

(2014) 10 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition Nos. 3378 of 1989, 2326 and 7963 of 2010

Indirabai Narayan Bivalkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Bombay Court of Wards Act, 1905 — Section 13(i), 14(c)(1), 14c(i)
Bombay Personal Inams Abolition Act, 1952 — Section 10, 13, 14, 17, 17(1)
Civil Procedure Code, 1908 (CPC) — Section 53
Constitution of India, 1950 — Article 136, 14, 21, 226, 227
Contract Act, 1872 — Section 19
Forest Act, 1927 — Section 3, 35, 35(1), 35(2), 35(3)
Land Acquisition Act, 1894 — Section 4, 6
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 11(b), 12, 12, 13
Maharashtra Private Forests (Acquisition) Act, 1975 — Section 2(ci), 2(f), 2(f)(iii), 3
Maharashtra Regional and Town Planning Act, 1966 — Section 113, 113(A), 113A, 113A

Citation : (2015) 4 ALLMR 77

Hon'ble Judges : Anoop V. Mohta, J;A.A. Sayed, J

Bench : Division Bench

Advocate : Mahendra Ghelani, Hamid Kadiani, Sneha Wani i/by Law Charter and Partners, V.A. Thorat, Senior Advocate i/by A.M. Kulkarni, Advocate for the Appellant; Mahendra Ghelani, Hamid Kadiani, Sneha Wani i/by Law Charter and Partners, D.J. Khambatta, Advocate General and Nitin Deshpande, AGP, Advocate for the Respondent

Judgement

Anoop V. Mohta, J.—Heard finally by consent of the parties, as facts and issues are interlinked and inter-dependent therefore, this common Judgment.

2. Prayer clauses in these Petitions are as under:-

A) In respect of Bivalkars' Writ Petition No. 3378 of 1989:-

a)to issue a Writ, direction or Order in the nature of Writ of Certiorari under Article 227 of the Constitution of India or analogous thereto calling for the record

of the said Case No. MS-KT-A-13/1989 before the Collector, Raigad, at Alibag, and after making inquiries and looking into the legality of the Order dated 28-2-1989, quash and set aside the same.

b)...to declare that the said impugned Order dated 28-2-1989 passed by the Respondent No. 2 abovenamed in the said Case No. MS-KT-A13/1989, Exhibit "I" collective hereto, is bad in law, unlawful without jurisdiction, arbitrary, capricious and violative of Article 14 of the Constitution of India.

c)...to declare that the Respondents abovenamed are bound and liable to pay to the Petitioner due and proper compensation for the land in question, namely, land bearing Survey No. 51/0 of Village Ulwe, Taluka Panvel District Raigad admeasuring about 157 acres 25 Gunthas, i.e. 63 hectares and 79 ares, since the same has been acquired under the Land Acquisition Act, 1894 pursuant to the said Notification No. LAQ-C-3419 dated 3-2-1970 issued thereunder.

d)directing the Respondents to pay to the Petitioner due and proper compensation for the land in question, namely, land bearing Survey No. 51/0 of village Ulwe, Taluka Panvel, District Raigad"

dd)directing the Respondents to allot to the Petitioners land in accordance with the Government Resolution at Exhibits J to K to the Petition in view of compulsory take over of the land of the Petitioners bearing Survey No. 51/0 of village Ulwe, Taluka Panvel, District Raigad"

B) In respect of Bivalkars" Writ Petition No. 2326 of 2010:-

"a)ordering and directing the Respondents 1 and 2 to give effect to and implement the orders dated 8/12/2005 and 20/12/2005 passed by this Hon"ble Court in Writ Petition No. 3378 of 1989 by Respondent 1 directing Respondent 2 to restore and handover to the Petitioners vacant and peaceful possession of the said land namely Survey No. 51/0 of village Ulwe, Taluka Panvel, District Raigad and pay to the Petitioners compensation and/or damages for the wrongful use and occupation of the said property including for the excavation carried out and/or permitted and/or caused to be carried out from 17/12/73 till possession thereof is restored to the Petitioners or till such time as the possession thereof is taken in accordance with the provisions of the Land Acquisition Act, 1894.

b)directing the Respondents to acquire the land under the Land Acquisition Act and pay compensation as also grant benefits of 12.5% Scheme Resolutions.

b-1)directing and requiring Respondent No. 1 and/or Respondent No. 3 to acquire the said land of the Petitioners in accordance with law, including inter alia under the provisions of the Land Acquisition Act 1894 and/or provisions of the Maharashtra Regional Town Planning Act and pay to the Petitioners compensation, solatium and interest in accordance therewith and grant to the Petitioners benefits under the prevailing scheme of grant of 12.5 land as set out herein.

b-2) requiring and directing Respondent Nos. 1 and 2 to handover to the Petitioners vacant and peaceful possession of the said lands in the event of their failure or neglect to acquire the said lands in accordance with law within such reasonable time as this Hon"ble Court may deem fit and proper;"

b-3)

b-4)

C) In respect of CIDCO's Writ Petition No. 7963 of 2010:-

"a) To hold and declare that the Respondent Nos. 4 and 5 or their predecessors are not the owners of the property in issue, i.e. Survey No. 51 at village Ulwe, Taluka Panvel, District Raigad (then Kolaba District), total admeasuring 157 acres and 25 gunthas.

b) To hold and declare that the property in issue..... is permanently and finally vested with the Government and from time to time transferred in favour of CIDCO for the purpose of establishment of Navi Mumbai Project.

c) To hold and declare that CIDCO is entitled to make use of the property in issue..... for the purpose of Navi Mumbai Project."

d)

e)

f)

3. The following is the basic case history of the respective Petitioners:-

Writ Petition No. 3378 of 1989 has been filed by the Owners of this plot of land bearing Survey No. 51/0 admeasuring 157 Acres 25 gunthas, at village Ulwe which was with the Petitioner and their predecessors in title since 1816. The Petitioners on coming to know that their lands are required by the Government for CIDCO, and handed over to CIDCO, had applied for compensation under L.A. Act. The Petitioners were informed that the matter of grant of compensation is referred to the Authority. However, by order dated 28 February 1989 passed by the Collector Raigad, who, while accepting the title of Bivalkar in the subject land and their entitlement to compensation, directed compensation to be paid to Bivalkar under the Maharashtra Private Forest (Acquisition) Act, 1975. In fact no such compensation however was paid or received. The Government had possession of the subject land only under a Management Agreement dated 21 October 1959 entered into with Bivalkar for management of the subject land under the provisions of Indian Forest Act, 1927 and the same was wrongfully and arbitrarily transferred by Forest Department to Revenue Department on its deforestation and in turn by Revenue Department to CIDCO without any authority of law. The grievance of Bivalkar is that without acquisition and payment of compensation, solatium, interest etc. the subject land has been wrongfully handed over by the Government to CIDCO.

4. Petition No. 7963 of 2010 has been filed by CIDCO against the State of Maharashtra & Ors. including the Bivalkar. Previously Writ Petition No. 7438 of 2009 was filed by the Bivalkars for similar reliefs and on similar basis and in which on 14 December 2009, the Court had passed the following order which had continued until its disposal.

"Stand over to 29th January, 2010. In the meantime the respondents are directed, if possession has not been handed not to handover possession until further orders."

On pointing out a formal defect in the pleadings, the said Petition was withdrawn by order dated 1 February 2010. After rectifying the same, Petition No. 2326 of 2010 has been filed on 17 March 2010.

5. Writ Petition No. 3378 of 1989 was initially disposed off by orders dated 8 December 2005 and, 20 December 2005. By Order dated 2 February 2012 in Review Petition (L) No. 32281 of 2011 by the State the above two orders have been recalled and the State is relieved of some of the admission/statements made as recorded therein by observing that:- "in as much as Petition No. 3378 of 1989 has been allowed in the sense that challenge to order dated 28 February 1989 succeeds in as much as that order stands withdrawn by the State Government" and it is directed that the Petition will be treated as pending for final hearing. There is some overlapping of submissions and reliefs sought in the two Petitions. However, in Petition No. 2326 of 2010 additional facts are pleaded and reliefs are prayed. All the Petitions have been heard finally.

Background/events of respective case/counter case and the reasons:-

6. In the year 1816, in reward of services, two grants were given to the predecessors in title of the Bivalkars. There have been successive alteration and changes therein from time to time. The history with regard to the grants has been set out in the Judgment of the Privy Council in Vinayakrao Dhundiraj Bivalkar Vs. Secretary of State AIR 1936 Privy Council 312.

7. Upon dissatisfaction on the offer of the Government proposing to put the predecessors of Bivalkars in possession of land not as Inamdar, but as a sort of managing member of an estate, the predecessors of Bivalkars as Plaintiffs filed the Suit for a declaration of title to hold the Suit lands as Inamdar with full proprietary rights. It has been further held on 29 July 1936, as under:-

"Their Lordships are clearly of the opinion that in passing this Order the Government of India proceeded on the basis that the Plaintiffs' predecessors had held their lands as inam lands, i.e. as lands in respect of which the Government had alienated to the grantee its land revenue in whole or in part as well as the lands themselves so far as they were the property of the Government."

"For these reasons Their Lordships are bound to dissent from the decision of the Courts below that the Plaintiff is not entitled to restoration in full of the inam property held by his mother as Inamdar."

"The Judgment should be for declaration only, as Their Lordships were assured that the authorities would act in accordance therewith, without any order for an injunction or other reliefs. The declaration will be as claimed in the Plaint ending with the words "within their limits". The right to possession and to mesne profits follows."

8. On 1 August 1953, the Bombay Personal Inam Abolition Act, 1952 (for short, "the Inam Abolition Act") came to be enacted. Provisions of Sections 4, 5, 7, 9, 10 and 17 are relevant. In the year 1957, village was surveyed and the property in Petition was assigned Survey No. 51.

9. Agreement dated 21 January 1959, Gazetted on 21 October 1959, came to be entered into between the Collector of Colaba and Bivalkars under Section 38(2) of the Indian Forest Act, 1927 (for short, "Forest Act") for management of the "private forest lands" on behalf of the Bivalkar, by the Forest Department of Government, as "reserved forest", on the terms and conditions set out therein. The title/ownership was never divested.

No challenge to this order by the Government at any earliest and relevant point of time was made, but in affidavit in reply of August 2014 made the following averments:-

"26..... This Agreement was mistakenly entered into by the Forest Department. It cannot confer title by admission nor can it supersede the provisions of the Inam Abolition Act, which will have effect by operation of law."

10. In the composite proceedings under the Inam Abolition Act, pertaining to the land in the Petition, and various other lands of the Petitioners, two Applications for compensation were filed, one under Section 10, and the other under Section 17 of the Inam Abolition Act.

11. On 29 April 1959, the Award by the Collector under the Inam Abolition Act came to be passed which makes abundantly clear that no proprietary rights in respect of such the land in the Petition were taken over and the claim of compensation for loss of proprietary rights was rejected. The proprietary rights of the Bivalkars were never extinguished of the land in question.

12. On 28 March 1960, after the order under the Inam Abolition Act and in consonance therewith, the revenue records were rectified by making an entry in Village Form 6 (Hakka Patrak) showing and noting lands which became Government lands consequent inter alia upon order dated 29 April 1959. On 6 November 1960, appointment of the Collector as Court of Wards under Bombay Courts of Wards Act, 1905 (for short, "the Wards Act") in respect of the properties of Vinayak Dhundiraj Bivalkar under Section 13(i) was made and gazetted and which continued till 1987. On 5 December 1960, Gazette Notification by the Collector and Court of Ward under Section 14c(i) of the Wards Act, inviting claims, if any, was issued in respect of the properties taken charge of by the Collector as Court of Wards. Obviously, no claim was made in response

thereto, by the Government. No averments or explanation by the State were made on this behalf.

