

(2018) 09 BOM CK 0093

In the Bombay High Court

Case No : Writ Petition No. 10112 Of 2016

M/S. Praful Industries

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-09-2018

Acts Referred:

Indian Forest Act, 1927 — Section 3(1), 3(3), 34A, 35, 35(1), 35(2)(i), 35(2)(ii), 35(2)(iii), 35(2)(iv), 35(2)(v), 35(3), 35(4), 35(7), 36, 37, 38
Maharashtra Private Forest (Acquisition) Act, 1975 — Section 2(a), 2(c)(i), 2(f), 2(f)(i), 2(f)(ii), 2(f)(iii), 2(f)(iv), 3, 3(2), 4, 5, 5(1), 6, 21, 22A
Right to Information Act, 2005 — Section 19(1)
Constitution of India, 1950 — Article 12, 226

Citation : (2018) 09 BOM CK 0093

Hon'ble Judges : S. C. Dharmadhikari, J; P. D. Naik, J

Bench : Division Bench

Advocate : S.V.Sonawane, Satish Mule, T.H. Jadhav

Final Decision : Disposed Off

Judgement

S. C. Dharmadhikari, J

1. In all these matters, the primary question falling for our consideration and determination is, whether the judgment and order of the Hon'ble Supreme

Court in the case of Godrej and Boyce Manufacturing Company Limited and Anr. vs. the State of Maharashtra would apply or otherwise. The

next question is, whether each of these petitioners can rely upon this judgment to resist the consequences flowing from the Maharashtra Private

Forest (Acquisition) Act, 1975 (hereinafter referred to as 'the Act of 1975'), when their predecessors in title have never raised any dispute about

the applicability of this law or the steps and action taken in pursuance thereof.

2. The facts and circumstances in most of these petitions are identical. Since

extensive arguments were canvassed, we are disposing of these petitions by a common judgment.

3. Rule is granted in each of these petitions.Â The respondents waive service.Â By consent of parties, Rule is made returnable forthwith.

4. In Writ Petition No. 4814 of 2016 the facts are that the petitioners are the owners of land bearing Survey Nos. 81, 82/1 to 82/6, 87/1, 82/7 to 82/16,

84/3, 85, 87/2 to 87/4, 88, 90/1, 90/2, 91/1, totally admeasuring 108.7860 acres, situated at VillageDahiwali, Taluka-Maval, District-Pune (hereinafter

referred to as 'the said property'), which is the subject matter of the present petition.Â The chart showing survey numbers with corresponding

Gat numbers, the area and the date of purchase of the said property is annexed as Exhibit 'A' to the petition.

5. Respondent no. 1 is the State of Maharashtra through its Principal Secretary, Revenue and Forest Department, in whose favour the impugned

mutation entry is made in respect of the said property.Â Respondent no. 2 is the Revenue Officer, the authority constituted and performing functions

under the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as 'the MLRC'), on whose instructions the impugned mutation entry

has been effected in respect of the said property.Â Respondent no. 3 is the Chief Conservator of Forests, an authority constituted and, inter alia,

discharging duties under the Forest (Conservation) Act, 1980.Â Respondent no. 4 is the Collector, Pune Division.Â All the respondents are 'State'

within the meaning of Article 12 of the Constitution of India and, therefore, amenable to the writ jurisdiction of this court.

6. The petitioners, by this petition, challenge the arbitrary and illegal action on the part of the respondents in treating the petitioner's lands as

'forest/private Forest' although these lands have never been forest in fact or in law.Â The petitioners are also challenging the action of the

authorities in mutating the name under the provisions of the Maharashtra Private Forest Act in 'other rights' column in Revenue records of the

Petitioners' lands under Mutation Entry No. 521.Â The actions on the part of the respondent authorities treating the said property as 'forest' are

completely arbitrary, unreasonable and non-est.Â The entire claim of the respondents for claiming the said property as 'forest' is based on a

purported show cause notice, stated to be issued on 7th June, 1956 under

section 35(3) of the Indian Forest Act, 1927, which was not even served on the predecessor-in-title of the petitioners who were cultivating the said property.Â The said property is â??Jirayatâ? land and was cultivated accordingly.

7. The petitioners state that the said notice not having been acted upon by the respondents, has lapsed and ceased to have any effect and, therefore, the actions of respondents on that basis, after about 46 years of the said notice, are clearly arbitrary and unreasonable.Â In any case, the said property was always under cultivation by the predecessor-in-title of the petitioners and was never actually and physically â??forestâ? at any point of time and, therefore, the notice issued under section 35(3) of the Act of 1927 was rightly abandoned and did not culminate into issuance of notification under section 35(1) of the Indian Forest Act, 1927. The mere issuance of notice under section 35(3) of the Indian Forest Act, 1927 is not sufficient for any land being declared as â??private forestâ? as defined under section 2(f)(iii) of the Maharashtra Private Forest (Acquisition) Act, 1975.

8. The petitioners state that the said property admeasuring 108.7860 acres was purchased by the petitioners, who are members of same family, during the years 1989 to 2002.Â The petitioners state that 79.4375 acres was purchased in the month of May, 1989, 6.4250 acres was purchased in September, 1989, 2.8500 acres in the month of July, 1990, 7.55 acres in the month of September, 1990, 2.1750 acres in the month of December, 1990, 6.0750 acres in the month of December, 1992, 3.0750 acres in the month of February, 1993, 0.6020 acres in the month of December, 2001 and 0.5965 acres in the month of January, 2002.

9. The said properties were purchased vide registered deed of conveyance after payment of the applicable stamp duty and registration charges.Â

The petitioners state that the said properties were duly mutated in the names of the petitioners in the Revenue records without any objection excluding properties bearing Survey Nos. 84/3, 87/4, 82/10, 90/2 and 91/1.Â The petitioners state that in respect of the aforesaid five survey numbers, the petitioners have filed applications for effecting the entries in their names, but the same has not been mutated till date.Â The petitioners state that at the time of the purchase and at the time of mutating the names of the petitioners in the Revenue records, there was no remark in the record of rights

about the said property being 'private forest'. The petitioners state that the petitioners have purchased the said property after exercise of due diligence in respect of the title to the said property and are bona fide purchasers for value without notice. The petitioners state that the words 'Under the provisions of Maharashtra Private Forests Act' have been mutated by the respondents in the year 2002 unilaterally and without any notice to the petitioners. The petitioners rely upon the registered agreements of sale in respect of the said property. Exhibit 'B' is the chart detailing the properties, which are still not mutated in the name of the petitioners.

10. The petitioners state that since 1989, the said property is in the possession of the petitioners and the petitioners have not received any notice from any authority calling upon them to handover the possession of the said property. The petitioners state that in order to complete the title documents in respect of the said property, in the year 2008, the petitioners applied to the office of Talathi, Taluka-Maval for the latest 7/12 extracts. The petitioners state that upon receipt of the 7/12 extracts, the petitioners were shocked to see that in the 'other rights' column, the words 'Under the provisions of the Maharashtra Private Forest Act' was entered vide Mutation Entry No. 521. The petitioners state that the petitioners immediately, vide application under the Right to Information Act, 2005 (RTI) dated 29th August, 2008, applied to the office of the third respondent and sought details of the notices issued and acquisition proceedings initiated in respect of the said property. The petitioners state that upon receipt of the documents from the office of the third respondent, the petitioners came to know that Mutation Entry No. 521 has been effected on 4th July, 2002 on the basis of the application made by respondent no. 3 purporting to annex copy of notices under section 35(3) of the Indian Forest Act, 1927 purported to be issued to the occupiers along with the purported notification under section 35(1). The petitioner state that thereafter, the petitioners, through RTI applications addressed to the office of respondent no. 3, called upon them to provide the documents pertaining to the declaration of the said properties as forest and collected all the information regarding the issuance of the said notices from the respondents. The petitioners refer to the said RTI applications. The petitioners, thereafter, received the photo copy of the documents on the basis of which the said property was mutated in

the Revenue records as "forest". Exhibit 'C' is the copy of the 7/12 extracts in respect of the said property showing the mutation of the words

"Under the provisions of Maharashtra Private Forest Act".

11. The petitioners state that from a perusal of the documents received from the respondents under the RTI, it appears that on 7th June, 1956, notices

under section 35(3) of the Indian Forest Act, 1927 were published in the Official Gazette in respect of some of the survey numbers comprised in the

said property. The petitioners state that there is no record of the purported notices issued in respect of land bearing Survey Nos. 82/2, 82/16, 84/3,

85, 87(4), 87(2) and 91/1. The petitioners state that further in respect of the balance survey numbers, there is no evidence on record about the

purported notices having been served upon the predecessors in title of the petitioners. Copy of the documents received by the petitioners under the

RTI are annexed to the petition as Exhibit 'D'.

12. The petitioners state that in the year 2001, the Bombay Environment Action Group filed a public interest litigation (Writ Petition No. 2980 of

2001/PIL No. 17 of 2002) in this court seeking directions against the State and concerned authorities to update the land records of the properties

acquired under the Private Forest Act, 1975. This court passed an order on 27th June, 2001, directing the State to file affidavits enumerating the

steps taken by the Government for recording the lands, which are 'forest' by virtue of inclusive definition under the Private Forest Act, 1975 and to

safeguard such lands from encroachment and trespass.

13. The petitioners state that the filing of the above PIL No. 17 of 2002 triggered the recording of various mutation entries in respect of lands, which

were claimed to be 'forest' by the Department of Forest. Similarly, the Mutation Entry No. 521 was effected by the Talathi, Taluka "Maval,

District "Pune in respect of the petitioners' land, reflecting the words "Under the provisions of Maharashtra Private Forest Act" in "other

rights" column on 4th July, 2002, without any notice to the petitioners.

