
(1984) 06 GUJ CK 0007
In the Gujarat High Court

Kaviraj Ramlal Chaturbhuj

APPELLANT

Vs

Prant Officer, Dahod Prant and Another

RESPONDENT

Date of Decision : 26-06-1984

Acts Referred:

Forest Act, 1927 — Section 34(A)

Gujarat Private Forest (Acquisition) Act, 1972 — Section 6, 7

Citation : (1984) 2 GLR 1477

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—In this petition under Article 226 of the Constitution which in substance is one under Article 227 thereof, the petitioners have challenged the order passed by the Prant Officer, Dohad in Private Forest Acquisition Case No. 6 of 1974 and as confirmed by the Gujarat Revenue Tribunal in TEN. A. A. 264 of 1976. By the impugned orders, the petitioner's claim for compensation for acquisition of trees situated in the private forest belonging to the petitioners which came to be acquired under the provisions of the Gujarat Private Forests (Acquisition) Act, 1972, hereinafter referred to as the. "the Acquisition Act" came to be rejected by both the aforesaid authorities.

2. In order to highlight the grievance of the petitioners, a few relevant facts which emerge well established on the record of this case deserve to be noted at the outset. The petitioners were proprietary Jagirdars of village Taladara situated in Santrampur taluka of Panchmahals district. In this village are situated two pieces of lands bearing S. Nos. 40 and 146 over which there was heavy growth of trees and which survey numbers, according to the petitioners, constituted a private forest. The petitioners' proprietary Jagir of village Taladara came to be abolished under the provisions of the Bombay Merged Territories and Areas Jagir Abolition Act, 1953, hereinafter referred to as "the Abolition Act". Under the provisions of the Abolition Act, compensation was awarded to the petitioners for the Jagir properties which vested in respondent No. 2-State u/s 8 of. the Abolition Act. According to the petitioners, the aforesaid two survey numbers of

village Taladara on which was situated a heavy growth of trees did not vest in respondent No. 2 under the provisions of the Abolition Act as these survey numbers represented private forest land which did not vest in the second respondent under the provisions of the Abolition Act. It is the case of the petitioners that after coming into force of the Abolition Act, the forest situated on survey numbers 40 and 146 remained in the private ownership of the petitioners. They dealt with the said forest as full owners thereof. As these forest lands did not vest in the State of Gujarat under the Abolition Act, no compensation was paid to the petitioners for these forest lands. However, the second respondent subsequently enacted the Acquisition Act whereunder such private forest vesting in the Private Owners came to be acquired and as per the Acquisition Act, compensation was required to be paid to the private forest owners both for the forest lands as well as the trees. The petitioners, therefore, applied to the compensation officer acting under the Acquisition Act as per Section 7 read with Section 6 of the Acquisition Act. The first respondent herein was the competent authority Before whom such application could be made. The first respondent by his order dated 3-3-1976 came to the conclusion that for private forest situated on survey numbers 40 and 146 of village Taladara compensation should be awarded for the forest land but not for trees standing there-on as according to the first respondent, the petitioners had no right, title or interest over these trees and consequently, no compensation was awarded for the trees. The petitioners carried the matter in appeal to the Gujarat Revenue Tribunal, u/s 12 of the Acquisition Act. The appeal came to be dismissed by the Tribunal. The Tribunal took the view that the petitioners' claim for compensation for trees situated on survey numbers 40 and 146 could not be entertained under the provisions of the Acquisition Act in the light of the decision of the Supreme Court in the case of U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, popularly known as Waghach's case. The aforesaid decision of the Tribunal has been brought in challenge by the petitioners in the present proceedings as noted earlier.