13. On 24 January 1961, Notification under Section 35(3) issued by the Conservator of Forest, Thana Circle which pre-supposed and treated the land in the Petition as a "private forest" and prohibited certain activities in respect thereof. The notice proceeded on the basis that the Noticee thereof viz. Shri Vinayak Dhundiraj Bivalkar was the owner of the property and the property was a "private forest" for which jurisdiction is assumed, directions under Section 35(3) of the Forest Act was claimed and exercised by the Conservator of Forest.

14. On 16 June 1961, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, "the Lands Ceiling Act") came to be enacted. In view of several challenges to its constitutional validity and several litigations and orders of the Courts, and amendment of Constitution, many of the relevant provisions thereof came into force much later.

15. On 3 February 1970, the Commissioner of Bombay Division issued a Notification under Section 4 of the Land Acquisition Act, 1894 (for short, "the Acquisition Act") notifying that the land described in the Schedule thereto, are likely to be needed for public purpose specified i.e. for the planned development and utilization of the land in the trans-harbour, Panvel and trans-Thana Creek area for industrial, commercial and residential purposes. The Schedule to the Notification covers "all lands lying within the survey limit of the village mentioned below except the lands falling in the following categories". The villages mentioned below therein, covers the entire village Ulwe. The exclusion in sub-clause (d) covers Central and State Government lands.

16. It appears that consequent upon the Agreement for Management gazetted on 21 October 1959 referred to above, and without the knowledge or consent of Bivalkars or the Collector of Court of Wards, who was in-charge and management thereof, a Revenue Entry came to be made showing the lands as Government lands. It is presumed and believed, therefore, that on the erroneous impression that the land in question was Government forest land and, hence, excluded from Section 4 Notification, no further proceedings to acquire the same by issuing a Notification under Section 6 or thereafter by making an Award were taken in respect of the lands in petition and the lands remained acquired but without compensation. The "other" lands of Bivalkars in Ulwe have been acquired under the notification and its follow up and compensation and allotment under 12.5% scheme has been granted.

17. The State Government through its Urban Development, Public Health and Housing Department issued a Notification dated 20 March 1971 and declared that the area comprised in the villages specified in the Schedule thereto, settled as a site for a new town in the draft development plan for the Bombay Metropolitan Region and that the Government is satisfied that it is expedient in the public interest that the area shall be developed as a site for the proposed new town,

and therefore, in exercise of the power conferred under Section 113(A) of the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act") designated the land described in the Schedule thereunder, the site for the proposed new town which shall be known by the name of New Bombay. The schedule includes at item No. 15, village Ulwe of Taluka Panvel, District, Colaba.

The Government of Maharashtra through its Urban Development, Public Health and Housing Department also included therein a further Notification also under Section 113 of the MRTP Act, declaring CIDCO to be the new Town Development Authority for the area comprised in the site of New Bombay.

18. On 1 July 1972, Memorandum issued by Revenue and Forest Department conveying to the Chief Conservator of Forest, purported sanction of Government to the transfer of "Forest Land" mentioned in the statements of deforestation to the Revenue Department for its further release to CIDCO on the terms set out therein. Statement "B" thereto, showing details of Forest Lands allegedly in charge of Revenue Department, proposed to be transferred to CIDCO. Item 1 thereof, refers to the land in Petition.

The purported sanction of the Government to transfer the forest land, through Revenue Department to CIDCO, thus, is on a totally incorrect and baseless premise of the forest lands being in charge of Revenue Department over which the State Government has no charge or authority to transfer to CIDCO without following the due process of law and is thus without any lawful authority and is void ab-initio.

19. On 1 August 1972, the Government's Revenue and Forest Department accorded sanction to the deforestation of the forest land including the land in the Petition and for transfer thereof to CIDCO.

20. On 6 February 1973, Notification by the Government of Maharashtra through Revenue and Forest Department directing that the land in village Ulwe, Taluka Panvel, specified in the Schedule thereunder shall cease to be "protected forest" from the date of the Notification and which Schedule includes the land in the Petition.

Thus, with effect from the date of the said Notification i.e. 6 February 1973, the said lands ceased to be "protected forest". It was originally "private forest".

21. On 17 December 1973, the Collector of Colaba records that it is pleased to transfer the land mentioned in the Schedule thereto, which include the land in the Petition, to CIDCO for the planned development and utilization in the trans-harbour, Panvel and trans-creek Thane area for commercial, industrial and residential purposes on the terms set out therein and directed Tehsildar to handover possession of the land to CIDCO. The possession of the said lands were entrusted by Bivalkar to the Forest Department under the Agreement under Section 38(2) of the Forest Act to the Collector, for its management. The Collector was not empower to handover possession thereof to CIDCO without

acquiring rights thereto of Bivalkars. The directions to handover the possession was given in 19 December 1973. Admittedly, the possession as per the Possession Receipt, dated 21 November 1985, is shown to have been given on 21 November 1985. This aspect may have some relevance on the contention of delay raised by the State Government and CIDCO. These actions are likewise arbitrary and without any authority of law and unlawful and illegal.

22. On 30 August 1975, the Maharashtra Private Forest (Acquisition) Act, 1975, (for short, "Private Forest Act") came into force. By notification of 6 February 1973 the lands in question were deforested and therefore, the provisions of Private Forest Act have no relevance or applicability. But for the first time the stand taken by the State and CIDCO in the year 2014 is as under:-

"27. The 1972 Memorandum and 1973 Notification:- These documents too cannot override the effect in law of the Inam Abolition Act."

23. On 22 September 1975, provisions of Sections 2(c), 3, 4(b), (c) and (d) (f), 10, 11(b) and 12 to 17 of the Lands Ceiling Act deemed to have come into force (The Lands Ceiling Act). Provisions of Section 2(a) and (b), 5, 7 and 8(b) of the Lands Act are deemed to have come into force on 2 October 1975 and the remaining provisions came into force on 3 January 1976. (See Maharashtra 2 of 1976, Section 1(ii).

24. On 26 March 1976, in the proceedings for determination of surplus land in excess of ceiling limits under the Lands Ceiling Act, an order came to be passed under Section 21 S.L.D.T., by which the lands in question have not been declared surplus. This order has become final and so also the order under the Inam Abolition Act. On 21 January 1985, in pursuance of the directions of the Collector to the Tehsildar, by Possession Receipt dated 19 December 1973, the possession of the land in Petition is claimed to have been handed over to CIDCO.

25. On 20 May 1985, on the Bivalkars coming to know of the erroneous Revenue entry unilaterally made without any notice or hearing showing their lands as Government Forest, made an application to the Collector for the rectification of the apparent mistake in the Revenue records and for compensation for their lands under Land Acquisition Act. Ultimately, instead of making an award under the Land Acquisition Act, an Award dated 28 February 1989 came to be passed under Private Forest Act, awarding compensation to Bivalkar. In the Award, the ownership of Bivalkars and so also the entitlement of Bivalkars to compensation for the deprivation of their property is not disputed. The controversy was with regard to making an Award under the provisions of Private Forest Act and not under the Land Acquisition Act since the land had ceased to be forest from as far back as 6 February 1973, apart from earlier background.

26. On 21 November 1985, Award by SLAO in case No. 261/ULWE in respect of other land of Bivalkars bearing S. Nos. 10, 31, 98 and 104 collectively admeasuring A 4 G 37 A 4 by which Rs. 15757/60 have been awarded to the Collector and Court of Wards of Bivalkar. On 1 September 1986, Award by SLAO

in case No. 261 A/ULWE in respect of other land of Bivalkars bearing S. Nos. 35 and 97/2 collectively admeasuring A 22 G 16 A 8 by which Rs. 108164/55, have been awarded to the Collector and Court of Wards of Bivalkar. On 28 February 1989, above referred order of the Collector under the provisions of Private Forest Act, as stated above, was challenged in Writ Petition No. 3378 of 1989 which was disposed of by order dated 8 December 2005 on the statements on behalf of the Government accepting the ownership of Bivalkars and stating that the Government has withdrawn the Award. However, on a Review Petition, the Government was permitted to withdraw the statement, but by order dated 2 February 2012, challenge of Bivalkar to the Award under the provisions of Forest Act succeeded. One of the vague stand of the State in this regard is:-

"28. Order dated 28 February 1989:- It is submitted that the order of the Collector, Raigad, dated 28 February 1989 is bad in law, and as recorded in the order of this Hon'ble Court dated 8 December 2005, and as confirmed in the order of this Hon'ble Court dated 2 February 2012, it has been withdrawn. The said order erroneously records that the disputed lands were "not included" in the 1959 Award "Because it was handed over to the Forest Department". However, this submission is without prejudice to the submission made above, in the alternative, about the vesting of the lands in Respondent No. 1 under Section 3 of the Maharashtra Private Forest Act."

The order dated 28 February 1989, now is also stated to be bad in law by the State. The same was withdrawn earlier. It is recorded in the order that disputed lands were "not included" in the 1959 award, "because it was handed over to the Forest Department". The alternative submission of the State is that the land vests with the State in view of Section 3 of the Maharashtra Private Forest Act.

27. In June 1989, Bivalkar filed Writ Petition No. 3378 of 1989, inter alia, challenging the Award under Forest Act dated 28 February 1989 and which Petition was subsequently amended to include additional submissions and prayers challenging unauthorized act of appropriation by Government and CIDCO without due process of law and without compensation to Bivalkar. On 15 December 1997, letter from State Government (UD Department) to CIDCO dated 15 December 1997, explaining/clarifying issue of "Absentee Landlord", making clear that in the present case, as the management only was handed over to Forest Department, issue of Absentee Landlord is not applicable.

28. On 17 March 1997, CIDCO (not State), filed affidavit in reply in the Petition. In its Affidavit of 17 March 1997, CIDCO has taken a specific stand that as on promulgation of the Inam Abolition Act, inam stood abolished and the Petitions land was transferred to the Government.

It is further contended by CIDCO therein that for privately owned lands, which were acquired for the Navi Mumbai Project, Notification to that effect under Section 4 of the Land Acquisition Act was issued. CIDCO further contends that the Petitions land was not notified therein as the same had already stood

transferred in the name of the Government in the Revenue records. It is also contended therein that the Revenue records also show the Suit land as forest land. The above referred Memorandum dated 1 July 1972 also refers specifically that the Government transferred the lands to CIDCO as per the Memorandum. In relation to the Notification issued by the State Government to Forest Department, the land in the year 1973, it is stated that, the same was in order to transfer the Suit land to the CIDCO and Bivalkars cannot claim ownership on the face of such Notification. It is also contended therein by CIDCO that Bivalkars were offered compensation under Private Forest Act and the same was not accepted by Bivalkar contending that they should be paid compensation as per the Land Acquisition Act. In the second Affidavit, CIDCO (not by the State) has attempted to improvise these in substance by contending that Bivalkars were "absentee landlord" and therefore not entitled even to the benefit of 12.5% scheme.

29. On 10 September 1998, there is a letter from CIDCO to Bivalkar confirming prima facie eligibility for entitlement inter alia to allotment of land admeasuring 32750 sq. mtrs. against acquisition of their lands in Ulwe. The State never raised any such challenge at any earlier relevant time. The CIDCO has no independent right, except through the State. All earlier orders passed and/or all the Acts remained intact, till this date.