14. The petitioners state that at the time when Mutation Entry No. 521 was effected, the 7X12 extracts recorded the names of the petitioners as the

owners thereof. The mutation entry was effected by the Talathi, District "Maval on the order dated 3rd July, 2002 issued by the Respondent

Tahsildar, without any notice to the petitioners. The said mutation entry records

that a letter dated 26th March, 2002 has been issued by the Range Forest Officer for entering the name of "Private Forest" Forest Department. The said mutation entry also records that the said letter dated 26th March, 2002 was accompanied by notices issued under section 35(3) and notification published under section 35(1). The petitioners state that the petitioners, vide RTI application dated 22nd December, 2015 addressed to respondent nos. 2 and 3, sought photo copy of the said letter dated 26th March, 2002 along with the accompanying documents mentioned in Mutation Entry No. 521. However, the documents have not been provided to the petitioners as yet. A copy of the Mutation Entry No. 521 is annexed as Exhibit 'E' to the petition.

15. The petitioners state that the recital in the said Mutation Entry No. 521 is factually incorrect. It is evident from the perusal of the Government

Gazette dated 7th June, 1956 that no notices are issued under section 35(3) of the Indian Forest Act, 1927 in respect of land bearing Survey Nos. 82/2,

82/16, 84/3, 85, 87/4, 87/2 and 91/1. Further, in respect of the balance land bearing Survey Nos. 81, 82/1, 82/4, 82/5, 87/1, 82/6, 82/7, 82/8, 82/9,

82/10, 88, 90/1 and 90/2, there is only the purported notice under section 35(3) of the Indian Forest Act, 1927 published in the Government Gazette on

7th June, 1956 without any evidence of the same having been served upon the petitioners' predecessors in title. Further, even in respect of such

properties, there is no notification issued under section 35(1) of the Indian Forest Act, 1927. The petitioners state that in the absence of any

notification issued under section 35(1) of the Indian Forest Act, 1927, the said property cannot be declared as a "private forest" under the

provisions of section 2(f)(ii) of the Maharashtra Private Forests (Acquisition) Act, 1975.

16. On 24th March, 2005, the Division Bench of this court disposed of a batch of writ petitions relating to lands which were claimed by the State as

"Forest Lands". This court had held that lands to which notice under section 35(3) of the Indian Forest act was issued at some point of time

were required to be treated as "forest" in view of the judgment of the Hon'ble Supreme Court in the case of Chintamani Gajanan Velkar vs. the

State of Maharashtra.

17. On 30th January, 2014, the Hon'ble Supreme Court decided the civil appeals

in the matter of Godrej and Boyce (supra) and quashed the stop work notice issued in the year 2006 by the Municipal Corporation on the instructions of the Deputy Conservator of Forests.Â The claim of the land being 'forest' was based on a show cause notice issued in the year 1956-57.

18. The petitioners state that the said property was never a 'private forest' under the provisions of section 35(3) of the Indian Forest Act, 1927 as

no notice had been served upon the predecessors in title of the petitioners as mandated by section 35(5) of the Indian Forest Act, 1927.Â Further,

there was no notification issued under section 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975.Â The petitioners state that any

notification under section 35(1) of the Act of 1927, if issued, is illegal and bad in law as no notice has been served upon the petitioners or their

predecessors in title nor they were heard before the issuance of the notification.Â The petitioners state that only upon consideration of the objections

raised by the owner of the land, the notification under section 35(1) can be issued.Â As observed by the Hon'ble Supreme Court in the case of Godrej

and Boyce (supra), section 2(f)(iii) of the Private Forests Act is intended to apply to 'live' and not stale notices issued under section 35(3) of the

Forest Act.Â The petitioners state that after issuance of the purported notices under section 35(3) of the Forest Act in the year 1956, no action had

been taken by the respondents for taking possession of the said land and has permitted third party rights to be created in respect of the said property.

19. The petitioners state that the Mutation Entry No. 521 was effected in the year 2002.Â The Revenue records reflected the names of the

petitioners as the owners thereof.Â The petitioners have not received any notice from the Forest Department for handing over possession of the said

property till date.Â The petitioners are in continuous possession of the said property from the date of purchase in the year 1989.Â Thus, even if the

purported notification was issued, the State Government by its conduct has abandoned the same and, therefore, is non-existent.

20. On being served a copy of these petitions, the respondents have filed an affidavit in reply and that is pursuant to a direction issued on 31st August,

2016.Â The affidavit in reply, apart from raising an issue of maintainability of the petition, also highlights the facts on legal issues.Â Paras 2, 3 and 4

with their sub-pars read as under:-

2. At the outset, I say and submit that the lands involved in this petition is Private Forest and deemed reserved forest under the provisions of

Maharashtra Private Forest (Acquisition) Act, 1975 [herein after referred to as MPF(A) Act, 1975] and deemed Reserved Forest under the Indian

Forest Act, 1927 [herein after referred to as IF Act, 1927].

3. I say that Section 2(f) of the Forests Acquisition Act identifies seven categories of lands as Private Forests which include section 2(f)(i) to

2(f)(vi) as well as all those areas which are not the property of Government and which fit into the definition of Forest as provided in section

2(c-i). I say that there under acquisition is not necessarily linked with Section 35 of Indian Forest Act, 1927, as being projected in many cases

pertaining to the acquired private forests (deemed Reserved Forests).

4. I say that based on the above paragraphs, the following legal issues arise for the determination of this Hon'ble Court.

(a) Section 3(1) provides for acquisition and vesting of all Private forests in the State free from all encumbrances with effect from the

appointed day (i.e. 30th August, 1975) without any reference to section 34A or section 35 of Indian Forest Act, 1927.

(b) The term Private Forest is defined under Section 2(f). It has two distinct parts. The first part provides as to what is meant by the term

Private Forest and the second part deals with what may be construed to be Private Forest like the lands/forests/sites of dwelling houses in

such forests etc. by way of inclusion as mentioned in clauses (i) to (vi).

(c) The first part of the definition appears as the primary definition of the term Private Forest given by the Legislature for the purpose of its

acquisition and vesting in the State Government under Section 3. As accepted by the Hon'ble Supreme Court of India in the judgment in the Godrej

case, the land or tract of land which falls within the definition contained in Section 3 (c-i), and is also not the property of the Government shall be a

Private Forest and would stand acquired and vested in the State Government by virtue of Section 3 of the MPF (A) Act, 1975 on and from 30th

August, 1975 i.e. the appointed day. It is not necessary for such land which falls within the definition of the term Forest as per Section 2(c-i)

to also fall within any of the clauses (i) to (vi) of section 2(f). Thus, the two parts of the term Private Forest are independent of each other.

21. Then, in para 7, it is stated that the forest areas were deemed reserved forests on the appointed day, namely, 30th August, 1975. The ownership of the said forest land stood vested in the State Government with effect from that date without any encumbrances. Any transaction of sale or purchase after the appointed day, therefore, would not confer any right in the purchaser. Any subsequent transaction of the land by original owners or their successors or any person, by way of various sale deeds and power of attorney, cannot be held to be valid. Thus, each of the petitioners would have to prove to this court that the transaction relied upon was prior to the appointed day. It is stated in this affidavit that the mutation entries have been made after full compliance with the provisions of law. As per section 3 of the Maharashtra Private Forest Act, all private forests stood acquired and vested in the Government with effect from the appointed day. The notice, along with possession receipt and panchanama of acquired forest is available on record. A copy of the same is annexed as Exhibit-'R-1'. As per section 5(1) of the Act of 1975, the Forest Officer (Range Forest Officer) has taken possession of the land. A list of the acquired lands as per the provisions of the Act was forwarded to the Collector on 30th August, 1976 and this list contains the description of the said land. It is in these circumstances that the land stood vested in the State Government with effect from 30th August, 1975 and the owners lost their right, title and interest therein. Then, there is a specific denial of the factual averment that no notice under section 35(3) of the Indian Forest Act, 1927 was issued and served on the then holders of the said lands. It is not true that the said lands were jirayat lands under cultivation. Apart from relying upon a photograph, a copy of the panchanama of the present position of the land is attached as Exhibit-'R-4'. Thus, this is a land adjacent to reserved forest Gat No. 276 and 254. All the averments to the contrary are, therefore, denied. It is specifically denied that the lands are in possession of the petitioners. In fact, the Range Forest Officer, Shiota, has obtained possession of the lands from the then holders. Thus, it is stated that there is sufficient record to prove issuance and service of notice under section 35(3) of the Indian Forest Act, 1927. A reference is made then to the Golden Register, which contains the details of the notices issued and served on the then holders of the lands. In para 18 of this affidavit, it is stated that the Mutation Entry No. 521 was effected by the

Talathi as per the orders of the TahsildarMaval as the said lands have been vested in the State Government as per the provisions of the Private Forest

Act.Â Hence, the mutation entry is legal and valid.Â It is in this backdrop that it is submitted that the writ petitions be dismissed.