3. Mr. J. D. Patel, learned Advocate for the petitioners vehemently contended that the Tribunal had committed a patent error of law in taking the view that in light of the decision of the Supreme Court in Waghach's case (supra) the petitioners were not entitled to be paid any compensation for acquisition of trees standing on S. Nos. 40 and 146 under the provisions of the Acquisition Act. He submitted that the aforesaid view was not only patently erroneous in law but was also contrary to the evidence on record which clearly shows that the lands in question were surveyed and settled prior to the appointed day viz. 1-8-1973 subsequent to which possession of these survey numbers was taken from the petitioners by the officers of the Government as per Section 4 of the Acquisition Act. He submitted that when possession of private forest land was taken from the petitioners, it is obvious that the petitioners became entitled to be paid compensation for the private forest which vested in the second respondent pursuant to the Acquisition Act. That the very concept of possession presupposes

the existing right of the petitioners in the acquired lands and the forest lands which were the subject matter of acquisition proceedings under the Acquisition Act did consist of not only the lands but also of trees which were standing on these lands and which formed private forest itself. He heavily leaned on the definition of the term "private forest" as enacted by Section 2(f) of the Acquisition Act. He further submitted that the ratio of the "Supreme Court decision in Waghach's case (supra) cannot be applied to the facts of the present case and hence, the Tribunal had failed to exercise its jurisdiction u/s 12 of the Acquisition Act in not computing proper compensation payable to the petitioners for the trees standing on the concerned survey numbers.

4. Mr. S.T. Mehta, learned Assistant Government Pleader for the respondents on the other hand tried to support the judgments and orders of the authorities below.

5. Having heard the Learned Counsel for both the sides, I have reached the conclusion that the petitioners have been able to make out a clear case for interference by this Court in the present proceedings inasmuch as the reliance placed by the Tribunal on the decision of the Supreme Court in Waghach's case (supra) is found to be totally uncalled for on the facts of the present case.

6. Before the ratio of the Supreme Court judgment in Waghach's case (supra) can be invoked, it is necessary to carefully note the exact nature of the decision of the Supreme Court in the aforesaid case. In Waghach's case the Supreme Court was concerned with the fact situation wherein rights of Ex-Jagirdar in trees situated in the lands of 39 villages of Ex-Waghach State in Baroda district came to be inquired into. Respondents Nos. I to II before the Supreme Court were claiming rights to cut and remove the trees in these lands. They were ex-proprietary Jagirdars of these forest lands. There was no evidence in Waghach's case about these villages being surveyed and settled under the provisions of the Bombay Land Revenue Code, 1879. When these proprietary Jagirs came to be abolished under the provisions of the Abolition Act, a question arose as to whether forest lands situated within the villages of Waghach estate got vested in the then State of Bombay as per provisions of Section 8 of the Abolition Act. On the scheme of the Abolition Act, the Supreme Court took the view that once Jagir got abolished under the Abolition Act, so far as the trees situated in forest land were concerned, the Jagirdar became occupant under the provisions of Section 5(1)(b) of the Abolition Act and the jagirdar would have rights of occupant qua these lands which comprised of ex-Jagir. It is in that light that Ramaswami, J. speaking for the Supreme Court considered the further question whether Ex-Jagirdar who became occupant of the forest land on the coming into operation of the Abolition Act could exercise any right to cut and remove the trees in these forest lands after becoming occupant thereof. While considering that question, the Supreme Court noted a salient fact that no survey and settlement had taken place in Waghach State and consequently, there was no occasion for the then State of Bombay to concede any rights to ex-Jagirdar in the trees standing on

these lands. In para 7 of the report, Ramaswami, J. speaking for the Supreme Court in terms held:

It is manifest that u/s 3 of the Jagirs Abolition Act, all Jagirs were abolished and all the rights of the jagirdars were extinguished, save these rights which are expressly provided by other provisions of the Act itself. It is also manifest that u/s 5(1) (b) of the Act the only rights conferred on the jagirdars are the rights of occupancy of the forest lands. In our opinion, the rights of the occupants under the Bombay Land Revenue Code do not include the right to cut and remove the trees from the forest lands. The reason is that the 86 villages in dispute have not been surveyed or settled and until there is completion of the survey and settlement there is no question of concession on the part of the State Government of the right to the trees in favour of the occupants.