30. On 1 October 2004, affidavit in reply is filed by the Collector in Writ Petition No. 3378 of 1989. On 25 November 2004, letter from CIDCO to Bivalkars confirming eligibility inter alia to allotment of 32750 sq. mtrs. On 10 February 2005, affidavit of Bivalkar in Rejoinder to the Affidavit of CIDCO in Writ Petition No. 3378 of 1989. Letter from State Government (UD Department) to CIDCO dated 15 December 1997 explaining/clarifying issue of "Absentee Landlord". On 7 October 2005, affidavit in reply on behalf of Respondent Nos. 3 and 4 in Writ Petition No. 3378 of 1989. On 21 February 2005 and 10 October 2005, affidavit in rejoinder to the affidavit of CIDCO in Writ Petition No. 3378 of 1989. On 8 December 2005, High Court order in Writ Petition No. 3378 of 1989 recording statements by AGP and disposing of the Petition thereon. On 20 December 2005, High Court order in Writ Petition No. 3378 of 1989 recording further statements of AGP and giving directions to the State Government. On 19 June 2007, Government Resolution forming Committee for grant of compensation to be paid under 12.5% scheme and benefit to Bivalkars.

31. On 20 November 2008, Contempt Petition was filed by the Bivalkars against the Government and Show Cause Notice issued therein and which however was withdrawn by the Petitioner on 16 March 2012 in view of the order in Review dated 2 February 2012. On 17 March 2010, in view of the inaction of the Government, Bivalkars filed Petition No. 2326 of 2010 in pursuance of the Orders dated 8 December 2005 and which has been admitted by order dated 2nd February 2012.

32. In the month of May 2010, project feasibility study published by CIDCO for

the New Airport Project stating that "In accordance with the "in principle" approval obtained from the Union Government, the project is proposed to be executed on the basis of public-private-partnership (PPP). Accordingly, a Special Purpose Company (SPC) would be incorporated as private company under the Companies Act, 1956 (for short, the Companies Act) in which 26% equity would be held by CIDCO/AAI and the rest with the strategic partner to be selected through the public bidding process. The SPC will raise the required resources, design, build, market, manage and operate, and maintain the Airport during the concession period."

33. On 17 September 2010, CIDCO filed Petition No. 7963 of 2010 praying inter alia, to hold and declare that Bivalkars are not owners of the property and that it has finally vested with Government and transferred to CIDCO. Prayers (d) (e) and (f) however, do not survive in view of the order in Review. On 2 February 2012, order on Review Petition permitting Government to withdraw admissions/statements and partially allowing Petition No. 3378 of 1989. After reviving Petition No. 3378 of 1989 and admitting Petition No. 2328 of 2010 of Bivalkars and Petition No. 7963 of 2010 of CIDCO, the Court also directed all 3 Petitions to be heard together. On the question of grant of interim relief, the Court observed that "It is clear from the record that for long time land is in possession of CIDCO. A statement has been made on behalf of CIDCO that the land is likely to be needed for the construction of Airport in New Bombay. The statement has also been recorded, which is made by CIDCO, that the land will not be permitted to be used for any commercial purpose unconnected with Airport, during the pendency of this Petition. It is made clear that in case it is held in this Petitions that the land does not vest in the State Government and CIDCO and that the Petitioner is the Owner of the land, the State Government will be free to acquire the land in accordance with law. It is clarified that the Petitioner will be at liberty to urge that he is entitled to land under 12.5% scheme in that event."

34. On 6 August 2014, affidavit in reply filed on behalf of CIDCO, as well as, the State Government in amended Writ Petition No. 3378 of 1989. On 10 August 2014, rejoinder of the Bivalkars to the replies of CIDCO and State, both dated 6 August 2004 in Writ Petition No. 3378 of 1989.

35. All the parties have filed their written submissions also.

36. As per the submissions of the Petitioners, the following are the gross inconsistencies/inaccuracies in the statements on oath on behalf of CIDCO and the State Government, which also remained uncontroverted, therefore, noted and quoted:-

"1) In its Affidavit in Reply dated 17 March 1997 by CIDCO in Writ Petition No. 3378 of 1989, in paragraph 3, it is stated that:-

"I say that on the promulgation of the Inam Abolition Act, inam was abolished and the said land was transferred to the Government under the said Act."

In the said Affidavit, in paragraph 4, it is further submitted that:-

"Bivalkar had been offered compensation under the Maharashtra Private Ownership of Forest Act, 1975. However, the Petitioner has not accepted the same and is contending that her land had to be acquired under the Land Acquisition Act, 1894."

2) The Collector Raigad, on behalf of the State, made an Affidavit dated 01.20.2004 in Writ Petition No. 3378 of 1989. In paragraph 1 of the said Affidavit, it is stated that:-

"Village Ulwe was personal inam village and one Mr. Bivalkar was Inamdar of the said village. The said Village Ulwe was un-surveyed village then. After Abolition of Personal Inam Act, 1952, survey of the said village was conducted and record of rights was created. I say that that record of rights was approved in the year 1957, wherein the land bearing Survey No. 51/0 was shown as Government forest."

3) It is further stated in paragraph 4 thereof that:-

"I say that on 20 May 1985, the Petitioner applied to the Respondent No. 2 and prayed for compensation. The correspondence went on between the Revenue Department and Government of Maharashtra and Collector's Office regarding quantum of compensation to be paid to the Petitioner. The Revenue and Forest Department vide letters dated 12 December 1988 and 3 February 1989 directed the Collector Raigad to finalise the amount of compensation under the said Act as the said land was private land."

4) Letter dated 12 December 1988 annexed as Exh. 1 to the said Affidavit clearly states that:-

5) "Of Survey No. 51/0, 157.25 acres land is by mistake shown as Government land and accordingly transferred to CIDCO in 1972." The Affidavit of State dated 6 August 2014 in para 11(i) it is stated that:-

"The land in question was falling in inam village of Bivalkar Family. "

6) Strangely, however, in the Written Submissions on behalf of the State, in para 14(i), it is alleged that:-

"The Award does not deal with all the lands situate within village Ulwe. Hence the lands which are the subject matter of the present Petition might not have been dealt with by the Collector in the award at all, and thus the award cannot be used by the Petitioners to argue that they held the title to the disputed lands."

It is further contended in paragraph 14(iv) that:-

"The Petitioners have not been able to identify what portion of the award deals with the lands that are the subject matter of the present petition."

The aforesaid may be borne in mind in the context of the contentions of the

State and CIDCO that the title of the Petitioners was divested by virtue of the provisions of the Bombay Personal Inam Abolition Act, 1952 and the Award made thereunder. It is gross misrepresentation by the State and the CIDCO to contend that the Petitioners are claiming title under the Award under the Personal Inam Abolition Act. In fact, it is the contention of the Government otherwise on divesting of the title under the said Act.

7) On behalf of CIDCO, a further Affidavit has been filed dated 7 October 2005 in said Writ Petition No. 3378 of 1989. In paragraph 3 thereof, it is contended that:-

"The Petitioner's right to compensation has been decided by the Impugned Order dated 28th February 1989 (Exh. 1 to the Petition) passed by Shri Rajiv Agarwal, the then Collector Raigad. I therefore deny that the Petitioner has been deprived of the property without compensation."

8) Further in the said paragraph 3, it is stated on behalf of the CIDCO that:-

"I say that in so far as the above Petitioner is concerned, it is an admitted position that the Petitioner had handed over lands to the Forest Department for management sometime in the year 1959 and in respect of which an agreement was entered into between the Petitioner and the Forest Department."

9) In the Writ Petition of CIDCO No. 7963 of 2010, in paragraph 7 thereof, CIDCO has stated that:-

"The present dispute pertains to the lands at serial No. 51 at village Ulwe, Taluka Panvel, dist. Raigad (then Colaba) totally admeasuring 157 acres 25 gunthas..... The property in issue is completely barren and uncultivable land."

10) In paragraph 23 of the said Petition No. 7963 of 2010, CIDCO has contended, in the context of the Award dated 28 February 1989 under the Maharashtra Private Forest Acquisition Act, 1975, that:-

"This alleged action on the part of the Collector, however was completely null and void ab initio inasmuch as the property in issue was the inam land of the contesting Respondents as aforesaid and after the said inam was abolished in pursuance of the Inam Abolition Act, there was no occasion for the Collector to apply the provisions of the aforesaid Maharashtra Private Forest (Acquisition) Act, 1975."

It is also stated in the said paragraph 23 that:-

"The Petitioner states that since the Collector basically erred in applying the provisions of the aforesaid Maharashtra Private Forest (Acquisition) Act, 1975, the said proceedings are void ab initio and there was no question at all of quashing or setting aside of the aforesaid Order/Award."

Strangely, however, in Submission 16 by the Government, it is submitted in the alternative that:-

"Assuming without admitting that the said lands did not vest in Respondent No. 1

by virtue of the Inam Abolition Act, they nevertheless vested in Respondent No. 1 by virtue of the Maharashtra Private Forest (Acquisition) Act, 1975 r/w Indian Forest Act, 1927."

Further, in paragraph 20, the State Government has stated that:-

"The subject lands in dispute was shown as protected forest in the revenue records since 1948. However the mere fact that the said lands ceased to be "protected forest" by virtue of 1973 Notification does not mean that they thereby also ceased to be a private forest."

It is also contended in paragraph 22 of the submissions of the State Government that:-

"Any private forest automatically vested in Respondent No. 1 under Section 3 of the Maharashtra Private Forest Act with its coming into force. Thus it is respectfully submitted that the lands which form the subject-matter of the present dispute, in any event vested in Respondent No. 1 in 1975 by virtue of the Maharashtra Private Forest Act, and the Petitioners have no title to the said lands."

It is further contended by the State in paragraph 23 that:-

"Though a Memorandum was issued by the Revenue and Forest Department of Respondent No. 1 on 1st July 1972, under which Respondent No. 1 consented to the "disforestation" of the lands presently in dispute, it is respectfully submitted that the said Memorandum is subject to the Notification dated 6 February 1973, under which the land did not cease to be a "protected forest", i.e. a Government owned forest."

The aforesaid submissions by the State Government are not made without prejudice or in the alternative and proceeds on the acceptances of the fact that the lands were forest and so treated until the Notification dated 6 February 1973.

11) The entire claim and case of CIDCO in the said Petition No. 7963 of 2010 has been summarized in the averments in paragraph 34 stating, inter alia, that:-

"The Petitioner states that in view of the various provisions of the Bombay Personal Inam Abolition Act, 1952, the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1966, the Maharashtra Private Forest (Acquisition) Act, 1975, the contesting Respondents are not entitled to claim to be the owners and/or holders of the land in issue."

12) The Government and CIDCO, both, have recently made affidavits both dated 6 August 2014 in Writ Petition No. 3378 of 1989 after the matter was partly heard. In paragraph 8 of the Affidavit on behalf of the State, it is stated that:-

"By a Memorandum dated 1 July 1972 a decision was taken to deforest the lands falling in Navi Mumbai area which was decided to be handed over to CIDCO. Then, by Notification dated 6 February 1973, the disputed land was deforested."

13) In paragraph 9 of the said Affidavit, it is further stated that:-

"Notification dated 6 February 1973 by which the disputed land was deforested, which is referred to above, makes a reference to the Government Notification dated 23 February 1907. This Notification dated 23 February 1907 does not show that the land in question which bears Survey No. 51/0 is a protected forest. Therefore, perhaps, the revenue records after 1948 was shown as Government Forest on the basis of Notification dated 23 February 1907. Thus, the Notification dated 6 February 1973 was unnecessary. Therefore, the agreement between the Forest Department and Bivalkar Family dated 21 October 1959 was illegal as the land in question was never a forest land."

Strangely, however, in the Written Submissions on behalf of State, in paragraph 2(i), it is stated that:-

"After 1948, the revenue records show that the land which is subject matter of the present petition was a Government forest, on the basis of a Notification dated 23 February 1907."

It is further contended in paragraph 10 of the Written Submissions of the State Government that:-

"It is respectfully submitted that even forest lands in Maharashtra, such as the lands which are the subject matter of the present petition, can be "cultivable" lands."

Further, CIDCO in its submission in Clause 6(a) has contended that:-

"Even if it is assumed that the subject land was saved from the clutches of inam lands, the subject land would still be vested with the Government under the Forest Laws."