22. There is a rejoinder affidavit, which has been filed by the petitioner in this petition, reiterating the contents of the writ petition and purporting to deal

with the affidavit in reply.Â It is admitted that the mutation entry was effected in the year 2002. The show cause notices under section 35(3) were

issued in the year 1956, without any evidence of the same having been served upon the owners.Â It is clear that the State Government has not acted

upon the said notices for almost 50 years and the possession of the subject land was always with the predecessor in title of the petitioners and

thereafter, the petitioners.Â After the purchase, the names of the petitioners have been duly mutated in the Revenue records.Â No notices of the

mutation of the State Government in the subject land was served upon the petitioners in the year 2002.Â The mutation entries are, therefore, bad in

law and, therefore, liable to be set aside.Â Thus, the claim is that there has been no adjudication of the question whether the subject land is a

â??forestâ? as defined in section 2(c-i) of the Act of 1975.Â The mutation entry has been effected only on the basis of the show cause notices

issued under section 35(3) of the Indian Forest Act, 1927 by virtue of the inclusive definition.Â Thus, relying upon the judgment of the Hon'ble

Supreme Court in the case of Godrej and Boyce (supra), it is urged that the lands cannot be termed as private forest. The rest of the affidavit in

rejoinder only contains denials.

23. The facts in Writ Petition Nos. 4318 of 2016 and 177 of 2016, in which lead arguments were canvassed, can also be summarised in the sense, the

subsequent purchasers and petitioners therein, on identical assertions and averments, urged that the mutation entries mutating the name of the State

Government, on the basis that the lands are private forest and vesting in the State Government, are invalid and illegal.Â The details with regard to the

lands, the holders, issuance of notices, the date of taking purported possession and panchanama may differ.Â However, the essential allegation and

challenge remains the same.Â The State Government also raises the same defence in the affidavit in reply and with mere change in the names of

parties and dates and events.Â The essential contention in reply also remains the same.

24. Dr. Sathe learned senior counsel appearing for the petitioners in Writ Petition Nos. 4318 of 2016 and 177 of 2016 would argue that for a land being

termed as a private forest and to be governed by the Act, it has to be first a forest.Â Secondly, a notice in terms of section 35(3) of the Indian Forest

Act, 1927 should not only be issued, but there should be proof of issuance as also service.Â This is a condition precedent.Â Â In that, he relied upon

section 35(4) (5) of the Indian Forest Act, 1927.Â It is then urged that action in terms of the notice should be taken within one year of its service,

else, the notice loses its shelf life.Â That notice must culminate in an action under section 35(1) of the Indian Forest Act, 1927, otherwise, it lapses

after one year.Â In that regard, he relied upon sub-section (4) of section 35 of the Indian Forest Act, 1927 and paras 63, 72 and 74 of the judgment of

the Hon'ble Supreme Court in the case of Godrej and Boyce (supra). If the land vests in the Government after due compliance with the above, then,

steps in terms of section 3(2), 4 and 5 of the Act of 1975 have to be taken.Â Our attention is also invited to section 21 of the Act of 1975 to urge that

the Government can declare, if it still wants to hold certain lands as private forest, but it cannot, in answer to these petitions, urge that the mutation

entry is justified.Â The Government cannot urge that today the petitioners' lands are private forests.Â If the sine-qua-non for the land to be termed

as a private forest is not fulfilled, then, no amount of reliance on panchanamas and mutation entries would suffice.Â There must be clear proof and

evidence of compliance with the law.Â It is stated that merely because the State Government says in the affidavit that some documents are available,

that would not be adequate.Â The compliance with law requires that actions pursuant to notice under section 35(3) of the Indian Forest Act, 1927

must be taken and proof of both, issuance of notice and its service and action under section 35(1) would have to be produced.Â Merely because the

issuance and service of notice is proved, but action subsequent thereto has not been taken or that fact has not been proved, then, the land cannot

assume the character of a private forest.Â The proof of one is available, but later is absent would only mean that nothing, which has culminated into a

firm action, has ever taken place.Â From 1975 till 2002, there is nothing on record except a mutation entry.Â There is no proof of taking over

physical possession either. It is in these circumstances that by mere reliance on a definition under the Act of the word and expression "forest"

and "private forest", the Government cannot insist on dismissal of these petitions. The Government must, independent of these definitions, also

establish that the mandate of section 21 of the Act of 1975 has been complied with. Merely because there is an opportunity to answer or file a reply

to the allegations in the writ petition does not mean that now a copy of the possession receipt or panchanama can be introduced by the State. The

State must establish and prove that this record was in existence on the appointed date. For these reasons, Mr. Sathe would submit that the writ

petitions be allowed.

25. We have also a reliance placed upon section 22A in the course of arguments in Writ Petition No. 7446 of 2006. There, it is stated that the

restoration order has been passed. The petitioner is in possession and the land was never a forest. In that regard, our attention has been invited to

pages 9 to 15 of the petition paper book and the affidavit in reply at page 191 of the paper book in that petition. Our attention is also invited to the

letter of the State Government dated 7th March, 1980, copy of which is at page 198 of the paper book.

26. It is clear from the arguments of the other counsel that a common thread runs through them. The common thread is as referred above.

27. Mr. I. M. Chagla learned senior counsel appearing in Writ Petition No. 6417 of 2015, while adopting the arguments of Dr. Sathe, would urge that

the Government's action in this petition is based on the notice dated 16th November, 1961. There is no proof of service of this notice. Mr. Chagla

would urge that there is no automatic vesting of private lands as private forest in the State Government. He would submit that the lands would have

to assume the character of a forest. Merely because there is presence of bush, trees etc., that by itself is no evidence of the land being a forest.

Therefore, for assuming the character of a forest, but applying the law to a land chosen, which is not a Government land, but a private land, it would

be imperative that the proceedings under the Indian Forest Act, 1927 are initiated and taken to their logical end. The said proceedings are, therefore,

a condition precedent for any land other than the Government forest to be identified and termed as a private forest. Hence, the Hon'ble Supreme

Court holds that not only a notice under section 35(3) of the Act of 1927 must be issued, but it must be duly served.Â Further, such a notice should not be stale or old.

Then, Mr. Chagla would invite our attention to section 21 of the Act of 1975 to urge that the same enables the State Government, if it appears to it

that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should

be declared, in public interest and for furtherance of the objects of this Act, to be a private forest, then, the State Government has to follow the entire

procedure prescribed in this provision.Â Once this enabling power has to be exercised in the manner set out therein, then, it could not be urged by any

stretch of imagination that before any private land assumes the character of private forest, there is no necessity of preceding adjudication.Â Hence,

there cannot be any vesting of a forest, which is private forest and not the property of the Government, independent of the above provisions of law.

Mr.Chagla would submit that the provisions will have to be construed strictly.Â Each of the provisions of the above nature are, therefore,

mandatory.Â There is no question of importing or applying the doctrine of substantial compliance to such cases. Mr.Chagla would, therefore, submit

that the statute is expropriatory in nature.Â Once such is the nature of the statute, then, the interpretation of its provisions must be made with

reference to its context and not de-hors it.Â Merely saying that this land, which is not a property of the Government, is a forest, would, therefore, not

suffice.Â In these circumstances, he would submit that the point is entirely covered in favour of the petitioners by the judgment of the Hon'ble

Supreme Court in the case of Godrej and Boyce (supra).

28. Mr.Chagla, in the alternative and assuming without admitting the position prevailing in 1961 is alone relevant, submitted that in para 4(b) of the

petition, there is a reference to an order made in Ceiling Case No. 141 of 1973, decided on 27th September, 1973.Â This is the only contemporaneous

record, but that is not adequate for the primary requirement is of issuance and service of notice under Section 35(3) of the Act of 1927. Pertinently, no

document of the year 1961 is relied upon in the affidavit in reply.Â Mr. Chagla would also invite our attention to the judgment of this court in the case

of J. C. Waghmare vs. State of MaharashtraÂ relied upon by Mr.Sathe to urge

that this is also considered by the Hon'ble Supreme Court while rendering the decision in the case of Godrej and Boyce (supra).

29. The argument of Mr.Chagla has then been adopted in more or less all the cases, save and except a case, which was argued by Mr.J. D. Mistri,

the petitioner appearing in person [Writ Petition (O.S.) No. 853 of 2017].Â He would invite our attention to the pleadings in that petition to submit that

the position in that case is peculiar. Even the Government has acknowledged that the said land is not vested in it.Â The property is entirely managed

and administered by the petitioner.Â That has been the position throughout.Â The petitioner No.1 has made a positive statement that neither she nor

her predecessor in title have received any notice under section 35(3) of the Act of 1927.Â The mother of the petitioner is alive and she has affirmed

the factual statements in the writ petition.Â For these reasons, it is submitted that this case must be viewed differently than others.

30. Similar attempt was made by Mr. Pratap Patil in one of the matters, namely, Writ Petition No. 11382 of 2016.

31. On behalf of the State Government, Mr. N. H. Seervai learned senior counsel was engaged as a Special Counsel. Mr.Seervai opened his

arguments by submitting that each of these petitions are not bona fide.Â Each of the petitioners herein are not the original owners, save and except in

a case here or there.Â Each of the petitioners have, subsequent to the vesting of the private forest in the State, contracted to purchase the land and

are relying upon the documents allegedly executed in their favour.Â Neither the predecessors in title of the petitioners nor the original owners have

ever disputed the position that the lands are forests, that they are not owned by the State Government, that such private forests vest in the

Government by virtue of the Act of 1975 and the entire procedure contemplated thereby being complied with.Â None of the petitioners have ever

relied upon any document affirmed by the original owners, much less any affidavit, nor have they brought any material in that form even today.Â It

does not lie in their mouth to say that the original owners did not receive any notice under section 35(3) of the Act of 1927.Â The original owners

have never protested and have submitted themselves to the jurisdiction of the authorities under the Act of 1975.Â They have accepted their fate.Â