In para 8 of the report, it was further observed:

Section 3 of the Act provides for abolition for jagirs and under that section all jagirs shall be deemed to have been abolished on and from the appointed day i.e. August 1, 1954 and all rights of a jagirdar, in respect of a jagir village as incidents of jagir, shall be deemed to have been extinguished by virtue of the section unless there is express provision in the Act saying the right of the jagirdars with regard to the trees.

It becomes obvious that the aforesaid decision of the Supreme Court in Waghach's case proceeded on the fact situation of its own. Firstly, the Supreme Court was not concerned with the question regarding award of proper compensation to the admitted owner of private forest which is acquired under the Acquisition Act. I will refer a little later to the scheme of the Acquisition Act with which I am directly concerned in the present proceedings. Suffice it to note that the Supreme Court decision in Waghach case had nothing to do with the question with which I am directly concerned viz. whether admitted owner of a private forest whose private forest land gets acquired under the Acquisition Act is entitled to get compensation for trees situated on his private forest land. Secondly, in Waghach's case there was clear evidence on record to show that the concerned 36 villages were not surveyed and settled at any time and the forest lands were situated in these villages. Not only that but it was found on the record of that case that on 6-7-1956, the State Government issued a notification u/s 34(A) of the Indian Forest Act, 1927 declaring all uncultivated lands in the said 39 villages to be forests for the purposes of Ch. 5 of the Act. On 19-3-1958, the Divisional Forest Officer wrote a letter to the respondents wherein he stated that all the rights of the jagirdars had been abolished by the Jagirs Abolition Act and that the reserved species of trees standing on the lands belonged to the State Government. He, therefore, asked the respondents to refrain from cutting teak and Pancharao trees standing in the forest lands. On 11-7-1956, the Divisional Forest Officer wrote another letter to the respondents in which he stated that the reserved species of trees-teak blackwood and sandalwood-vested in the State Government and, therefore, prohibited the respondents from cutting and

removing the material from those trees. The question in Waghach's case centred round the above mentioned reserved species of trees which, according to the authorities, had vested in the State Government and over which the concerned respondents had no right entitling them to cut and remove them. That stand was taken by the State authorities presumably on account of the notification issued u/s 34(A) of the Indian Forest Act. It is in the background of the aforesaid peculiar facts of the case that the Supreme Court came to the conclusion that the concerned respondents cannot be treated to be having any right in the trees situated in this forest land comprised in 39 villages. This decision of the Supreme Court cannot be almost automatically applied to the facts of the present case as has been done by the Tribunal. Before the ratio of Waghach case can be applied to any given case, the following conditions have to be satisfied on the facts of each case:

1. Whether the lands over which trees stood were ever surveyed and settled in remote past during the time they were comprised in the territories of ex-States or at any time after their merger with the then State of Bombay under the provisions of the Bombay Land Revenue Code.
2. Whether the trees situated on the concerned lands about which dispute as to title arises, were ever reserved under the provisions of the Indian Forests Act, 1927. Whether control over this forest was exercised at any time by the State Government by issuing notification u/s 34(A) read with Section 35 of the Forest Act whereby cutting and removal of trees from the concerned land came to be prohibited.
3. Whether there arose any occasion in the past when the State Government conceded rights in trees to the concerned occupants either expressly by any overt act or by necessary statutory indentment.

The ratio of the decision in the case of Waghach came to be examined and distinguished by the Supreme Court itself in two later decisions which are required to be noted at this stage. In *State of Gujarat Vs. Kumar Shri Ranjit Singhji Bhavan Singhji and Others*, J. C. Shah, J. speaking for the Supreme Court upheld the claim for compensation as put forward by the ex-Jagirdar of four villages situated in Baroda district for the standing trees on the Jagir lands which became the subject matter of Abolition Act. The ex-Jagirdar's claim for compensation for trees was rejected by the concerned authorities on the ground that those teak trees were reserved trees and hence they never belonged to the Jagirdar on the appointed date and consequently, there would be no occasion to compensate the Jagirdar for the loss of these trees. The view of the compensation authority was upheld by the Tribunal. However, this Court quashed and set aside the decision of the Tribunal. This Court held that there was evidence to show that ex-State of Chhota Udepur had treated and dealt with the forest as absolute property of the grantee and it was not proved that the teak trees were reserved trees. The High Court's decision in favour of the ex-Jagirdars entitling them to compensation for abolition of their rights in the teak