It is further contended in sub-paragraph (b) that:-

"Once the subject land is proved to be a private forest then the State Forest Act Section 3 comes into the picture automatically. By legal fiction the subject land stands acquired and vested in the State Government free from all encumbrances and shall be deemed to be the exclusive property of the State Government..... In such case at the most the Petitioners are entitled to compensation under the State Forest Act."

14) CIDCO in the Affidavit on its behalf dated 6 August 2014 and in written submission, has repeated in paragraph 7 that the property in issue is a completely barren and uncultivable land.

15)

16) While all along contending that the property stood vested in the Government under the Inam Abolition Act, in paragraph 12 of the said Affidavit, CIDCO alleges that:-

"The said Judgment does not refer to any details of the land involved in the said village Ulwe, Survey Number, area etc. and as such there is serious dispute as to whether the said Judgment relates to the property in issue at all and that it will not be just, legal and proper to rely upon the said Judgment to conclude that the Petitioners are the inamdars of the property in issue."

17) In paragraph 15 of the said Reply, CIDCO has gone to the extent of stating that:-

"I say that in relation to the property in issue no ownership rights were ever conferred upon the Petitioners" predecessors."

At the same time, in the same very paragraph, CIDCO also alleges that:-

"In any case, it is specifically observed in the Award under the Inam Act as well as it is the legal and settled position that all the rights and interests of the predecessors of the Petitioners were extinguished and the inam land including the property in issue vested with the Government."

In their Written Submissions in paragraph 6 CIDCO has contended that:-

"Basically, the Petitioners have miserably failed to identify the subject land in the award under the Inam Act. Admittedly, the said award takes into its compass the entire village Urve, where the subject land is situated. As such there cannot be any dispute that the subject land has been vested with the Government under the Inam Act."

It is further contended in the said paragraph 5(e) that:-

"It is further observed that no other rights or interests of the Inamdar has been extinguished meaning thereby that no other proprietary rights were ever held by the predecessors of the Petitioners and therefore there is no question of any extinguishment thereof."

Thus, the contention of the CIDCO now appears to be that the subject land is not identifiably covered in the Inam order and is not specifically covered thereby and consequently there is no extinguishment of the proprietary rights of the Petitioner under the Inam Abolition Act. In sub-paragraph (f), CIDCO continues to allege that:-

"The only conclusion is that after coming into force of the Inam Act, the subject land vested with the Government and the Petitioners and the predecessors lost all their rights and interests including proprietary in the subject land. Since thereafter the subject land became the exclusive property of the State Government."

This submission, which also is not made without prejudice or in the alternative, runs contrary to the earlier contentions in the said submissions by CIDCO which goes to the length of saying that the award does not extinguish the proprietary rights of the predecessors of the Petitioners as no such proprietary rights were

held by them."

37. The Respondents-State of Maharashtra and CIDCO have raised mainly following points/issues for consideration.

- a) Not entitled for any compensation as land already vest in the State/CIDCO.
- b) Disputed question of facts revolving around title/ownership of the property/No title on admission.
- c) Maintainability of Petitions.
- d) Availability of alternate remedy, like Suit.
- e) delay and laches.

All the parties have read and referred and relied upon the various provisions of the involved Acts, apart from pleadings on record.

38. Bombay Personal Inams Abolition Act, 1952:-

The submissions of State of Maharashtra and CIDCO are as under:-

"(1) In paragraph 3 of the Petition, the Petitioners admit that "The entire Village Ulwe was the Inam land of the Bivalkar family." However, personal inams were abolished by virtue of the Inam Abolition Act. Extracted below are some of the key provisions of the Inam Abolition Act:-

Section 2(1)(c)-

" "inamdhar" means a holder of a personal inam and includes any person lawfully holding under or through him,"

Section 2(1)(d)-

" "Inam village" or "inam land" means a village or a portion of a village on land, as the case may be, held by a person under a personal inam"

Section 2(1)(e)

" "Personal inam" means,- (I) a grant of a village, portion of a village, land (including any share in the revenues of a village or any portion thereof or land) or total or partial exemption from the payment of land revenue entered as personal inam in the alienation register kept under section 53 of the Code; (ii) a grant of money or land revenue including anything payable as a cash allowance on the part of the State Government in respect of any right, privilege, perquisite or office and entered as class I, II, III, IV or V in the records kept under the rules made under the Pensions Act, 1871...."

Section 4: Abolition of personal inams and rights in respect of such inams:

"Notwithstanding anything contained in any usage, settlement, grant, sanad or order or a decree or order or a Court or any law for the time being in force, with

effect from and on the appointed date-

(i) all personal inams shall be deemed to have been extinguished;

(ii) save as expressly provided by or under the provisions of this Act, all rights legally subsisting on the said date In respect of such personal inams shall be deemed to have been extinguished:

Provided that in the case of a personal inam consisting of an exemption from the payment of land revenue only, either wholly or in part, such exemption shall be deemed to have been extinguished-

(a) if the amount of such exemption is or exceeds Rs. 5,000 with effect from the 1st of August 1953; and

(b) in all other cases, with effect from the 1st day of August 1955."

(2) The abolition of personal inams also results, by operation of the provisions of Section 7 of the Inam Abolition Act, to vest certain parts of the erstwhile inam land in the State Government. Section 7 provides as follows:

Section 7: All public roads, etc., situate in inam villages to vest in Government:-

"All public roads, lanes and paths, the bridge, ditches, dikes and fences, on or beside, the same, the bed of the sea and of harbours, creeks below high water mark, and of rivers, streams, nallas, lakes, wells and tanks, and all canals, and water courses, and all standing and flowing water, all unbuilt village site lands, all waste lands and all uncultivated lands (excluding lands used for building or other non-agricultural purposes), which are situated within the limits of any inam village or inam land shall, except in so far as any rights of any person other than inamdar may be established in or over the same and except as may otherwise be provided by any law for the time being in force, vest 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 held by an inamdar in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose them of as he deems fit, subject always to the rights of a way and other rights of the public of individuals legally subsisting.

Explanation:- For the purposes of this section, land shall be deemed to be uncultivated if it has not been cultivated for a continuous period of three years immediately before the appointed day. "

(3) Thus, Section 7 of the Inam Abolition Act clearly provides that "all uncultivated lands... which are situated within the limits of any inam village or inam land shall....vest in and shall be deemed to be..... the property of the State Government and all rights held by any inamdar in such property shall be deemed to have been extinguished." (emphasis supplied)

(4) Section 7 speaks about "uncultivated" land. The Supreme Court has, in State

of Gujarat Vs. Gujarat Revenue Tribunal and Others, , interpreted this to mean "cultivable" yet uncultivated lands.

(5) It is respectfully submitted that even forest lands in Maharashtra, such as the lands which are the subject matter of the present Petition, can be "cultivable" lands;

i. Section 2(c-i)(iii)-(iv) of the Maharashtra Private Forests (Acquisition) Act, 1975 defines the word "forest" as including:

"(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." (emphasis supplied) Thus, the definition of "forest" in the Maharashtra Private Forests (Acquisition) Act, 1975 recognizes that even forest lands in Maharashtra can be cultivable.

ii. Likewise, even Section 2(16)(c) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 suggests that forests can be cultivable. The said Section defines the word "land" as follows:

" "land" means land which is used, or capable of being used, for the purposes of agriculture, and includes-

...

(c) trees and standing crops on such land" (emphasis supplied)

Thus, even the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 recognizes that land on which trees are present can be cultivable land.

(6) The Supreme Court has held that the word "vest" in such cases means that the land vests in the government absolutely and free from all encumbrances. Thus, in Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, , the court held:

"In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever." (at p.2967, paragraph 16).

"The land once vested in the State cannot be divested. Once the land is vested in the State it has a right to change the user. The appellant cannot be heard raising grievance on either of these issues." (at p. 2971, paragraph 34)

39. The Petitioners' contention in answer to above is acceptable, in this regard,

for deciding the present Writ Petitions in view of following Judgments.:-

Gangadharrao Narayanrao Majumdar Vs. The State of Bombay and Another,

The validity of Bombay Personal Inams Abolition Act, 1952 dealt in this Judgment. While interpreting the provisions, it is observed as under:-

"....Thus by s. 5 the holder of a personal inam became for all practical purposes an occupant under the Code liable to pay full land-revenue and the advantage that he had under Acts II and VII of 1863 of paying only a part of the land-revenue and retaining the rest for himself was taken away. The exception which we have referred to above was where the inferior holder holding inam land paid an amount equal to the annual assessment to the holder of the personal inam, such inferior holder would be liable to the State Government and would become an occupant of the land under the Code."....

"It will be seen from this analysis of the Act that the main provisions are Sections 4, 5 and 7. So far as s. 7 is concerned, there is provision for compensation with respect to lands vested in the State by virtue of that section. But no compensation is provided for the rights extinguished by Sections 4 and 5

"31. We find, however, that the Act has provided for compensation under s. 10 so far as that part of inam lands which are vested in the State by s. 7 are concerned. Further s. 17 provides for compensation in a possible case where anything has been left out by s. 7 and the inamdars are entitled to compensation for it. It is true that by sub-s. (5) of s. 17 no compensation is to be paid for the loss to the inamdars of what he used to get because of the difference between the quit-rent and the full assessment.".....

40. Maharana Shri Jayavantsinhji, Ranmalsinhji Vs. The State of Bombay and Others,

This Judgment deals with the liability of erstwhile Taluqdar to pay land Revenue assessment-Jama, in view of Bombay Taluqdari Tenure Abolition Act, 1949 and Gujrat Taluqdars Act, 1888.

".....Shortly stated, the combined effect of the provisions was that the taluqdari tenure was abolished and that the taluqdar became the occupant with liability to pay land revenue in accordance with the provisions of the Code."

41. U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others,

This judgment deals with the rights of Jagirdars becoming occupants of Forest Areas under the Bombay Land Revenue Code after Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953. It is held that they do not have right to cut and remove the trees from the Forest land of the villages in question.

42. Navinchandra Babubhai Nagarsheth and Others Vs. Bombay Revenue Tribunal and Others,

The Apex Court in this case also dealt with the provisions of Bombay Personal

Inams Abolition Act and specifically Sections 4, 5, 10 and 17. It is reiterated that Section 5(2)(a) gives Inamdar the rights of an occupant in respect of the lands in his actual possession or in possession of persons holding from him other than inferior holders. It is also held that the grants of inam lands, on their true construction, may included the right to mines or mineral produces (Secretary of State for India Vs. Shantaram Naravan) ((1925) I.L.R. 49 Bom. 99) and this right of the Inam is preserved by Section 9.

It is observed by the Apex Court that-

"Section 5(2)(a) gives him the rights of an occupant in respect of lands in his actual possession or in possession of persons holding from him other than inferior holders. The grants of inam lands, on their true construction, may include the right to mines or mineral products, see Secretary of State of India v. Shantaram Naravan ((1925) I.L.R. 49 Bom. 99), and this right of the inamdar, if any, is preserved by s. 9 of the Act. By s. 10 of the Act the inamdar holding inam villages or lands is entitled to compensation in respect of any right or interest in any property referred to in s. 7. He is also entitled to compensation under s. 17(1), but this right is subject to the provisions of s. 17(5). It will appear, therefore, that the Act treats the inams of the two categories very differently. While the holder of the inam of the first category referred to in s. 2(1)(e)(i) suffers from the disadvantage of the bar of s. 17(5) in respect of compensation, he enjoys numerous advantages which are denied to the holder of the inam of the second category referred to in s. 2(1)(e)(ii)."