They are in receipt of the requisite notices and, therefore, their lands, styled as

private forest, have vested in the State Government as on the appointed day.Â Mr.Seervai has taken us through the scheme of the Act to urge that everything prevailing as on the appointed day is relevant and has to be accepted.Â So long as there is official record to indicate that lands, which are otherwise forest, but not the property of the Government, stood vested in the State Government on the appointed day, after due and proper compliance with the provisions of law and which record has never been questioned or doubted by the original owners, then, none of these petitioners can claim any right, title and interest in the property.Â The original owners have lost their right, title and interest in the property by virtue of its vesting in the State Government.Â Therefore, it is entirely for the State Government to deal with the lands, which are vested in it and which are identified and taken over as private forest.Â The forest cover in the State of Maharashtra was depleting.Â A Public Interest Litigation (PIL) was filed in this court bringing to this court's notice the utter neglect and inaction on the part of the State Government in complying with the forest laws.Â This resulted in the forest cover or forests in general decreasing, thereby endangering ecology and environment.Â Once this serious issue was brought before this court, by way of the PIL, this court activated the authorities and the State Government as a whole, after which, the attention of the authorities was invited to the unauthorised and illegal attempts to takeover such lands indirectly.Â In other words, all those lands, which were private forests and stood vested in the Government, having not been properly depicted and shown as such in the Records that the mutation entries in the village records were inserted.Â That was done by a process known to law.Â Once that was done pursuant to an order passed by this court in a PIL and which order operates in rem, then, all the more, we should not accept any of the arguments to the contrary.Â It is mere updating of the Revenue records which has been done so as to prevent the mischief and potential threats to takeover the forest lands by private persons.Â Once there are entries in the Revenue records depicting the lands to be a forest, then, it is not expected that such entries should be ignored by those dealing with these lands. If they have been intentionally ignored and still deals have been struck, then, such deals do not have any sanctity in law.Â The beneficiaries of such deals are before this court and hence, we should be very slow in

interfering with the mutation entries or directing any de-novo or fresh adjudication of the issue and particularly whether these lands are forests and if they are, whether they are private forests within the meaning of the Act of 1975.

32. Mr. Seervai was at pains to point out that in each of these cases, the sheet anchor of the arguments of the petitioners is reliance on the judgment

of the Hon'ble Supreme Court in the case of Godrej and Boyce (supra).^Â However, Godrej and Boyce (supra) is not a judgment, which can be of

any assistance to the petitioners before us.^Â That was a peculiar case.^Â The judgment must be read in the backdrop of the facts in the case of

Godrej. There, Godrej successfully pointed out that no notice under section 35(3) was ever served on them and that is the basis on which their lands

were taken away terming them as private forest.^Â Godrej went, as far as bringing on record the affidavit and a positive assertion of their employee,

who was in service in its Estate Department in the year 1957, in which the Government of Maharashtra claimed to have issued and served a notice

under section 35(3) of the Act of 1927 on Godrej.^Â Thus, Godrej said that they were and continued to be the owners of the land, which is neither a

forest nor a private forest vesting in the State Government by the Act of 1975.^Â They refuted every allegation of the State Government and their

assertion was backed by absence of any official record in relation to issuance and service of the above notice.^Â Hence, the condition precedent to

term the land as private forest and to hold that it vested in the Government of Maharashtra was not complied with in the case of Godrej.^Â The

decision of the Hon'ble Supreme Court entirely rests on this premise.^Â While appreciating the case of Godrej and particularly the argument of the

learned senior counsel appearing for Godrej that the State Government's stand that the proof of issuance of the notice under section 35(3)

must be construed and accepted as proof of receipt/service would be too risky and to be applied to all cases across the board irrespective of their

peculiar facts and circumstances.^Â If proof of the nature brought by Godrej is on record, then, the further contention was that this assertion has

definite force.^Â It is in these circumstances and when the original owners had developed their properties, constructed buildings and households,

including factories and industries, that the Hon'ble Supreme Court rendered its judgment in favour of Godrej.^Â If that judgment has to be applied to all

cases and of the nature brought before us, it would result in destruction of forest cover and ecology in the State.Â Every person would then raise the

issue of the issuance and service of notice under section 35(3) of the Act even though he has no right in the land or property.Â If subsequent

purchasers like the petitioners are allowed to dispute the position emerging from the records of 1961 and 1975 in the year 2015, 2016, 2017 and 2018,

then, larger public interest would be defeated.Â According to Mr. Seervai, in Godraj's case, the main part of section 2(f)(i) of the Act of 1975 was

not considered at all.Â The case of Godrej was specific.Â That absent, a proof of service of notice under section 35(3) of the Act of 1927 and its

mere issuance would not make the lands of Godrej a private forest.Â If they are not private forests then they would not vest in the Government.Â

Thus, to hold that they are private forests, proof of service of such notice is also mandatory and every judgment of the Hon'ble Supreme Court to the

contrary does not lay down a correct law.Â This argument was accepted in Godrej's case and hence, no benefit or advantage can be derived of the

same by these petitioners.Â Here, the petitioners are relying upon the case of J. C. Waghmare (supra), which is a judgment of this court and even by

that judgment, nothing contrary to what is urged by the State above, is held.Â In that regard, our attention is invited to para 25 of the said judgment.

33. Mr.Seervai continued his arguments by inviting our attention to pleadings in certain petitions and particularly in Writ Petition No. 4814 of 2016.Â

He would submit that paras 1 to 5 of this petition are completely dealt with and the contents thereof denied and in that regard, our attention is invited to

the affidavit in reply of the Government and pages 153 to 154 and 157 thereof. Mr.Seervai would submit that this is a case, in which he can

successfully point out the falsity in the arguments of the petitioners.Â Mr. Seervai then proceeded to deal with the judgments cited by Mr.Chagla and

submits that each of these judgments are distinguishable on facts.Â Mr.Seervai also laid great emphasis on the principle that no judgment, even it be

of the Hon'ble Supreme Court, should be construed as if it is a statute. Mr.Seervai submits that judgments are not statute for a judgment interprets

statute.Â Judges do not make laws, but they interpret laws.Â Therefore, a word here and a word there on facts makes a lot of difference and no

judgment can be construed as a binding precedent unless there is a similarity in fact situation.Â In other words, if the facts, based on which a binding

precedent has been rendered, are identical to the case in which such precedent is relied upon, then alone the judgment can be said to be binding.

34. Ending his argument, Mr. Seervai would submit that presuming that the State Government cannot succeed on its case on section 2(f)(iii) of the Act

of 1975 does not mean that the case is not covered by section 2(c)(i) of that Act.Â In other words, merely because the Government is unable to

produce record which would indicate that a private forest has vested in it, then, the case of the Government should be allowed to rest and successfully

on section 2(c)(i) of the Act of 1975.Â Thus, mention of section 2(f)(iii) would not vitiate the action of the State Government in this case because the

lands have a natural flavour of a forest.Â That is how he would rely upon section 2(c)(i) of the Act of 1975.Â For all these reasons, he would submit

that the writ petition be dismissed.

35. In rejoinder to Mr. Seervai's arguments, Mr. Chagla and Dr. Sathe would submit that if we do not follow the judgment of the Hon'ble Supreme

Court in Godrej's case, it would amount to acting in defiance of the law of the land.Â It is a binding precedent.Â Not following it would be judicial

indiscipline.Â Every attempt to brush aside such binding precedent be discarded and all the more by the State Government.Â Merely because the

erstwhile owners have not come forward to challenge the action of the State Government does not mean that there is an estoppel, in the sense that the

petitioners are prohibited or estopped from questioning the Government's action.Â The petitioners' locus cannot be questioned on the premise that the

persons from whom they bought the land or acquired the title have accepted the action of the Government. Mere inaction on their part cannot be

construed as acceptance of the action of the State Government.Â The inaction of the erstwhile owners would not deprive the petitioners of their right

to challenge the said action and particularly when they are aggrieved by the mutation entries carried out in the year 2002. For these reasons, it is urged

that the petitions be allowed.

36. For properly appreciating the rival contentions, a brief reference will have to be made to the provisions of the Act of 1927 and the Act of 1975.

37. The Indian Forest Act, 1927 is an Act to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and

other forest produce.Â The law was enacted on 21st September, 1927.Â Section

2 is the interpretation clause and thus contains definitions.Â

Chapter II of this Act deals with reserved forests and contains provisions in that regard.Â Chapter

III provides for village forests and Chapter IV is titled as â??Protected Forestsâ?.Â Then comes Chapter V which talks of control over forests and

lands not being the property of Government. Sections 35 to 38 fall in this Chapter and read as under:-

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

forest waste-land -

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

(b) the pasturing of cattle; or

(c) the firing or clearing of the vegetation;

When such regulation or prohibition appears necessary for any of the following purposes:-

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

(ii) for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the preservation of landslips or of the formation of ravines,

and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

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

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

(v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or wasteland, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner

of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made

or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by

an officer duly appointed in that behalf and have been considered by the State Government.

36. Power to assume management of forests. - (1) In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if

the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such

forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the

provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

37. Expropriation of forests in certain cases. - (1) In any case under this Chapter in which the State Government considers that, in lieu of placing the

forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the State Government may process to acquire it

in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years

from the date thereof, require that such forest or land shall be acquired for public purposes, and the State Government shall acquire such forest or land

accordingly.

38. Protection of forests at request of owners. - (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein

amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to

the Collector their desire -

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon;

or

(b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it think suitable

to the circumstances thereof and as may be desired by the applicants.â??