trees was challenged by the State of Gujarat before the Supreme Court. In support of the challenge, reliance was placed by the State on the decision of the Supreme Court in Waghach case (supra). Repelling the said contention J. C. Shah, J. observed-that the principle of Waghach case had no application to the facts of the case before them. While distinguishing the ratio of the decision of Waghach case in the latter decision, the following pertinent observations were made:

But the principle of the case has no application to this case. In U.R. Mavinkurve Vs. Thakor Madhavsinghji Gambhirsingh and Others, the State of Bombay which had at the relevant time jurisdiction issued a notification u/s 34 (A) of the Indian Forest Act, declaring all uncultivated lands in the villages of the Jagir to be forests for the purposes of Chapter V of that Act. On that account the forests were deemed protected forests and the Jagirdar had no right to cut and remove trees from the forest lands as owner and that under the Bombay Land Revenue Code, 1879. the rights of occupancy did not carry the right to cut and remove trees from forest lands.

In the present case there is no evidence of any such notification issued that teak trees formed part of the forest. The Jagirdar had absolute rights to the land and therefore to what grew on the land. u/s 11 of the Act, the Jagirdar was entitled to compensation for trees or structures on the lands. The right of the Jagirdar to the teak trees not being extinguished or restricted by a notification issued under the Indian Forests Act, the High Court was, in our judgment, right in holding that he was entitled to compensation for the teak trees.

There is also, a later decision of the Supreme Court explaining the ratio of the decision in Waghach case. That decision is rendered in the case of Thakoreshri Maharasinghji Dolatsinghji and Others Vs. State of Gujarat and Others, In Dolatsinghji's case (supra), the Supreme Court was concerned with the claim of the ex-proprietary Jagirdar in connection with forest trees situated in some of the survey numbers comprised in Bx-Jagir of Idar State which was a proprietary Jagir and which came to be abolished on the coming into force of the Abolition Act. The ex-Jagirdar claimed to be the occupant of the lands together with forest trees standing thereon. He was not permitted to cut and remove the trees after the decision of the Supreme Court in Waghach case (supra). That drove the ex-Jagirdar to file a writ petition in this Court in 1965. This writ petition alongwith other companion writ petitions raising similar contentions came to be dismissed by this Court. Those original writ-petitioners carried the matter in appeal before the Supreme Court. Before the Supreme Court it was pointed out that private forests have ultimately come to be" acquired under the provisions of the Acquisition Act. That subsequent event was not considered by the Supreme Court and the main question in controversy was decided by the Supreme Court speaking through Untwalia, J. It was held that once any proprietary jagir gets abolished, consequences u/s 5(1)(b) would follow. That ex-Jagirdar did become occupant i.e. holder in actual possession of the land directly under the State and

alongwith land would go trees attached to the earth forming part. Thus, ex-jagirdar would become occupant of the land alongwith trees, Section 8 of the scheme was noted and dealt with and it was observed that land or trees in question were not covered and would not vest in the State. Thereafter, Section 9 of the Abolition Act was considered and in that connection, the Supreme Court observed:

Neither the rights to trees were specially reserved under the Indian Forest Act nor was it a case where the State Government by any notification in the official gazette had declared any trees or class of trees in a protected forest to be reserved from a date fixed by notification.