43. State of Gujarat Vs. Gujarat Revenue Tribunal and Others,

While dealing with the Bombay Taluqdari Tenure Abolition Act and referring to Section 6 that the vesting is in respect of properties which could be put to public use. It leaves the public properties untouched. Whether the property rights extinguished or not, depends upon the category of the property. "All waste lands" and "all uncultivated lands" are two different types of lands. It is also held that the expression "uncultivated land" in Section 6 means "cultivable but not cultivated". That is fit for cultivation but allowed to lie fallow. It is cultivable or unfit for cultivation.

"20. The Explanation below S. 6 has a twofold function. The purpose of the explanation first, is to explain the meaning of the expression "uncultivated lands" in the substantive provision. It then seeks to curtail the effect of the section. It is a key for ascertaining the meaning of the expression "uncultivated lands". Without the Explanation, any land lying uncultivated, on the date of the vesting, even for a year, i.e. allowed to lie fallow according to the normal agricultural practice, would vest in the Government. But then the Explanation steps in and seeks to mitigate the rigour. It says that the land allowed to lie fallow continuously for a period of three years, shall alone be deemed to be uncultivated land, meaning thereby that a piece of land allowed to lie fallow, intermittently, for a period of less than three years will not be deemed

"uncultivated lands".

21. In that view of the matter, the grass-lands on hilly tracts which were incapable of any cultivation could not, in law, be treated to be "uncultivated lands" within the meaning of S. 6, read with the Explanation thereto."

44. Ambabai Janhavibai Vs. State of Maharashtra,

This Judgment deals with Bombay Personal Inams Abolition Act, 1952, specifically Sections 5 and 7 wherein it is observed by the Division Bench of this Court that the land in possession of an Inamdar which was not cultivated but which naturally grew grass for fodder does not vest in the State under Section 7 of the Inams Abolition Act as it is saved by Section 5. The actual cultivation as contemplated under Section 5 is not necessary. Inamdar were making use of these lands by selling grass on lands which grew thereon, is sufficient to hold that it was in cultivation. In paragraph 6, the Apex Court observed that-

"6. It seems to us that the question whether the Inamdar loses his rights to the lands, which were in his actual possession, but which were not cultivated, should be decided by reading together Ss. 5 and 7 and so construing them as to bring about harmony between them, and if this is done, S. 7 will, in our opinion, not apply to lands, which on the appointed date were in actual possession of the Inamdar, even if they were uncultivated lands."

45. The submission to distinguish State of Gujarat (Supra) by referring to paragraphs that even otherwise evidence is necessary to show that the land was "cultivable" and/or "cultivable-yet uncultivated" is also unacceptable in the above admitted position apart from all the judgments of Supreme Court of 1959, 1961 and 1980 and High Court judgments so read and referred by the Petitioner, specifically when there is finding given by the concerned Authorities that there was income received/receivable by the land owner out of this land in question. This issue, in our view, not raised at any earlier point of time, cannot compel the owner and/or parties to re-open the issue for want of evidence as stated for the first time in the reply in the writ petition. The Respondents/Authorities throughout admitted the ownership of the land including the title, now cannot be permitted to raise such pleas specifically in view of admitted material placed on record and the judgments so referred giving the interpretation in support of Petitioner's contention. The Respondents failed to discharge their burden as they claim that the land vested in the Government under the Inam Abolition Act and other Act also but failed to prove the same except by raising frivolous pleas. The order so passed by the Authorities consistently, on the contrary, supports the case of the Petitioner that the land was never vested with Government specifically under the Inam Abolition Act. The diversion of Government of land to CIDCO was illegal and without authority of law and Land Acquisition provisions so invoked even if any, admittedly no compensation paid to the Petitioner for this land though the same was paid for other lands of Petitioner in accordance with law including based upon the policy of CIDCO. The Respondents, therefore, in

our view, failed to discharge their own burden. Mere allegation vesting of property is not sufficient. The vesting always must be accordance with law and even if any, to settle that the requisite compensation need to be paid to the owner at appropriate time. The judgments cited by the Petitioner in this regard on adequate and requisite compensation supports the case to this extent. There is no question of conferring title on the basis of revenue records as sought to be contended by the Respondents. The frivolous contentions, in view of above reasons, in fact destroy the contradictory defence so raised by the Petitioner/land owner and further supports their case that Respondents arbitrarily misused their power and without paying reasonable compensation in accordance with law, usurp the property. This, in our view, is impermissible.

46. There is no issue with regard to the Judgment of Vinayakrao Dhundiraj Bivalkar Vs. Secretary of State (Supra). The relevant paragraphs are as under:-

"This suit was instituted by the plaintiff in the District Court at Thana against the Secretary of State for India in Council for a declaration that he is the inamdar and owner of the soil and has full proprietary rights in the suit lands, and for possession and mesne profits. The District Judge dismissed the suit as to merits and for want of jurisdiction. He also thought that the suit was barred by limitation of time. The judgment of the Bombay High Court affirmed his decision as to merits and dismissed the appeal without deciding the questions of jurisdiction or limitation."

"For these reasons in their Lordships' opinion the plea as to jurisdiction fails and as the plea of limitation also fails on the facts and dates the appeal should be allowed. The judgment should be for a declaration only as their Lordships were assured that the authorities would act in accordance therewith without any order for an injunction or other relief. The declaration will be as claimed in the plaint ending with the words "within their limits." The right to possession and to mesne profits follows. The plaintiff should have the costs here and below. Their Lordships will humbly advise His Majesty accordingly."

47. The agreement dated 21 October 1959 treating the Petitioners' predecessors as "Owners" by the Government by entering into agreement for a period of 90 years for managing the property, including land in question as "Reserved Forest" as contemplated under Sub-Section (2) of Section 38 of the Indian Forest Act, 1927 is also not in dispute. By this agreement, even the liability of the taxes were upon the owners. The property in question of village Ulwe, Survey No. 51 area 157.25 (AG) is well described.

48. The Award under the Bombay Personal Inams Abolition Act, 1952 dated 29 April 1959 passed by the District Deputy Collector, Panvel Division as read and referred by the parties declared as under:-

"The total acreage of the village is 720 acres and 3 gunthas out of which 464 acres 20 1/2 gunthas are under cultivation."

49. The reference to sweet land of 157.36 (A.G.) is also made and observed as under:-

"At the outset it is necessary to observe that none of the above properties vest in Govt. They are either held by Inamdar or inferior holders etc."

"The inamdar has admitted that all these properties are held by other occupants and not by Govt. The question of granting compensation for the properties themselves therefore, does not arise. He has lost his property right to Land Revenue or rent from the cultivators in his capacity of superior holder of the lands. No other right or interest of the Inamdar has been extinguished."

50. By the order, therefore, compensation under Section 10 was granted and not under Section 17. There is clear observation so far as the property in question that this property not vested in Government. They are held by Inamdar or Inferior Holder. In this background, it is necessary to note the other relevant provisions of the Bombay Personal Inams Abolition Act, 1952 viz. Section 4, 5, 7, 9, 10 and 17 along with Sections so read and referred by the parties.

"5. Liability of inam village or inam land to payment of land revenue and inamdar and permanent holder to be occupant.- (1) All inam villages or inam lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder and the provisions of the Code and the rules relating to unalienated land shall apply to such lands.

(2) (a) An inamdar in respect of the inam land in his actual possession or in possession of a person holding from him other than an inferior holder, referred to in clause (b) below, or

(b) an inferior holder holding inam land on payment of annual assessment only shall primarily be liable to the State Government for the payment of land revenue, due in respect of such land held by him and shall be entitled to all the rights and shall be liable to all obligations in respect of such land as an occupant under the Code or the rules made thereunder or any other law for the time being in force."

51. The Apex Court in State of Gujarat (Supra) while dealing with Bombay Taluqdari Tenure Abolition Act, 1949 of which basic sections are stated to be identical in terms with Bombay Personal Inams Abolition Act. The Apex Court has observed, though based upon the material available therein but referring to the basic provisions which are relevant, observed thus:-

"10. The abolition of the taluqdari tenure, however, did not deprive the taluqdars of the lands in their possession, and Section 5(1)(b) provides that a taluqdar holding any taluqdari land shall be deemed to an occupant within the meaning of the Land Revenue Code or any other law for the time being in force. Then comes S. 6, which provides that all public roads, lanes etc., not situate within the want as belonging to a taluqdar, shall vest in the Government and all rights held by a taluqdar in such property shall be deemed to have been extinguished. S. 7

provides for payment of compensation to taluqdars for extinguishment of rights under S. 6 Clause (b)(i) thereof provides that if the property acquired is "waste or uncultivated but is culturable land", the amount of compensation shall not exceed three times the assessment of the land. S. 14 provides for payment of compensation to taluqdars for extinguishment or modification of any other right where such extinguishment or modification amounts to transference to public ownership of such lands or any right in and over such land, i.e. in any land other than those in respect of which provision for the payment of compensation has been made under Section 7."

"15. It is, therefore, evident that the determination of the question whether a particular category of property belonging to a taluqdar in a taluqdari estate is vested in the Govt. or not, and the determination of the question whether the rights held by a taluqdar in such property shall be deemed to have been extinguished or not, will depend upon the category of that property. The expression "all waste lands" has been joined by conjunctive "and" with the expression "all uncultivated lands". They, therefore, indicate two distinct types of lands. If the legislature had intended that the aforesaid expression should indicate one class of lands, the expression rather would have been "all waste and uncultivated lands" as against the expression "all waste lands and all uncultivated lands". Here we have, therefore, two distinct categories of properties viz. (1) waste lands, and (2) uncultivated lands. The contention that the grasslands on hilly tracts which were incapable of cultivation were "waste lands" or "uncultivated lands" within the meaning of S. 6 cannot be accepted."

"18. It is clear that these grass-lands on hilly tracts were not waste lands. They were productive lands in the sense that grass grew naturally and so they were not desolate, abandoned or barren waste lands with no vegetation. The expression "waste lands" in the context would be clearly, in the original sense of the term "waste" as meaning barren or desolate lands which are unfit for any use or which are worthless. That test is not clearly fulfilled."

25. Our attention was drawn to the decision in *Ambabai Janhavibai Vs. State of Maharashtra*, . That judgment proceeds on the footing that there was a conflict between S. 5 and S. 7 of the Personal Inams Abolition Act. There is no basis for this assumption. Further, the observation that "since it is admitted that no agricultural operations were carried out on the lands for the purpose of raising or growing grass on the lands", the contention that "the lands on which grass grew naturally could not be said to be uncultivated, cannot be accepted", even though the inamdars were making use of these lands and were realising income by selling the grass which grew thereon, appears to proceed on a wrongful assumption that the sine qua non for the applicability of S. 5 was actual cultivation. This observation, in our view, cannot be supported."

52. *The State of Gujarat and Another Vs. Ibrahim Akabarali and Others*,

This Judgment dealt with the concept of waste land of uncultivated land,

including phrase "cultivation".

The expression "uncultivated" certainly means "cultivable but not cultivated". A waste land is something different from "uncultivated land". It is uncultivable or unfit for cultivation. An uncultivated land in its turn cannot necessary be a waste land, if it is cultivable. The forest lands, which by their very nature are uncultivable and in respect of which no question of their having been cultivated or otherwise can arise do not fall under the expression "all uncultivated land".

53. In view of above position of law and/or Abolition Act, the ownership/proprietaryship/occupancy rights of Bivalkars remained intact. The Respondents case and submission, now as agitated, in these Writ Petitions without raising the same earlier are unacceptable and contrary to the record, rightly admitted the ownership/title of the Petitioners.