38. A bare reading of the title of the Chapter and section 35 would denote that the State Government has a discretion to issue notification in the

Official Gazette to regulate or prohibit in any forest or waste land as understood in law, when such regulation or prohibition appears necessary for the purposes indicated in clauses (i) to (v).¹ Sub-section (2) of section 35 enables the State Government to construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.² That is to fulfill the purpose of regulation or prohibition in any forest or waste land, the activities set out in sub-section (1) clauses (a) to (c) of section 35.³ Sub-section (3) of section 35 says that no notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after issuance of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.⁴ Thus, the purport of the section is to inform the owner of the forest or waste land, where the activities referred above are sought to be prohibited or regulated.⁵ The word "owner" is defined in an inclusive manner in section 2(4A) to include a Court of Wards in respect of property under the superintendence or charge of such Court.⁶ Thus, the power to place a forest or land in control of the Government, to assume management of forest in case the notification regulating or prohibiting the activities is neglected or willfully disobeyed is also conferred by section 36.⁷ The expropriation of forest in certain cases is permissible by taking recourse to section 37 and by section 38, protection of forest at request of owners is possible. These provisions, therefore, must be understood in the backdrop of the title to Chapter V, the object and purpose in enacting the Act of 1927 and protecting forests for special purposes. Therefore, the notification under sub-section (1) or the work under sub-section (2) cannot be issued or undertaken until there is compliance with sub-section (3) of section 35.⁸ We need not refer to further Chapters for those deal with timber and other forest rules, their control, penalties and procedure and other relevant and miscellaneous matters.

39. The Maharashtra Private Forests (Acquisition) Act, 1975 enables the Maharashtra Government to acquire private forests in the State and to provide for certain other matters.⁹ The preamble to this law reads as under:-

â??An Act to acquire private forests in the State and to provide for certain other matters.

WHEREAS the forest land in the State is inadequate;

AND WHEREAS the private forest in the State is generally in highly degraded and over-exploited state, and is adversely affecting agriculture and

agricultural population;

AND WHEREAS it is, therefore, expedient to acquire private forests in the State of Maharashtra generally for conserving their material resources

and protecting them from destruction or over-exploitation by their owners and for promoting systematic and scientific development and management

of such forests for the purpose of attaining and maintaining ecological balance in the public interest, for improving the socio-economic conditions of the

rural population, and particularly of the adivasis and other backward communities who generally live in forest areas, for developing as pasture the

forest suitable for the purpose, for assigning a part of the private forest to the rural community, for controlling the soil erosion both in the forest areas

and in the lower level agricultural lands, for conserving soil moisture, for improvement of the water regime and raising the water table, for retarding

the siltation of dams and tanks, for distribution of forest produce for the common good and preventing the concentration of forest wealth to the

common detriment, for distribution of the mature exploitable forest produce as best to subserve the common good, for promoting employment

opportunities based on forest, for meeting the requirements of forest produce including fire-wood with a view inter-alia to decrease the dependence on

cow-dung, and in particular, for afforestation of private forest wherever feasible on scientific lines, and thereby create conditions for the improvement

of land and underground water resources to the best interest of agriculture and agriculturists in such private forests and other lands in the State, and

for undertaking schemes for such purposes;

AND WHEREAS it is also expedient to provide that in the case of owners of private forests (other than those whose lands were used for extracting

minor minerals such as stone quarries)' whose total holdings of lands became less than twelve hectares on the appointed day on account of acquisition

of their forest lands under this act, or whose total holding of lands was already less than twelve hectares on the day immediately preceding the

appointed day, the whole or the appropriate portion of their forest lands so acquired shall be restored to, and reserved in, them, so that their total

holdings of lands may be twelve hectares or less, as the case may be, and they may be able to continue to earn their livelihood from such lands; and to

provide for certain other purposes hereinafter appearing; It is hereby enacted in the Twenty-sixth Year of the Republic of India as follows:-

40. The definitions are to be found in section 2 and we are concerned with the definition of the term "appointed day". That is defined in section

2(a) to mean the date on which this Act comes into force. This Act came into force on 30th August, 1975. The term "Collector" is defined in

section 2(c) as under:-

"2(c) "Collector" includes an officer not below the rank of a Deputy Collector appointed by the State Government to exercise the powers and

perform the duties of the Collector under this Act."

41. Thereafter, the definitions of the term "forest" "Forest Act" and "private forest" are relevant and material and read as under:-

"2(c-i) "forest" means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation,

whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which

such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land

from erosion, or other such matters and includes; -

(i) land covered with stumps of trees of forest;

(ii) land which is part of a forest or

" "

2(d) "Forest Act: means the Indian Forest Act, 1927 in its application the State of Maharashtra ;

" "

2(f) "private forest" means any forest which is not the property of Government and includes, -

(i) any land declared before the appointed day to be a forest under section 34A of the Forest Act ;

(ii) any forest in respect of which any notification issued under sub-section (1) of

section 35 of the Forest Act, is in force immediately before the appointed day ;

(iii) any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act, but excluding an area not exceeding

two hectares in extent as the Collector may specify in this behalf ;

(iv) land in respect of which a notification has been issued under section 38 of the Forest Act;

(v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and

lands appurtenant thereto ;

â?|..â??

42. Section 3 of the Act is further material section and is another relevant section and it reads as under:-

â??3. (1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any

decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State

shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the

property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on

the said day shall be deemed to have been extinguished.

(2) Nothing contained I sub-section (1) shall apply to so much extent of land comprised in a private forest as is held by an occupant or tenant and is

lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by section 5 of the Maharashtra Agricultural Lands

(Ceiling on Holdings) Act, 1961, for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest

Act.â??

43. Thus, the definition of the terms â??forestâ?, â??private forestâ? together

with section 3 would convey the object and purpose of the Act and namely to vest in the State, free from all encumbrances, all private forests.Â Once these private forests so vest and with a deeming fiction as envisaged by sub-section (1) of section 3, then, every right, title and interest of the owner or any person other than the Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

44. The argument of the learned senior counsel appearing for the petitioners overlooks this fundamental position, namely, that everything must be seen with reference to the appointed day. On and from the appointed day, the vesting is complete and the deeming fiction in sub-section (1) of section 3 would demonstrate that the right, title and interest in the private forest is extinguished.Â Pertinently, in all these cases, the petitioners have come on the scene much after the appointed day.Â All the petitioners rely upon some document, but executed post the appointed day.Â None have been on the scene on the appointed day. For example, in Writ Petition No. 4814 of 2016, the 12 petitioners claim to be owners of the land.Â However, the argument is that the property involved in this writ petition was purchased by the petitioners, who are members of the same family, during the years 1989 to 2002.Â They claim to rely on registered agreements of sale.Â Pertinently, in the petition, further it is stated that since the year 1989, the property is in possession of the petitioners, but they have not received any notice from any authority, calling upon them to handover possession of the said property.Â At the same time, it is stated in para 6 of this petition that the title was not complete by mere execution of agreement for sale in favour of the petitioners.Â In order to complete the title, in the year 2008, the petitioners applied to the Revenue officials for the registered 7X12 extracts.Â In that, they found Mutation Entry No. 521, which contains the details, namely, the acquisition under the Act of 1975.Â It is then that this mutation entry was known to them. It is then they made inquiries by seeking information under the Right to Information Act, 2005 and then they became aware of the date of the mutation entry, namely, 4th July, 2002.Â They state that this mutation entry has been made on the basis of issuance of notice under section 35(3) of the Act of 1927.Â They claim that this is purported to be issued and served on the occupiers along with purported notification under section 35(1).Â Such an averment in the memo of the petition

itself means that not only was the notice issued, but, thereafter, the notification under section 35(1) was also published in the Official Gazette.Â In the affidavit in reply, the Assistant Conservator of Forest very clearly states that the petitioners have no right, title or interest in the land, because on the appointed day i.e. 30th August, 1975, these lands stand acquired and vested in the State free from all encumbrances.Â This statement is made in the affidavit by relying upon the notice along with possession receipt.Â It is stated that the further steps have also been taken and by virtue of sub-section (3) of section 3, all private forests vesting in the State under subsection (1) of section 3 shall be deemed to be reserved forests within the meaning of the Act of 1927.Â Annexure â??R-1â? to the petition is the notice along with possession receipt.Â Now, it is evident that the petitioners seem to be feigning ignorance of the contents of Annexure â??R-1â? to this petition.Â Annexure â??R-1â? in the copy of the notice and which notice is not the one which the petitioners purport to state and refer to.Â The stage of section 35(3) culminating into issuance of notification under section 35(1) was over long time back.Â This notice, copy of which is at Annexure â??R-1â? merely informs one Tulshiram Bhika Dagde and others, whose names were mutated in the records as owners earlier, that the lands covered by this notice are private forests vesting in the State under the Act of 1975.Â It is only that physical possession of these lands was not taken from these parties earlier.

That is how this notice calls upon the persons, to whom it is addressed, to handover physical possession of these lands to the Department of Forest/Assistant Conservator of Forest, Pune Region, else, that possession would be taken in terms of the power conferred by section 5 of the Act of 1975.Â This section reads as under:-

â??5. Where any private forest stands acquired and vested in the State Government under the provisions of this Act, the person authorised by the State Government or by the Collector in this behalf, shall enter into and take over possession thereof, and if any person resists the taking over of such possession, he shall without prejudice to any other action to which he may be liable, be liable to be removed by the use or such force as may be necessary.â??

45. Hence, this is a notice traceable to section 5 of the Act and based on that,

the affidavit asserts that the steps prior thereto have already been taken and no issue, much less a dispute or challenge was ever raised to such an action, on the part of the State Government, by anybody.Â Pertinently, on the date when the proceedings under section 35(3) and 35(1) ended and equally section 5 was invoked, the petitioners were not on the scene.Â It is surprising and shocking that they are filing petitions in this court and stating that no notice under section 35(3) was issued and served.Â That is not the controversy which can be raised by the petitioners now, particularly in the light of the positive assertion in this affidavit in reply.Â Further, Annexure â??R-2â? is a list of acquired lands and which are private forests vesting in the State under the Act of 1975.Â That list was sent to the Collector in 1976. That list covers the land, which is the subject matter of this writ petition.Â It is, therefore, apparent that the petitioners have no right, title and interest in the land and the agreement for sale is not valid and legal.