In this light, Untwalia, J. also examined the ratio of Waghach's case (supra) and made the following observations:

In the case of Mavinkurve (supra) it appears the State Government had issued a notification u/s 34A (State Amendment) of the Indian Forests Act declaring all uncultivated lands in the 39 villages in question in that case to be forests for the purposes of Chapter V of the Forest Act. No such thing seems to have been done in the present case. But the matter does not stop there. The High Court following the decision of this Court in Mavinkurve's case held that there was no survey settlement of any of the lands in question before the High Court and hence the ratio of the case fully applied and the former Jagirdars or their settlees did not acquire any right or interest in the forest trees. This is on the basis of the view that u/s 5(1)(b) of the Jagirs Abolition Act a person who becomes an occupant of the land is entitled to all the rights and liable to all the obligations in respect of such land under the Land Revenue Code, And in absence of a survey settlement the person aforesaid could not fall back upon any provision of the Land Revenue Code, such as, Section 40 or Section 41 for claiming a right in the trees. In our opinion, the view so expressed by the High Court is not correct.

Thereafter it was held that there was evidence on the record of the case before the Supreme Court that there was already survey and settlement during the time of Ex-Idar State and the said survey and settlement in the Ex-Idar State remained operative and effective in view of Sub-section (2) of sec 216 of the Land Revenue Code and such settlement would clearly fall within the provisions of para 2 of Section 40 of the Land Revenue Code under which it can be said that rights to trees situated on the land on which private parties have been made occupants under the Land Revenue Code stood conceded. It was also noticed that in Waghach case, the dispute related to cutting of teak and Paneharao trees standing in the forest lands that is to say, special kind of trees in respect of which a notification u/s 34-A of the Indian Forest Act had been issued, and consequently the ratio of the decision of Waghach case (supra) was confined to its own peculiar facts. It is in these circumstances that the Supreme Court in Dolatsingh's case (supra) took the view that Ex-Jagirdar became occupant of the land together with trees standing thereon and the Government authorities had no right to interfere with the appellant's dealing with the forest trees, at any rate

before the passing of the Gujarat Private Forests (Acquisition) Act, 1972. The aforesaid decisions of the Supreme Court subsequent to Waghach case (supra) have clearly laid down the limited scope and ambit of the ratio of the decisions of Waghach case. In view of the aforesaid settled legal position, when applied to the facts of this case, it appears clear that the Tribunal on a total misconception of law and facts, failed to exercise its jurisdiction and refused to compute proper compensation awardable to the petitioners for abolition of their rights in trees standing in the private forest land which came to be acquired under the Acquisition Act. In the present case, it is an admitted position that no notification u/s 34(A) of the Indian Forest Act, 1927 has ever been issued so far as the concerned forest lands go. It is also not the case of the State that at any time, either the then bilingual State of Bombay or subsequently the State of Gujarat had issued any notification reserving any of the trees standing on these two survey numbers under the provisions of the Indian Forest Act. It is true that on 4-7-1955, the then State of Bombay had issued a notification u/s 35 so far as these two survey numbers are concerned, but the said notification which is annexed at annexure "C to the petition when read closely, clearly shows that instead of prohibiting the petitioners from cutting and removing the trees standing on the said lands, the said notification itself recognised and endorsed the rights of the petitioners to cut and remove trees from these lands subject of course to the petitioners following regulatory procedure of submitting an application to D.F.O. for cutting and removing these trees. It is pertinent to note at this stage that u/s 35 of the Indian Forest Act, amongst others, the State Government has power to issue a notification not only to regulate but to prohibit cutting, sawing, conversion and removal of trees. In the present case, the notification of 1955 did not prohibit the petitioners from cutting, sawing or removing the trees standing on their private forest lands. On the contrary, the said notification while accepting the petitioners' rights to be owners of private forest in terms recognised their right to cut and remove trees from those lands, but regulated that exercise by providing regulatory measure of following the procedure for submitting plans to the concerned district forest officer for the said purpose. Thus, the notification in question instead of going against the petitioners fully supports their case that they were recognised to be the full owners of the trees standing in the private forests even after abolition of Ex-Jagir on coming into force of the Jagir Abolition Act. Thus, on the facts of the present case, not only there is no evidence of the trees standing on the concerned forest lands of the petitioners being ever reserved at any time by the State authorities as belonging to the State but there is positive evidence on record to show that those trees were accepted to be private ownership trees of the petitioners being comprised in the private forest situated in the concerned lands. It is on that basis that private forests belonging to the petitioners are sought to be acquired under the provisions of the Acquisition Act. In view of this positive evidence on record, it is obvious that ratio of the decision in Waghach case (supra) can never be pressed in service on the facts of the present case. Once the State authorities recognised the rights of the petitioners in the trees situated in the private forest