54. The object and purpose of Abolition Act are completely overlooked by the Respondents, only for these Petitions, not earlier, when they never raised such contentions earlier by invoking appropriate proceedings and/or objections. All the parties, specially the Bivalkars, could have defended and/or dealt with it before the competent authority, including leading evidence, if necessary. There was no such disputed facts raised, on the contrary, the owners/occupants/proprietors rights have been admitted and confirmed even by the authorities. Such pleas of consistently ignorance of title/ownership/description of the property, is totally an afterthought, contrary to the record and the law. The aspect of compensation under Lands Acquisition Act also therefore, interlinked and connected. The terms of "uncultivated lands", "private forest", the scheme of Abolition Act, as interpreted by the Supreme Court and other Judgments, clinches the issues in favour of the Bivalkars. No case and material is made out by the Respondents to destroy the title/ownership and so also of the compensation. There was no claim granted for extinguishable of any proprietary rights of property/land in question. The State cannot deny the existence of 1959 agreement between the State and Bivalkars. No justification given by the State in respect of order under Section 13, dated 6 November 1960 referring to the property in question, the appointments of Collector as Court of Wards, which was continued till 1987. Therefore, taking over all view of the matter, including Judgments of Supreme Court Navinchandra Babubhai Nagarsheth & Ors. (Supra), Gangadharrao Narayanrao Majumdar (Supra), Ambabai Janhavibai (Supra), State of Gujarat (Supra), Maharana Shri Jayavantsinhji, Ranmalsinhji (Supra), U.R. Mavinkurve (Supra), the case of the State Government/CIDCO is unacceptable and rejected.

Forest Lands/Forest Act

(I) (Indian Forest Act, 1927 and;

(ii) Maharashtra Private Forests (Acquisitions) Act, 1975.

55. The case of the State of Maharashtra and CIDCO is as under:-

It has been the respectful submission of Respondent No. 1, thus that the lands

which form the subject-matter of the present dispute before this Hon"ble Cour vested in Respondent No. 1 by virtue of the Inam Abolition Act. However, without prejudice to the said submission, it is submitted in the alternative that assuming without admitting that the said lands did not vest in Respondent No. 1 by virtue of the Inam Abolition Act they nonetheless vested in Respondent No. 1 by virtue of the Maharashtra Private Forests (Acquisitions) Act, 1975 (hereinafter, the "Maharashtra Private Forests Act"), read with the Indian Forest Act, 1927 (hereinafter, the "Indian Forest Act").

56. The Petitioners have admitted that the subject land was a private forest. For example, on page 4, paragraph 3 of Petition No. 3378 of 1989, the Petitioners state: "The land in question was at the material time a private forest of the Bivalkar family". The Petitioners have referred to a notification dated 24 January 1961 which was issued to the Petitioners under Section 35(1) of the Indian Forest Act, according to which the lands presently in dispute were declared private forest lands. The Petitioners have specifically admitted that the said notification "presupposes that the land is private forest not belonging to government."

57. On 6 February 1973, a notification was issued by the Revenue and Forests Department of Respondent No. 1 under which the land in the village Ulwe was declared to have ceased to be a "protected forest" from the date of the said notification.

58. Section 35 of the Indian Forest Act empowers the State government to regulate private forests, i.e. forests that are not the property of the government. Section 35 falls within Chapter V of the Indian Forest Act, which is titled "Of the Control Over Forests and Lands Not Being the Property of Government". This chapter must be distinguished from Chapter IV of the Indian Forest Act which is titled "Of Protected Forests". Chapter IV of the Indian Forest Act deals with "protected forests", i.e. forests that are the property of the government.

59. The subject lands in dispute were shown as protected forests in the revenue records since 1948. However, the mere fact that the said lands ceased to be a "protected forest" by virtue of the 1973 notification does not mean that they thereby also ceased to be a "private forest". As discussed above, a "protected forest" is distinct from a "private forest". Therefore, it is respectfully submitted that the notification dated 6 February 1973 did not "deforest"/"disforest" the Petitioners' lands, as the said lands were still a "private forest" though they may have ceased thereafter to be a "protected forest".

60. Subsequently, the Maharashtra Private Forest Act came into force on 30 August 1975. A few relevant extracts of the Maharashtra Private Forest Act are reproduced below:-

Section 2(f):

" "private forest" means any forest which is not the property to Government and

includes,--

(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;"

Section 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 (Mah. XXVII 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."

61. Any private forest automatically vested in Respondent No. 1 under Section 3 of the Maharashtra Private Forest Act with its coming into force. Thus, it is respectfully submitted that the lands which form the subject-matter of the present dispute, in any event vested in Respondent No. 1 in 1975 by virtue of the Maharashtra Private Forest Act, and the Petitioners have no title to the said lands.

62. Though a Memorandum was issued by the Revenue and Forests Department of Respondent No. 1 on 1 July 1972, under which Respondent No. 1 consented to the "disforestation" of the lands presently in dispute, it is respectfully submitted that the said Memorandum is subject to the notification dated 6 February 1973, under which the land did not cease to be a forest entirely, but in only ceased to be a "protected forest", i.e. a government owned forest.

63. There is nothing to justify that "deforestation" means and applies to the "protected forest" and not to the "private forest". The Submission is incorrect

and contrary to law. The meaning of "deforestation" and its purpose is clear. The object was to permit the land to be utilized for Town Development in question.

64. We have to deal with the State and Central Forest Act in the present facts and circumstances. Above general submissions are not sufficient to accept the case of the Respondents.

Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others,

This Judgment deals with the Maharashtra Private Forest (Acquisition) Act 1975 and meaning of the words "forest" "Waste land" and/or "land on which buildings are constructed" and "Forest Act". The Apex Court dealt with Section 35 of the Forest Act (16 of 1927) and held that notice "issued" does not mean mere issuance but includes service of notice.

"71. 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.

72. In Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, 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 Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, and Khub Chand and Others Vs. State of Rajasthan and Others, 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."

In this Judgment the Apex Court accepted the prayers of declaration so sought by the Petitioners about the ownership of the alleged forest land in question and all consequential benefits. The Apex Court, after considering the provisions of both Central, as well as, State Act, held that the issuance of notice under Section 35(2) of the State Act itself is not sufficient to mandate the service of the same, based upon which only the Government can declare the land to be private forest and/or protected forest and/or otherwise under Section 3 of the Forest Act. The Supreme Court observed:-

"59. 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(5) 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 to also 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."

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) 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."

65. Order dated 28.02.1989 passed by the Collector is challenged by the Petitioner/Bivalkars mainly on the ground that the Collector though accepted the ownership of the Petitioner's land in question has passed the order of compensation under the Forest Act and not under the Land Acquisition Act-1894 as contended throughout.

66. There is no denial that pursuant to Agreement dated 21.10.1959, the Government has accepted the ownership of the land in question and entered into the agreement for 99 years for controlling/managing the land in question as reserved forest land/protected forest with detail description of the property as contemplated under Section 38 of the Forest Act. No claim was made in respect of the land by the Government under Section 14(c)(1) of the Wards Act, 1905 when claims were invited. The Conservator of Forests, Thane Circle, while issuing Notification under Section 35(3) treated the land as private forest and prohibited certain activities in respect thereof in the year 1961 itself. No notice as contemplated under Section 35 was served. No hearing was given and, therefore, there was no question of declaring the said land out of purview of provisions in question as decided in Godrej (supra).

67. Admittedly on 3.2.1970 the Commissioner, Bombay Division, issued Notification under Section 4 of the Land Acquisition Act describing the land as needed for public purpose. That schedule covers the entire village-Ulwe. However, based upon agreement of 1959, a revenue entry came to be made as Government lands treating the land as Government forest land and, therefore, excluding the provisions of Section 4 Notification. However, after proceedings initiated under Section 6 and/or no award passed, the land, therefore, remained unacquired and so also the ownership of the Bivalkars. Some of the lands which acquired as Bivalkars, compensation is given by allotment under 12.5% claim. The State, on 20.03.1971 again declared the acquisition of land for new town in the draft development plan for the Bombay Metropolitan Region by exercising power under Section 113-A of the MRTP Act. This also covered the property/land

in question. Further Notification under Section 113 of MRTP Act was also issued declaring CIDCO to be the new developing authority for the area comprised in the site of New Mumbai. On 1.7.1972, the Revenue and Forest Department also made deforestation of the land in question as it is leased to CIDCO.

68. Therefore the Forest Department, in view of above reasoning in other paragraph referring to Inam Act had no authority to transfer the same to the Revenue Department for further release to CIDCO. The submission that the land was vested with State Government prior to 1972 as sought to be contended for the first time in reply in the present writ petition and as contended is contrary to their own record. Section 38(2) of Forest Act for management by treating the same land as "reserved forest" and/or "protected forest" which is always subject to the mutual agreement between the parties and as, in the present case endorsing the ownership of the Bivalkars, the Collector agreed to manage the property as protected forest with clear condition to return after the least expiry period and subject to the obligation of the Bivalkars to pay the necessary revenue/charges. The Respondent/State and even other authorities accepted the ownership of the Bivalkars even in the impugned order of 1989. The challenge raised by the Petitioner only with regard to the award of compensation under the Forest Act instead of Land Acquisition Act, the State Government also submitted that the order is void and/or illegal. The submission for the first time now in the writ petition of the Respondents that de-notification as a protected forest and being "private forest" as vested in the Government after coming into force of Maharashtra Private Forest Act is again contention contrary to their own case on record and specifically in view of the Supreme Court judgment in *Godrej* (supra) also. The Respondents nowhere deal with the Supreme Court judgment which is directly on the issue dealing with the declaration of land as forest land as contemplated under the Maharashtra Private Forest Act as the Respondent have not followed the mandatory procedure under Section 35 of the Forest Act and, therefore, there was no question of any declaration and/or vesting of land of Bivalkars in the Government based upon the Maharashtra Private Forest Act. The Respondent's case is therefore not acceptable and their contention revolving around Abolition Act as well as Forest Act and the claim of vesting of land in the Government and/or CIDCO is contrary to their own record specifically when they have not challenged all these orders within limitation and at relevant time and, therefore, the Respondent/State Government cannot deny the rights of Petitioners in such fashion merely by raising pleas contrary to their own record and conduct. The submission that there is no question of estoppel against the statute is also unacceptable as the Respondents' initial action on the basis of provisions of law and the judgment so referred above and now for the first time, agitating issue by stating that the action and/or order so passed by the State Government/Authorities at the relevant time were by mistake and/or contrary to law. We are inclined to accept the interpretation so submitted by the Petitioner of these laws and as admittedly the Respondent/State Government until the affidavit in the year 2014 and so also CIDCO always accepted and treated the

Bivalkars as owner/occupants and recognised proprietary rights of the Petitioner. The State Government, at least, cannot raise such contradictory and alternative pleas without challenging the impugned action/orders so passed by the authorities in favour of the Petitioner/landlord.

69. The orders as stated to be illegal and so also the agreement but no steps taken within time to challenge the same by the Government. Such orders have attained finality and therefore binds all. The orders if illegal and/or voidable need to be challenged. Otherwise, such orders unless set aside, binds all specifically no case of fraud or misrepresentation averred at relevant time even now except contradictory and afterthought, vague averment of mistake by their officers, which pleas are also unsustainable in view of clear law and the judgments so cited/referred. The Respondents failed to discharge their burden. The wrong or misinterpretation of the clear provisions and the law even otherwise cannot be accepted as "mistake", "voidable order", at the instance of the parties, one who themselves admitted in writing the ownership/title of the other side throughout the proceeding and acted accordingly. The inconsistent statement/averments/submissions as noted already no way assist the State and/or the CIDCO to deny the title/ownership/and the due compensation. All the acts so referred itself provide mechanism to decide the issue of extinguishment of inam/ownership/occupancy right and/or exemption from the law and/or declaration of surplus land and/or vesting in land and/or provisions for compensation as per the law and the policy. The orders so read and referred remained intact and as attained finality as Respondents never challenged in accordance with law, now can not deny the effect of those orders in favour of the Bivalkars. The order under Forest Act, as per submission of all the parties, is bad, illegal and liable to be set aside without going further, apart from above observations. The order of 1989 is accordingly set aside to the extent of grant of compensation under Forest Act.