46. Additionally, this affidavit in reply denies that notice under section 35(3) of the Act was not issued and served on the owners of the land.Â Once again, such argument of the petitioners flies in the face of section 35(3) of the Act of 1927, which says that notice has to be issued to the owners of such forests or land calling upon them to show cause within a reasonable period to be specified in such notice, why such notification should not be made as is referable to section 35(1) of the Act of 1927.Â Annexure â??R-3â? to this petition is a photograph of the land and Annexure â??R-4â? is a copy of the panchanama in relation to the present position of the land.Â The panchanama reveals that there are trees.Â The land has a steep slope.Â The trees are to be found on the slope.Â There is no construction of any nature nor any cultivation.Â This document is relied upon to show that the land is adjacent to reserved forest Gat No. 276 and 254.Â In the rejoinder affidavit, all that the petitioners would say is that the mutation entry was effected in the year 2002.Â The notices under section 35(3) of the Act of 1927 were issued in the year 1956 without any evidence of the same having been served upon the owners.Â The State Government has not acted upon the said notices for almost 50 years and the possession of the subject land was always with the predecessor in title of the petitioners and thereafter, the petitioners.Â After the purchase, the names of the petitioners have been duly mutated in the Revenue records.

47. The statements in the affidavit in rejoinder would have to be seen in the backdrop of the averments in the writ petition. The statements in the writ petition are very guarded. The statements in the writ petition are that the petitioners came on the scene during the year 1989 to 2002. The writ petition, however, is filed on 1st April, 2016. In the writ petition itself, in para 7, it is stated that the petitioners were supplied with all the information, which they sought by making an application under the Right to Information Act, 2005. They were also supplied with copies of the documents. These documents received from the respondents revealed to the petitioners that on 17th June, 1956, notices under section 35(3) of the Act of 1927 were published in the Official Gazette in respect of some of the survey numbers comprised in the said property. There is no record of the purported notices issued in respect of certain survey numbers. Then, it is stated that insofar as the balance survey numbers is concerned, there is no evidence on record about the notices having been served upon the predecessors in title of the petitioners. Exhibit 'D' is relied upon in that regard. Now, Exhibit 'D' to this writ petition is nothing but a copy of the communication from the Conservator of Forest, Shirola, Kuvashet, Taluka Maval, District Pune. That is the office of this Conservator, which is communicating with the Tahsildar and giving him information on the subject of Writ Petition No. 2980 of 2001. Pertinently, this writ petition was filed in this court as a Public Interest Litigation so as to safeguard and protect forests and overall forest cover, which was apprehended to be depleted or adversely affected by the inaction of the officials in the Department of Revenue and Forest, Government of Maharashtra. The Tahsildar is informed by the office of the Conservator of Forest that village Dahivali, Taluka Maval, District Pune is the village concerned. Within the village limits, certain lands have been acquired and stand vested in the State by virtue of the Act of 1975 because they are private forests. There is evidence on record, which would indicate that these lands/private forests are not mutated in the Revenue records in the name of the Department or the State. That is why, acting on the communication from the Revenue and Forest Department, Mantralaya, Mumbai dated 22nd February, 2005, the necessary steps are taken. These are but mutations, which remained to be carried out. In other words, it is the entries, which were not carried out by correcting the Revenue records. By this alone, the petitioners cannot

assert that the steps prior to these lands or private forests vesting in the State have not been taken.Â There is no basis for such a plea as, in the same breath, the petitioners have also pointed out that in the Bombay Government Gazette of 7th June, 1956, a notice was published under section 35(3) of the Act of 1927 addressed to one Bhika Bhagu Padval.Â He was called upon to show cause as to why action under section 35(1) should not be taken.Â The notices are published in the Bombay Government Gazette of the above date and that is addressed to several persons, as is evident from pages 58 to 85 of the paper book.Â Then, it is stated that the notices in relation to the mutation entries follow the vesting of these lands in the State. The vesting takes place by virtue of the steps taken and referred in the law itself, namely, compliance with section 35(1) and (3) of the Act of 1927.Â In the instant case, no argument can be founded on non-issuance or non-service of notice under section 35(3) because the petitioners themselves annex extracts from the Bombay Government Gazette dated 7th June, 1956 and which is nothing else, but the notification issued under sub-section (1) of section 35 of the Act of 1927.Â That notification was in force before 30th August, 1975.Â It is by virtue of that the State is asserting that this is a private forest, which was not the property of the Government.Â It stood vested on and from the appointed day because the steps prior to such vesting have already been taken.Â Thus, all the pre-requisites and pre-conditions stand complied with and fulfilled.Â It is not the petitioners' case that notices under section 35(3) of the Act of 1927 have not been taken to their logical end in relation to these lands.Â It is not possible for them to raise such an issue or plead such a case simply because it is not the State, but the petitioners themselves, who are annexing copies of the notification published under section 35(1) of the Act of 1927.Â Once they do so, then, they would have to show that this notification was not in force before the appointed day.Â That is not their case.Â That plea could never have been raised by the petitioners because the petitioners were not on the scene at all on the appointed day.Â It does not lie in their mouth now to say that the concerned lands are not private forests and that they do not vest in the State free from all encumbrances.Â Thus, the entire foundation in this case is the inaction of the Revenue Department in mutating the name of the State Government in the Revenue Records.Â That the names have not been entered orÂ entered belatedly is the basis on which these petitions are

filed.Â The judgment of the Hon'ble Supreme Court in Godrej (supra) is not founded only on such a plea.Â The positive case as pleaded and proved in Godrej (supra) is hopelessly lacking in these petitions.Â Â Besides this, the case as pleaded is vague and hopelessly lacking in material particulars.Â It is also very guarded and unsure.

48. The petitioners are aware that at page 86, the Talathi, Mauje Dahivali, Taluka Maval, District Pune has prepared a record of the entries and these entries would go to show that compliance has been made with section 35(1) of the Act of 1927. The petitioners are informed that each of these lands are vesting in the State and it is only the mutation or the process of inserting the name of the State Government in relation thereto, which had remained to be completed.Â Now, even that is completed.Â In these circumstances, it would be highly unsafe to allow the petitioners in this petition to argue that no notice under section 35(3) of the Act of 1927 was ever issued or if issued, was served.Â Such a case, if permitted to be introduced now and accepted would only mean that persons who are out to deprive the State and the public at large of a huge forest cover derive an unfair advantage and benefit by invoking the discretionary and equitable jurisdiction under Article 226 of the Constitution of India.Â It is too well settled to be reiterated that the jurisdiction under Article 226 of the Constitution of India is extraordinary.Â That jurisdiction is vested in this court to promote justice and not defeat it.Â It cannot be exercised so as to undo what has already been done long time back and accepted by those, who claimed right, title and interest in these lands, but did nothing to assert it, though being very much on the scene at the relevant time.Â Once they do not deem it fit and proper to protest or have not protested in time, then, their inaction would visit parties like the petitioners with all consequences.Â If the predecessors in title of the petitioners have never bothered to question or challenge the action of the State Government in taking over their lands/private forests, then, it is not open to the petitioners to now challenge the same.Â The petitioners have to blame themselves for having dealt with lands and properties, which were never owned by their predecessor in title.Â Their predecessors in title lost their rights and interest in the land on the appointed day.Â Much before they dealt with these lands or entered into the transactions with the petitioners, they were denuded of their right, title and interest in the

same.Â One, who deals in such lands and properties is not entitled to any protection from a court of law, much less in writ jurisdiction.

49. This is the position common to almost all the petitions, which have been argued before us.Â In the other two petitions argued by Mr. Chagla, it is

evident that at pages 32 to 47 of the Writ Petition Nos. 6417 of 2015, the petitioners have annexed what, according to them, are the relevant

documents.Â However, as is evident from the documents, these documents cannot be of any avail or assistance as even these petitioners were not

on the scene.Â The predecessor in title of these petitioners have also not bothered to question the acts of the State and its officials.

50. Pertinently, even Mr. Chagla could not dispute that each of these petitioners are not the original owners.Â The lands involved in this petition were

originally owned by Chinchwad Devasthan Trust.Â These lands were sold to the petitioners only in the year 1999.Â It is claimed that the Trust filed

a return or statement in respect of holding of agricultural lands.Â An inquiry was held by the Special Deputy Collector, Land Ceiling, Phaltan.Â He

passed an order on 27th September, 1973 and excluded, inter alia, the said lands bearing Old Survey No. 247 (present Survey No. 211), village Mann

from the holding of the Trust.Â It is stated that it was not mentioned anywhere that these lands were forest lands or attract the provisions of the Act

of 1927 or any law relating to forest.

51. The Trust intended to give on lease for a period of 99 years, inter alia, the said lands and invited offers.Â Then, the Trust is stated to have made

application before the Charity Commissioner, who granted permission to sell or lease the lands.Â Then, it is claimed that a company (Kalpavruksha

Plantations Private Limited) purchased these lands as its offer was accepted.Â A lease was executed in favour of this company for 99 years and

thereafter, mutation entries were made.Â Then, it is stated that an outright sale offer was made by the Trust and once again, it inserted public notices,

in response to which the very company, to which the land was leased, agreed to purchase and the Trust agreed to sell the lands subject to the right of

nomination of the company in favour of petitioner nos. 1, 2, 4 and 5.Â It is claimed that such is the acquisition of the right in the property and after

payment of consideration.Â It is, therefore, claimed that at no stage there was any invocation of forest laws.Â It is only when the first respondent,

through respondent no. 3 directed respondent no. 4 to ensure that necessary entries are made in his Tehsil in respect of the lands affected by the Act

of 1975 that the necessary entries in the village records were made.Â It is claimed that the lands are affected by the provisions of the Act of 1927

and that Act was applied and invoked based on a notice dated 21st June, 1961 issued under section 35(3) of the Act and published in the Official

Gazette on 16th November, 1961 by respondent no. 1.Â That is how respondent no. 4 instructed the village level officer to make the necessary

entries in the record of rights based upon this notice.Â That is how this village level official acted and made the entries in the 7X12 extracts.