lands with which I am concerned it goes without saying that when such private forest lands are acquired, the petitioners are entitled not only to be compensated for the acquired forest lands but also for the trees standing thereon over which the State of Gujarat at no time claimed any proprietary right. Even apart from the aforesaid salient features of the case, there is another tale tell circumstance which is required to be noted. The concerned two survey numbers are situated in Ex-Jagirdari village Taladara. Even after coming into operation of the Abolition Act, the trees situated in the private forests are clearly shown to be situated in two Survey Numbers 40 and 146 Not only that, but these survey numbers have been assessed to land revenue as noted by the first respondent. The evidence which is not disputed and which has been, on the contrary, acted upon by the first respondent while granting compensation for forest lands to the petitioners, shows that Survey Numbers 40 and 146 comprise of H 274-Are 85-sq. mts. 39 and they are totally assessed to Rs. 84-87p. The aforesaid land was less than 400 hectares and consequently the petitioners were entitled to claim compensation for the forest land at the rate of 100 times assessment as per part A of the Schedule read with Section 6 of the Acquisition Act. The first respondent has further held that assessment of Hec. 194-Are 70 - Sq mts. 50 which are the subject matter of acquisition under the Act would work out at Rs. 60-27 and at 100 times the assessment the compensation would work out at Rs. 6027/-. As it was less than the minimum provided by Clause 4 of part A of the Schedule read with Section 6, compensation for forest lands was awarded to the petitioners for H. 194- Are. 70-Sq. mts. 50 at the rate of Rs. 37-50 per hectare as laid down by the said clause 4 and it worked out to Rs. 7302-20. Once this finding was reached by the compensation authority, it passes one's comprehension how it can ever be urged by the State authorities that so far as trees standing on these forest lands were concerned no compensation should be paid to the petitioners as their concerned lands were not surveyed and settled. It goes without saying that if there was no survey and settlement under the provisions of the Land Revenue Code, the concerned lands would not have got any survey numbers nor they would have been assessed to land revenue and their assessment would not have been fixed. On the facts of the present case, not only it is found that the said survey numbers were assessed to land revenue but assessment has been acted upon by the compensation officer himself for computing compensation for the entire forest lands as payable to the petitioners. Once that is so, it must logically follow as a sequitor to the finding of the compensation officer himself that trees standing on these lands also would automatically become entitled to be compensated for. It is difficult to appreciate the reasoning adopted by the first respondent and as confirmed by the Tribunal in appeal that these Survey Numbers 40 and 146 of village Taladara were not surveyed or settled under Chapter 8-A of the Land Revenue Code and consequently, the ratio of Waghach case (supra) applied to the facts of the present case. As seen above, the first respondent himself has accepted the factual position that for these two survey numbers not only there was survey and settlement but assessment was also fixed. Once that factual position is accepted, it must necessarily follow that these