70. It is relevant to note that CIDCO contended that proceedings under the Private Forest Act were void and ab initio and so also the Government which, in a way, supports the case of the Petitioner, that the impugned order of the year 1989 in question is bad in law. The Court, therefore, needs to pass an appropriate order in view of above; position referring to impugned order. Therefore, the submission that the lands automatically vested in the State Government under the Inam Abolition Act as recorded above, as not acceptable and so also the impugned order passed under the Forest Act for the above reason, then the issue remains only of entitlement of requisite compensation, as per the scheme declared even by CIDCO in question in the impugned order itself the Government has accepted the ownership of the petitioner.

71. The case of the Respondents that any disputed question of title and/or ownership, in the present facts and circumstances, arise in the present case. The Respondents earlier orders which remained unchallenged till this date, at the instance of Respondents, needs no evidence and there is no factual aspect of title/ownership is involved, specifically at the instance of Respondents by raising

such plea for the first time in the writ petition. The description of the property is well known and clear to all the Respondents throughout. Mere submission in the writ petition is not sufficient to deny even the description of the property. There are ample documents on record to suggest and describe the property in question. The contradictory stands so taken by the Respondents on the issue of title, ownership and description is unacceptable. The Government/Respondents just cannot raise such frivolous pleas only to avoid the obligation to pay the compensation so declared.

72. The Petitioner's application for rectification of 20.05.1985 ought to have been considered by the Respondents for compensation for their lands under Land Acquisition Act instead of award under Maharashtra Private Forest Act as the land was ceased to be forest from 6.2.1973. The Government, in fact, at one time, made statement in this regard and order dated 2.2.1912 came to be passed that the said Award dated 28.2.1989 has been suo motu withdrawn and cancelled. On 21.11.1985 SLAO for other land awarded the compensation/benefits of Scheme 12.5% and so also by order dated 1 September 1986. The withdrawal of statement as recorded in Order dated 2.2.2012 no way take the case in support of the State Government in view of above reasons and findings so recorded.

73. Maharashtra Agricultural Land (Ceiling on Holdings) Act 1961:-

Hari Ghodke Vs. The Maharashtra Revenue Tribunal, Bench Aurangabad, Additional Commissioner, The Collector and Vasantrao,

This Judgment also deals with the Lands Ceiling Act. Sections 12, 21 and 45(2) referring to the concept of surplus land and the basic procedure prescribed for the Surplus Land Determination Tribunal (SLDT) to deal with the provisions of determination of surplus land. The aspect of "Potkharab land" is also discussed in this Judgment.

74. In suo-motu Revision under the Act referring to order dated 26 March 1976 passed by SLDT Panvel declared surplus land under Section 21 of the Act, Bivalkars (owners) filed their returns prior to 2 July 1975 after due inquiry declared surplus land with detailed by deleting the lands under the acquisition and also the lands alleged to be vested in Government under the Private Forest Act. The same was taken in suo-motu Revision some time in the year 1982. The issue was wrong deletion of the area on the ground that the same was acquired for the CIDCO for want of documentary proof. Bivalkars-owners, in their reply dated 30 November 1988 supported the case of deletion of lands under the acquisition for CIDCO, in view of Section 4 Notification under the Land Acquisition Act, as the land is presumed to vest with Government unless the acquisition proceedings are withdrawn. Section 6 Notification was issued on 3 February 1970 for CIDCO. A letter of Collector and Government dated 8 March 1983 referred for the same. Therefore, by the action initiated for acquisition as referred by SLDT, was prior to appointed date of Agricultural Ceiling Act and therefore, requested only for enhancement of compensation and prayed for

giving option for retention of land out of the land declared surplus. The Additional Commissioner taking note of all the material placed on record, including the submission of the Petitioners, upheld the conclusion drawn by SLDT with regard to the exemption of land from the clutches of Agricultural Ceiling Act for the reasons so recorded above, in view of notice dated 10 October 1982. This covers the exemption of land in question i.e. Ulwe Survey No. 51/0. There is nothing mentioned, even in the order, by both the Authorities about this land while declaring the same as surplus. There is no issue that the land in question as was acquired by invoking the Land Acquisition proceedings and/or even otherwise for CIDCO, can be treated and/or included as a surplus land of Bivalkars-owners. There is no challenge raised in this regard at any point of time by invoking appropriate proceedings by the State so also by the CIDCO, as they have no independent right or interest in the property, except through the State.

75. Subhash Vs. State of Maharashtra and Others,

This Judgment is under the Lands Ceiling Act and deals with the concept "land on which grass grows naturally" (Clause (b) of Section 2 sub-Section 16). The lands, where grass grows, but otherwise rocky or barren, cannot fall within this clause.

76. The State of Maharashtra-Respondent No. 1 has filed the reply in Writ Petition No. 3378 of 1989 for the first time on 6 August 2014. No averments and/or challenge raised to the orders passed by the Commissioner in Revision under the Agricultural Ceiling Act though specific challenge raised/agitated even in written statement, revolving around the Indian Forest Act, as well as, the Private Forest Act and also Bombay Abolition Act, by referring to the Notification dated 23 February 1907 under the Indian Forest Act. The contrary submission was made that the agreement between the Forest Department and Bivalkar family dated 21 October 1959, is illegal as the land in question was never the forest land. The another contradictory submission is also made that the Government Forest Department on the basis of Notification dated 23 February 1907 based upon the protected Forest, by overlooking their own Notification dated 6 February 1973 by which the land in question was deforested-no material whatsoever placed on record even in support of their case except averments for the first time in the Petition. Unable to deny the principle so laid down in the Supreme Court Judgments cited by the Petitioners-Owners referring to Sections 4, 5 and 7 of Bombay Personal Inams Abolition Act. These documents on record, as filed alongwith the affidavit supports the case of the Petitioners with regard to the Survey No. 51/0 and its area i.e. 157.25 AG. The proprietorship/occupation right remained intact, till this date.

77. The aspect of exemption from Ceiling Act remained untouched by all the Respondents and basically at appropriate time and the same, therefore, attained a finality. The Government, on wrong foundation of vesting of land in question upon them, diverted the property to CIDCO. Later on, without paying compensation, permitted the CIDCO to proceed and use the land for New Mumbai. By invoking provisions of Forest Act wrongly, recognising ownership,

granted compensation under the Forest Act. There is nothing to show that they have followed the procedure before declaring the land in question as Forest land which is the basic requirement for passing and/or granting compensation under the Forest Act. The claim of compensation/entitlement of Petitioner on land, admittedly, acquired by the State for CIDCO remained without payment of compensation. There is ample material on record that while dealing with the provisions of Ceiling Act, except the land in question, which was already acquired for CIDCO and was with CIDCO at the relevant time, passed orders for remaining land by declaring the same as surplus land by order passed by SLDT under Section 21 dated 26.03.1976. The State Government/CIDCO while dealing with other land of nearby area including of Bivalkars, granted compensation as per the CIDCO policy of 12.5%, but not granted any relief/compensation to the Petitioner by treating the land to be the land of Government by claiming to be vests with Government in view of Abolition Act and so referred above which, as recorded above, was wrong. The Respondents, therefore, have acquired the property illegally, but not paid the compensation in accordance with law. The aspect of delay, laches, question of facts just cannot be the reason in view of above position to accept the case of Respondents in such fashion. The date and the event so recorded above and the fact that no challenge raised even with regard to the exemption of land and rightly so, the entitlement of Petitioner just cannot be denied, as good and satisfactory explanation for the delay is also made out by the Petitioner/Bivalkars. We are declined to accept the case of Respondents that no case for compensation of Petitioner be entertained as objection is filed after dispossession in the year 1973, specifically when we are not accepting the case of Petitioner for restoration of land in question, but we are inclined to accept the case of compensation. However, even for that, we need to consider the case of Petitioner in accordance with law.

Maintainability of Writ Petitions of Bivalkars:-

78. Syed Maqbool Ali Vs. State of Uttar Pradesh and Another,

The Apex Court while dealing with Writ Petition under Article 226 of the Constitution of India, refused to deny relief because alternate remedy of Civil Court as stated to be available because the matters involves the question of facts. The Supreme Court reiterated that "the Court has to examine whether the dispute involves a public law element". It is observed that "if the action can be shown to be arbitrary, irrational, unreasonable, biased, malafide or without the authority of law, and therefore, prayed for the reliefs of direction that the land should be acquired in a manner known to law." The Writ Petition cannot be dismissed on the ground of alternate remedy. It is also observed that "the delay should not be ignored, as the person aggrieved to approach the High Court diligently". Therefore, we have to consider the facts and circumstances of this case also, before accepting the contention/objection with regard to the delay and laches as raised by the Respondents. It is relevant to note that the observations of the Supreme Court in this regard are as under:-

"....But where the person aggrieved establishes that the State had high-handedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition."

"11. When a writ Petitioner makes out a case for invoking the extraordinary jurisdiction under Article 226 of the Constitution, the High Court would not relegate him to the alternative remedy of a civil court, merely because the matter may involve an incidental examination of disputed questions of facts. The question that will ultimately weigh with the High Court is this: Whether the person is seeking remedy in a matter which is primarily a civil dispute to be decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. (See the decisions of this Court in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and Kisan Sahkari Chini Mills Ltd. and Others Vs. Vardan Linkers and Others, ."

79. Ganga Retreat and Towers Ltd. and Another Vs. State of Rajasthan and Others,

The Supreme Court, referring to Articles 226 and 136 of the Constitution of India, refused to dismiss the Petition on the ground of alternate remedy to avoid miscarriage of justice and decided the matter on its merits. It is also observed that "mistake of fact on the part of only one party would not vitiate the contract". The mistake as to any law in force in India would not render the contract voidable, specifically when the concluded contracts where the party challenging the agreement and voluntarily chosen to implement the contract knowing all the relevant facts and circumstances referring to Section 19 of the Contract Act 1872. The principal of promissory estoppel also discussed, which in this goes against the Respondents in all objects like delay, laches, State/mistakes, voidable or void orders by their officers in the respective law in question. Such objections cannot permitted to raise by the State/CIDCO.

80. M/s. Real Estate Agencies Vs. Govt. of Goa and Others,

This judgment is also in reference to the maintainability of Writ Petition under Article 226 of the Constitution of India for the reasons of existence of alternative remedy but not equally efficacious remedy. The Supreme Court here again considered the basic elements of "likelihood of irreparable injury", "balance of convenience", "question of facts" while dealing with and passing appropriate order against the public bodies, despite availability of Civil Suit. The issue in this case was also where the Municipal Corporation had claimed that the land as vested in it. Mere averments itself is not sufficient. The High Court needs to consider the background of the case before accepting such contention to relegate the party to mere "lengthy, dilatory and expensive process" i.e. in a Civil Suit. It is also observed that the High Court needs to consider real dispute between the parties on the ownership and/or the title. Therefore, we have considered the

undisputed position of record till the last affidavit filed by the Government on 6 August 2014 and the fact that no above orders are challenged at any time by the State and/or CIDCO. Those orders still remained intact till this date. We have also to see the effect to challenge of this issue first time in this Writ Petition in reply and not by initiating any separate proceedings.

81. ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others,

The Supreme Court again reiterated while dealing with the issue of maintainability of Writ Petition where the question of facts stated to be involved. It is observed that "there is no absolute bar in regard thereto". It is observed that where disputed question of fact pertaining to the interpretation/meaning of documents and part thereof are involved, the Court can very well go into the same and decide the objections, if facts permit. It is also observed that merely because one of the parties wants to dispute the meaning of a document or part thereof would not make it a disputed fact. It is declared again that the High Court can intervene under Article 226 of the Constitution of India if the State and/or its instrumentality acts in an arbitrary manner even in a matter of contract, as they discharging the public function/duty. It is further observed that a Writ Petition involving consequential relief of monetary claim is also maintainable, specifically when there is no allegation that the contracts in question were obtained either by fraud or misappropriation. The Supreme Court refuses the contention of alternate remedies. In the present case, we have therefore, to consider whether the Respondents State/CIDCO have acted within the framework of law and proved that the property vested in the Government and therefore, there is no question of providing compensation and/or appropriate portion of land as per the scheme to the Petitioners/owners of the property. As recorded, both the Respondents failed to prove it. The ownership/title/occupancy/proprietaryship remained with the Bivalkars but not the possession of the land in question.