52. It is claimed that what is published is a draft/proforma of the notification under section 35(1) of the Act of 1927.Â That is appended to the notice

under section 35(3) of the Act of 1927 published in the Government Gazette of 21st June, 1961.Â Thus, this is an issuance of notice under section

35(3), but that has not been taken to its logical conclusion.

53. In response to this petition, an affidavit in reply has been filed by the Assistant Conservator of Forest, Pune, who says that Old Survey No. 247

admeasures 352 Acres and 31 Gunthas (142.76 Hectares).Â It is renumbered as Gat No. 211.Â After referring to the provisions of the Act of 1927

and 1975, it is claimed that the Revenue Entry Nos. 5179 and 6575 are rightly made.Â It is claimed that Notice No. 31/2723 dated 21st June, 1961

issued under section 35(3) of the Act of 1927 was issued and served on the then original land owner Shri. Karbhari, Chindhwad Devasthan,

Chinchwad.Â This was also published in the Official Gazette dated 16th November, 1961.Â Exhibit 'R-2' to this affidavit is relied upon.Â We do not

see how, when the then owners nor anybody claiming through them ever sought an enquiry into the factual aspects, particularly in relation to the

Gazette notifications, that merely relying upon knowledge of the Revenue entry derived in 2004, can we entertain this petition. We have carefully

perused Exhibit 'R-2' and it is evident that this was a notice issued pursuant to section 35(3) of the Act of 1927 and a notification dated 19th

September, 1950 (notifying the rules).Â The entire notification indicates as to how there is a description of the lands, the boundaries, the village and it

is stated that the notice dated 21st June, 1961 was known to all concerned.Â The communication, copy of which is at Exhibit 'R-4' from the Range

Forest Officer, Paud addressed to Tahsildar, Mulshi (Paud) records the compliance with the Act of 1927 and the Act of 1975 and directs him to

ensure that no non-forest activity should be carried out on this reserved forest.Â To ensure that no such

activities are carried out, it is necessary to insert the entry in the requisite 7X12 extracts denoting the lands as reserved forest.Â He was to comply

with this communication from the Forest Department.Â Beyond that, we do not see how anything can be read in this communication far from urging

that for the first time in May, 2010, the provisions of the law were sought to be applied, relying on the alleged compliance with section 35(3) of the Act

of 1927.Â That compliance has been already made and such compliance is relied upon to take the further steps.Â Thus, making correction or

inserting of a mutation entry later on, therefore, confers no right in the petitioners herein.

54. In most of these cases, the same position would emerge and though several counsel attempted to distinguish their matters from the others, still, we

do not find the facts and circumstances to be any way different or distinct at all.

55. For example, in Writ Petition (ST) No. 30103 of 2016, the lands involved are situated in Thane District and Vasai Taluka. There, similar steps

were taken, though the petitioners may refute the same.Â There, the only argument was no notice under section 35(1) of the Act of 1927 was

issued.Â The pleadings in this petition and the arguments would denote as to how only guarded statements are made.Â There is no positive

assertion.Â By picking up some paragraphs from the judgment in the case of Godrej and Boyce (supra), it is sought to be urged that the issuance of

notice under section 35(3) of the Act of 1927 is not admitted by the petitioners.Â Then, they say that the notice has never been served or any hearing

was ever held.Â This pre-supposes that there was a notice issued, but the petitioners do not wish to admit that it was duly served.Â The State

Government may not have filed any reply, but reliance on such guarded statements would not be safe.Â It is highly unsafe to rely upon such sketchy

and incomplete materials.

Firstly, an attempt is made to urge that no notice under section 35(3) of the Act of 1927 was issued.Â Secondly, the attempt is to show that there is

no record that such notice, even if issued, ever served or thirdly, if served, any

hearing taking place.Â Finally, it is urged that all this has not culminated in the notification under section 35(1) of the Act of 1927.

56. Similar is the position with regard to Writ Petition No. 31 of 2017.

57. In Writ Petition No. 10112 of 2016, it is claimed that the important dates and events would denote that the notification under section 35(1) under

the Act of 1927 was not published. Thus, what is published is a draft order.Â We are not sure as to whether the petitioners can rely upon the ratio in

the case of Godrej and Boyce (supra) and raise such contentions.Â More so, when these petitioners are aware that the State Government has

produced with its reply affidavit, a copy of the notice under section 35(3) issued way back on 5th July, 1957 for Survey No. 67. That notice was issued

to the predecessor in title of the petitioners.Â We have grave doubts as to whether the petitioner is at all the successor in title of the original owner

for the original owner himself lost the right, title and interest in the land on the appointed day as above.Â Therefore, the argument that no notice was

served on him, now raised in a writ petition filed in 2016, is without merit.Â The petitioners cannot urge that the notice was never served.

58. Even if the lands are in urban agglomeration in Thane city and used for non-agricultural purpose in 1973, what we find is that Mutation Entry No.

1673 was made on the basis of an alleged pending inquiry under the Act of 1975.Â It is such a land which is acquired by the petitioners.Â We are,

therefore, of the opinion that at the instance of the present petitioners, no relief in the nature of holding an inquiry now can be granted.

59. We have also perused the communication dated 6th July, 2015 of the Revenue and Forest Department of the Government of Maharashtra signed

by the Chief Conservator of Forest and addressed to all the Divisional Commissioners and District Collectors.Â It specifically invites the attention of

these authorities

to the fact that there was no question of deleting the Revenue entries (reserved forest) pertaining to lands other than those covered by the judgment of

the Hon'ble Supreme Court.Â Thus, benefit of the Hon'ble Supreme Court judgment could have been derived only by those 90 petitioners, who had

already approached the Hon'ble Supreme Court.Â They were aggrieved and dissatisfied with the judgment and order rendered in their writ petition by

the High Court of Bombay.Â There was no occasion, therefore, to delete the

entries in relation to other reserved forests.Â That is a patently illegal act.Â It is in these circumstances that there is nothing that the petitioners can claim to be unclear or ambiguous so as to give them an impression that the judgment in the case of Godrej and Boyce (supra) applies to them.

60. However, the allotment of Gut numbers or new Survey numbers without anything more and by itself would not enable them to challenge the steps that have been taken as far as back as 1957 and secondly, they cannot rely upon the allotment of gat numbers or new survey numbers to claim that the area of the land is less than 2 hectares and therefore, they are out of the purview of the law.Â No dispute was ever raised by the petitioners' predecessors, much lessÂ to the above effect.Â Similar is our conclusion in relation to lack of mutation entries or insertion of the same later on.

Thus, the attempt in Writ Petition No. 6042 of 2010 and Writ Petition No. 4606 of 2016 is of no avail.

61. The written submissions tendered in Writ Petition No. 9763 of 2017 would denote that the mutation entries made in the year 2005 are sought to be challenged.Â The petitioners, beyond stating that no notice under section 35(3) of the Act of 1927 was ever issued on the petitioners or their predecessor in title and no notice under section 35(1) of the Act of 1927, are seeking to rely on the judgment in the case of Godrej and Boyce (supra).Â If one sees the fallacy in the understanding of law, then, this is a clear illustration or example.Â The petitioners were nowhere on the scene when the Act of 1927 was invoked or they were not on the scene on the appointed day, namely, 30th August, 1975 when the Act of 1975 came into force.Â Now, they are desperately urging that the notification under section 35(1) of the Act of 1927 is nowhere published and therefore, it must be presumed that no notice under section 35(3) of the Act of 1927 was ever issued to them.Â The question of issuing such notice to the petitioners does not arise at all.Â However, these petitioners, realising their mistake, then say that such notice under the Act of 1927 was never issued to their predecessors in title, but if issued, was never served.Â However, if both compliances are made, then, there is no notification published under section 35(1) of the Act of 1927 and a copy of such a notification was not produced.Â

62. Mr. V. A.Gangal would vehemently urge that his clients' case cannot be equated with these matters.Â We would only consider separately Writ

Petition No. 6444, but as far as Writ Petition No. 389 of 2018 and Writ Petition No. 9368 of 2015 are concerned, the only argument there is, the plot

of land admeasuring less than 2 hectares was excluded from the operation of the law.Â Â This case is not different than the other writ petitions.Â

Thus, in all the petitions, the factual position is identical, except for the description and location of the land.Â The fate of such petitions cannot be different.

63. Then, in Writ Petition No. 12542 of 2015, Mr. Gangal would submit that land bearing Survey No. 38(part), village Ambernath, Taluka Ulhasnagar,

District Thane is a land, for which an application was made for sanction of layout on 15th March, 1974 and there was recommendation made by

Collector's office on 4th May, 1974.Â The final order was passed allowing conversion of the use from agricultural to non-agricultural.Â The layout

was approved and immediately thereafter, plots were sold to various persons.Â The area is now known as Shivganga Nagar.Â The area was

originally 21 hectares and 31 ares.Â There is a plot of 15812 square meters conveyed to MHADA under the Urban Land Ceiling Regulations.Â On

the remaining plots, there are more than 100 constructions, which have come out from 1974-1975.Â There is a huge overhead water tank and

situated at the centre of Shivganga Nagar.Â Thousands of people occupy the said constructions.Â The petitioners had filed an application to get zone

certificate in respect of the above land with the Bombay Metropolitan Regional Development Authority.Â In response to the said application, vide

letter dated 31st January, 2002, the said authority informed the petitioners that the said land is falling under the zone of education, medical, recreational,

roads and residential zone.