lands were surveyed and settled atleast at any time prior to coming into force of the Acquisition Act. It must be kept in view that for deciding the present controversy, what is relevant is the appointed date under the Acquisition Act. It is not the case of the second respondent that the area in which the lands are situated was never surveyed and settled under the provisions of the Land Revenue Code at any time after merger of the Ex-Santrampur State with the bigger bilingual State of Bombay. On the contrary, the record of the case and the finding reached by the compensation officer himself clearly bring out the fact situation that these lands were surveyed and settled under the provisions of the Land Revenue Code. It is no doubt true that the petitioners had not led evidence to show that during the regime of Ex-Santrampur State, there was any survey and settlement. But even if that is so, after the merger of the said State with the bigger bilingual State of Bombay when the Bombay Land Revenue Code became applicable, it can be presumed that proper survey and settlement would have been carried out by the said authorities so that the land revenue payable to the State from the concerned occupants in this territory may not be lost to the State. But apart from this presumption, even factually it clearly emerges on the record of this case and it has been accepted even by the first respondent that these lands not only were surveyed and were having survey numbers but they were properly assessed to land revenue and their assessment has been accepted as assessment for computing compensation for awarding proper compensation for the lands. It would have been open to the State authorities to plead and prove that till the appointed date as laid down by the Acquisition Act, no survey and settlement had ever taken place for the concerned lands and hence there was no occasion for the State authorities to concede rights of the petitioners in the trees standing in the forest lands. No such case was ever-pleaded and proved on behalf of the State authorities. Not only that, there is evidence on record to show that the then State of Bombay recognised the rights of the petitioners in the trees standing in the private forest lands. In the light of this clinching evidence on record for which there cannot be and there is no controversy between the parties, it must be held that the ratio of the decision in Waghach case (*supra*) cannot be brought in service on behalf of the respondents for disentitling the petitioners from getting compensation for the trees standing in the private forest lands on the appointed date. Even apart from that, under the scheme of the Acquisition Act, compensation has to be paid not only for forest lands but also for trees. As laid down by Section 2(f) of the Acquisition Act, forest land would include (i) any land declared before the appointed day to be a forest u/s 34-A of the Forest Act and (ii) any forest in respect of which any notification issued u/s 35 of the Forest Act is in force immediately before the appointed day. Sub-section (3) of Section 2(f) makes it clear that where in a forest, forest land vests in any person other than the State Government and trees vest in the State Government, the same would be included in the definition of private forest. In the light of the aforesaid inclusive definition of private forest, any owner of a private forest would be entitled to due compensation u/s 4(1) of the Act on account of vesting of his private forest in the State Government on account of

the Acquisition Act. As per Section 6 of the Acquisition Act, compensation has to be paid not only for forest land but also for trees as laid down by Section 6(b) of the Act. Such a right of private forest owner for being paid compensation for trees can be lost only if in a given case, it is established that the trees standing on such land were reserved in the past prior to the appointed day by the State authorities and the rights of the concerned occupants in these trees were expressly or by necessary implication effaced because of which occupants were not legally entitled to enjoy any rights over these trees. It is only in such cases that claim for compensation of trees in the forest land can be repelled. In the present case, no such fact situation has ever emerged. On the contrary, there is overwhelming evidence to show that the trees standing on the forest land of the petitioners were all throughout dealt with by them as full owners thereof and the then State of Bombay had even recognise the said rights of the petitioners. If that is so, there was no occasion for the authorities below to reject the claim of the petitioners for compensation for trees on the basis of the ratio of the decision in Waghach case (supra) which was miles away from the facts of the present case. Once that conclusion is reached, the result is obvious. Decision of the Tribunal rejecting the petitioners' appeal for compensation for trees situated in the forest lands acquired under the Acquisition Act will have to be quashed and set aside as suffering from patent errors of law and jurisdiction. Rule issued in the petition is accordingly required to be made absolute. The decision of the Tribunal at Annexure "B" is quashed and set aside. It is held that the petitioners are entitled to proper legal compensation payable to them for the trees standing on survey numbers 40 and 146 in their ex-proprietary Jagir village Taladara in Santrampur taluka. Proper compensation payable to them will have to be computed by the Tribunal as per the provisions of the Acquisition Act. For that purpose, the appeal is restored to the file of the Tribunal with a direction to compute proper compensation payable to the petitioners for the concerned trees standing in Survey Numbers 40 & 146 on the appointed day in the light of the evidence on record.

Rule is made absolute with costs.