82. Ramesh Shriram Wani Vs. State of Maharashtra & Ors. 2012(3) AIR Bom. R 502

The Petitioner relied upon this Judgment in support of the contention that appropriation by property of citizen without due process of law can violate Article 300-A of the Constitution of India. Right to property, in view of the provisions of the Land Acquisition Act, apart from Article 21 of the Constitution of India, just cannot be overlooked and cannot deny the entitlement to the compensation in accordance with law.

Delay and Laches:-

83. P.B. Roy Vs. Union of India (UOI),

The relevancy of this judgment is with regard to the aspect of considering a merits of the matter, in case issue of delay in filing writ petition raised and/or in

that matter for condoning the delay also.

84. West Bengal Govt. Employees (Food and Supplies) Co-operative Housing Society Ltd. and Others and The State of West Bengal and Others Vs. Smt. Sulekha Pal (Dey) and Others,

This Judgment deals with the W.B. Estates Acquisition Act, 1953 and also on the issue of delay and laches. It is held in this Judgment that the parties who are not dispossessed lawfully are entitled for right to vindicate and protect their interest in the lands in question. The State required to take action and possession by observing the formalities contemplated under the Statutory provisions.

Disputed question of facts revolving around title/ownership of the property or No title on admission and the delay are dealt in this part of the Judgment itself in addition to the earlier observations, as specific pleas are raised by the State and the CIDCO based upon the following Judgments:-

85. D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others,

This Judgment cited in support of the contention by the Respondent-State that disputed questions of title of property, cannot be decided in Writ Petition but by means of a Civil Court where detailed evidence can be led and thereby in the facts and circumstances, the Supreme Court dismissed the Writ Petition and permitted to seek their remedy by a regular suit. The Supreme Court has opined that, where the basic facts are disputed, and complicated questions of law and fact depending on the writ Court is not the proper forum for seeking relief. We have to consider the facts and circumstances of this case in view of above reasons.

86. Ambika Prasad Vs. Ram Ekbal Rai AIR 1966 SC 605

The Apex Court on question of title observed that "title cannot pass by mere admission". The evidence on record must establish the claim. The admission made on circumstances which are explainable and therefore, in view of the case held that "This admission has weak evidentiary value. We have to consider the case in hand in the background of reasons so recorded. The Respondents in the present case, resisted the claim ownership/title of the Bivalkar, on above ground also, which is unacceptable.

87. State of Rajasthan Vs. Bhawani Singh and others,

The Apex Court, based upon the facts held that "disputed question relating to title cannot be satisfactorily gone into or adjudicated in a Writ Petition".

88. Union of India (UOI) and Others Vs. S.J. Thanawalla and Another,

The Supreme Court refused to entertain the assertion of title of the property in a Writ jurisdiction and upheld the order of High Court of relegating the parties to concern tribunal.

89. (Writ Petition No. 7963 of 2010 dated 2 February 2012) (No judgment found)

The Division Bench of this Court also refused to entertain the Writ Petition where the question of title of property was involved on the basis of statement made on behalf of the State of Maharashtra and observed that it can be decided only by an order of Court of competent jurisdiction.

There was a dispute that some lands belonging to the Petitioner vested in the State under the provisions of Section 7 of the Inams Act.

90. Tilokchand and Motichand and Others Vs. H.B. Munshi and Another,

The Supreme Court in para 10 and 39 dealt with the aspect of delay and laches on the part of persons applying under Article 32 and Article 226 of the Constitution of India. The Supreme Court observed that the Court under Article 226 of the Constitution of India required to exercise a discretion and in suitable cases refused to grant reliefs even on the merits. The Applicant has substantially complained but refused to grant relief in case of long or unreasonable delay. Though there is no limitation Act applies for the enforcement of the fundamental rights.

There cannot be any dispute that the High Court needs to exercise discretion, based upon the facts and circumstances.

91. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

In para 35 while dealing with the administrative action dealing with the law of tender/contract of State, the Supreme Court refused to entertain the Petition on account of delay.

92. State of Maharashtra Vs. Digambar,

While dealing with the aspect of laches and delay (19 and 20), the Apex Court again observed that the facts and circumstances of the case need to be decided while granting relief against the State and/or such other authority.

93. Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others,

The Supreme Court dealt with about the concept ("vest") land specifically in the Government free from all encumbrances. Once the land vested in the State cannot be divested and it has right to change the user. The owner has a right to get compensation only for the same. The person interested cannot claim right to restoration of the land on any ground, whatsoever.

Right to property/Land Acquisition Act, 1894-

94. Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others,

The Supreme Court reiterated that right to property is human right and therefore, that cannot be deprived without payment of compensation. Right

cannot be denied on the ground of delay and/or laches. It is clearly observed that the State and/or such authorities are bound to pay adequate compensation and to rehabilitate such person. The State cannot act arbitrarily and misused their power in the guise of public interest.

95. State of U.P. and Others Vs. Manohar,

The Supreme Court expedited the directions that the State should pay compensation, as he was dispossessed by high handed action of the State, specifically by not taking steps to acquire the land in accordance with law, without compensation. It is reiterated again that no person shall be deprived from his property, by authority of law.

96. Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.,

The above principle is also recorded in this Judgment.

97. Vijay Narayan Thatte and Others Vs. State of Maharashtra and Others,

The provisions of Land Acquisition Act, 1894 explained specifically for taking possession of the property by expediting the acquisition. The scope and purpose and mandate of Land Acquisition Act discussed therein.

98. The State/CIDCO acted on wrong foundation that land vested in them under Inam Abolition Act, Central/Forest Act. There is no question of deemed acquisition/vesting. But as land/occupancy rights remained with the Bivalkars, the acquisition through land acquisition is the procedure. Therefore, as not done, the issue of compensation still remains.

99. The judgment so cited by the Respondents so recorded above are distinguishable on facts. The judgment so cited by the Petitioner, in view of above admitted position on record are sufficient to consider their case, but only for compensation in accordance with law. We are inclined to observe that this is appropriate case where the writ Court has jurisdiction to entertain the writ petition as there are no disputed questions of facts are involved. There is no absolute bar for entertaining such writ petition as the Respondent/State Government misread and misinterpreted the provisions of law as recorded above, including the Supreme Court judgments and thereby sought to deny even the ownership, title of the Petitioner and though lands were acquired without following due procedure, opposed the Petitioner/land owners entitlement of reasonable compensation as admittedly lands in question are in possession of Respondents since 1973. Therefore, we are inclined to observe that it is difficult to accept the case of Petitioner for restoration of land in question as prayed, however, we are inclined to accept the case of compensation as per the present scheme, but at the same stroke, the Respondent's submission in this regard as prayed by CIDCO also cannot be accepted.

100. We are inclined to observe here that the action of acquisition of land initiated by the Respondents was contrary, irrational, unreasonable and without

authority of law and, therefore, the case is made out to exercise extraordinary jurisdiction under Article 226 of the Constitution of India, where alternate remedy of Suit is not appropriate and proper remedy specifically when Bivalkars have been claiming requisite compensation since so many years and the Respondents till the date of filing of their reply in the writ petition, even accepted the ownership, title and therefore, entitlement of compensation now denying the same by raising the pleas contrary to their own stand as well as record.

The Maharashtra Regional and Town Planning Act, 1966

101. Notification under Section 113 of the Maharashtra Regional and Town Planning Act, 1966 r/w implementation of Section 113A and Chapter 7 itself provides the statutory obligation upon the State/CIDCO to take effective steps before acquiring any property. All are missing here. They are under statutory obligation to provide compensation as per the existing policy. We are not inclined to grant order for restoration in view of pleadings by the Petitioners, apart from raising claim of possession of the property not immediately for restoration. The cause of action to claim compensation in the circumstances is permissible, as right to claim compensation survives. Therefore, the Judgments for restoration of land are of no assistance to the Petitioners in view of above reasons itself.

102. A letter from State Government dated 15.12.1997 clarifies the position in the present case as the management was only handed to Forest Department, issue of "absentee landlord" is not applicable. The stand and submission of CIDCO that the suit land was transferred to the Government is also of no assistance as CIDCO had no independent right, but only through the State Government. As the stand of State Government fails on the title and owner and proprietorship, CIDCO's submission, therefore, also fails on this ground. By letter dated 10.09.1998, CIDCO has accepted Bivalkar's case and eligibility for entitlement inter alia to the allotment of land measuring 32,750 sq. mt against acquisition of their lands in Ulwe and so also by letter dated 25.11.2012. The stand "absentee landlord" of CIDCO, in the present facts and circumstances, as explained in affidavit dated 10.02.2005 apart from the reason so recorded above, therefore, also no case is made out of denying the rights/entitlement of Petitioner at the instances of Respondents, who are raising contradictory, inconsistent and frivolous pleas contrary to their earlier stand and record.

103. The learned Counsel appearing for the Petitioners, on instructions of Mr. Yashwant Bivalkar (Petitioner No. 2) who is present in Court, for himself and on behalf of other Petitioners, states that the Petitioners are not pressing for restoration of land in question, as all the time they have essentially prayed for compensation under the Land Acquisition Act, but on the conditions that the Respondent-State/CIDCO to grant fair compensation as per the policy/scheme 12.5%, and other related benefits, by signing the necessary agreement under Section 113-A of the MRTP Act or under related provisions. The learned counsel appearing for the Petitioners also makes statement that the Petitioners are not pressing for restoration of possession of the land knowing fully well that the land

is required for the "public purpose" known as "Navi Mumbai International Airport Project".

104. In view of above, we are inclined to pass the following common order-

ORDER

a) Impugned order dated 28.02.1989 as mentioned in Prayer (a) of Writ Petitions Nos. 3378/1989 and 2326 of 2010 is quashed and set aside, if the same is not already withdrawn.

b) The Respondents are liable to pay to the Petitioners (Bivalkars) the due and proper compensation for the land bearing Survey No. 51/0 of Village Ulwe, Taluka Panvel District Raigad admeasuring about 157 acres 25 Gunthas, i.e. 63 hectares and 79 acres (the land) as mentioned in prayer (c), upon them signing necessary agreement with State/CIDCO.

c) The Respondents to allot to the Petitioners land in accordance with Government Resolution at Exhibits "J " and "K", and as per modified and prevailing policy/scheme as of today, in view of taking over of the land.

d) The Writ Petitions of Bivalkars 3378 of 1989 and 2326 of 2010 are allowed only to the above extent, other prayers are rejected.

e) Writ Petition No. 7963/2010 (of CIDCO) is rejected.

f) Considering the above fact, we are inclined to direct the Respondents-State/ CIDCO to complete the process of allotment and sign the agreement on priority basis and as early as possible and preferably within four months.

g) It is made clear that interim order dated 2.2.2012 to the extent that the land will not be permitted to be used for any commercial purpose unconnected with Airport to continue till the date of execution of agreement. Once the agreement is executed, it stands vacated automatically. All other interim orders, if any, stand vacated.

h) In view of above, all the Writ Petitions are accordingly disposed of in the above terms. Rule is accordingly disposed of.

i) There shall be no order as to costs.

j) Both the learned counsel appearing for Respondents-State and CIDCO pray to stay the order so announced in open court today. In view of the fact that we have already granted four months time and for the reason so already recorded in the judgment, no stay is necessary. Oral request is therefore rejected.