64. We do not see how then the petitioners say that a notice under section 35(3) of the Act of 1927 was issued on 27th April, 1957, but was not

served on the owners.Â Pertinently, the petitioners rely upon a registered deed of conveyance executed by original owners transferring the land in

favour one Dr.Kishor Chand Dunichand Arora and Shri. Tekchand Dunichand Arora. This is reflected by Mutation Entry No.338 in village

Ambernath. The dispute is confined to part of the land admeasuring 43 acres and 28 gunthas.Â It is claimed that there were suo moto proceedings,

where, an order was passed under section 22A of the Act of 1975 by the Deputy

Collector (Private Forests), Thane and he held that area

admeasuring 17 Hectares, 45 Ares plus 3 hectares and 86.88 ares vested in the State of Maharashtra by virtue of section 35(3) of the Act of 1927.Â

These are stated to be suo moto proceedings.

65. We would like, in the facts and circumstances of the present case, the authorities to verify the position and from the records, so that the

correctness of the petitioners' assertions can be judged.Â Without expressing any opinion on the rival contentions, we direct the authorities,

particularly the Collector, District Thane to examine the case as set up by the petitioners and pass the requisite orders after hearing them.Â However,

this is an exceptional and unique case.

66. Then, in remaining writ petitions, same contentions have been raised and reliance is placed upon a circular of the Government of Maharashtra

dated 14th July, 2005. It is claimed that in relation to such matters, an order has been passed so that the verification becomes possible.Â The

respondents have clarified in each of these matters that none of the cases reflect the position on par with that of M/s. Godrej and Boyce (supra).Â

Thus, there has been a compliance made in the cases, which we have referred and of both laws.Â In this, the State's stand is, if the petitioners are at

all aggrieved, they have remedy available under section 6 of the Act of 1975 and some of the petitioners have already filed proceedings before the

Collector, which are pending.Â Therefore, the Government has not said that it would not be ready and willing to verify the position in these cases.Â

However, it cannot extend a blanket protection for in that garb, several of the nonforest activities, which are ex-facie illegal so also unauthorisedly

carried out would be continued.Â The vague and bald assertions that are made by the petitioners are not based on the petitioners' personal knowledge

for none of them have stated that they ever made enquiries with the original owners nor, before filing these petitions, they have obtained any

information from the original owners, which would denote that the original owners had not received any notices under section 35(3) of the Act of

1927.Â None of the petitioners have bothered to verify the factual position from the Revenue officials or the officials of the Forest Department, much

less those at site, by seeking details and information.Â The crucial details and the vital information would be as to whether there is any record of title

of the land, which is now styled as reserved forest, who was the owner or holder when the Act of 1927 was applied and invoked.Â Whether that

owner/title holder was issued any notice under the Act of 1927 and was it served on him and finally, what steps in furtherance thereof have been

taken.Â Once no affidavit of the original owner or positive assertion based on the information or details as above is to be found in the pleadings of the

petitioners, then, it would be highly unsafe to rely on their assertions.

67. Even in the written submissions tendered by Mr.VagyaniGovernment Pleader, with reference to several writ petitions, specific details are set

out.Â These details are based on Government records and official documents.Â It is in these circumstances that we do not find any merit in the

contentions of the petitioners.Â

68. In Writ Petition No. 11382 of 2016, the assertion is that notice under section 35(3) of the Act of 1927 was never issued.Â It is stated that linking

of the petitioners' land in Gat No. 46, admeasuring 66 Ares purchased by the petitioners' grandfather on 18th April, 1964 and inherited by the

petitioners and Gat No. 2 Old Survey No. 1/1A admeasuring 6 Hector 81.4 Ares in Pune District is sought to be linked with another gat number,

which is declared as forest.Â It is claimed that the petitioners' lands are also forest.Â It is claimed that by linkage, the petitioners' lands could not

have been treated as forest.Â It is evident that the petitioners' lands are treated as forest not by a direct process, but by an indirect or oblique one.Â

69. In relation to the above, we find that the petitioners in such petitions are relying upon allotment of Gat numbers to these lands.Â This allotment of

gat or new numbers would not mean that when these lands were taken to be part and parcel of old survey number and divided into hissas or sub-parts,

they were not taken as a single piece of land.Â The procedure to allot gat numbers was under a distinct law.Â The dissatisfaction of the petitioners

can be understood for when they sought to acquire these lands, they knew that they had already assumed the character of reserved forest.Â They

knew that there was lack of mutation entry in relation thereto in the 7X12 extracts of the concerned village. Pertinently, in Writ Petition No. 11382 of

2016, it is stated by the respondents that once the reserved forests have to be managed and maintained by the Government, then, naturally the

expectation was all land revenue records would be mutated accordingly.Â That is

how the character of these lands should be indicated with reference to the appointed day in the revenue records. It is claimed that land admeasuring 6.81 hectares and 0.66 Are in Gat Nos. 2 and 46 of village Pangaloli, Taluka Maval, District Pune was acquired by applying the Act of 1975 and that is in accordance with law. It is claimed that the said lands were forests as defined in section 2(c-i)(iii) of the Act of 1975 as they were linked to Survey No. 52. The said survey number came to be declared as reserved forest by issuing a notification dated 29th December, 1921. Annexure 'R-1' to the affidavit in reply is a copy of this notification. A careful perusal of Annexure 'R-1' at page 124 of the paper book reads as under:-

THE BOMBAY GOVERNMENT GAZETTE, DEC. 29, 1921

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No. S.-35/13/8133.-In exercise of the powers conferred by section 19 of the Indian Forest Act, No. VII of 1878, Government of Bombay

(Transferred Departments) are pleased, with reference to Government Notification No. AMisc.-236, dated 10th February 1921, published at pages

426 and 427 of Part I of the Bombay Government Gazette, dated 17th February 1921, to declare the land in the Mawal Taluka of the Poona District

specified in the Schedule hereto annexed to be Reserved Forests, with effect from 1st March, 1922.

70. Below this portion appears a Schedule, in which, village Pangloli's name finds place with survey numbers and area. It is stated that there was no

demarcation of this forest area and that is why it will not be possible to ascertain its exact extent. There is a communication dated 30th August,

1976 of the Divisional Forest Officer, Pune Division, Pune. A list of the villages is annexed therewith and it is asserted in the affidavit that Mutation

Entry Nos. 91 and 139 are valid. The land from Old Survey No. 64 is included in 1976 list of acquired private forests of Pune Forest Division, Pune

for further action. Then, there is even a panchanama annexed. Pertinently, we find that the land is in village Pangloli, which is Maval Taluka of

Pune District and when the Act of 1975 was applied and thereafter the attention of the Collector, Pune was invited to the list of villages and survey

numbers acquired under the Act of 1975. The other survey numbers of this

village Pangloli, which is admittedly in Taluka Maval are, therefore, mentioned at page 128 of the paper book against the name of village Pangloli at serial number 60.Â In these circumstances to urge that all these Government records are false would be too bold for the petitioners do not dispute the Bombay Government Gazette and the notification of 29th December, 1921. They also do not dispute the issuance of the communication from the Pune Forest Division.Â Still, they maintain that their lands are not forests/reserved forests and they are falsely linked to a reserved forest Survey No. 52.Â As held above, we would like the petitioners to approach the authorities in the event they are entertaining a doubt with regard to the status of their lands.Â This is despite the fact that in para 7 of the rejoinder at running pages 137-138, the petitioners admit that there is a communication from the Divisional Forest Officer, Pune to the Collector, District Pune, but that by itself will not make their lands private forests and subject to or covered by the Act of 1975 is the assertion. They are also relying upon the crop cultivation column of the 7X12 extract of the petitioners' lands and claim that the entries therein are crop was cultivated in the land.Â Hence, these are agricultural lands.Â There is dispute with regard to Mutation Entry Nos. 91 and 139 and for which we have given them liberty to approach the Collector.

71. Before coming to the other petitions, we must note that in the lead arguments canvassed by Dr. Sathe and Mr. Chagla and other counsel, the emphasis is that all these matters are on par with that of Godrej and Boyce (supra).Â Godrej and Boyce was a case raising a principal question and whether mere issuance of a notice under the provisions of section 35(3) of the Act of 1927 is sufficient for any land being declared as a private forest within the meaning of that expression as defined in section 2(f)(iii) of the Act of 1975. The batch of 20 appeals before the Hon'ble Supreme Court were argued on the basis of the facts in the Godrej and Boyce' case. The facts in Godrej and Boyce' case were that Godrej acquired land in Vikhroli, Mumbai by a registered deed of conveyance dated 30th July, 1948 from the successor-in-interest of Framjee Cawasjee Banaji, who, in turn, had been given a perpetual lease of the land by the Government of Bombay on 7th July, 1835.Â The land was described in the perpetual lease as 'wasteland' and one of the purposes of the lease was to cultivate the

wasteland.Â The appeals before the Hon'ble Supreme Court concern an area of 133 acres and 38 gunthas of land bearing Old Survey Nos. 117, 118 and 120.

72. Then, there was an Act passed, abolishing these estates. After referring to the salient features of this Act, it was stated that Godrej did not accept that the lease was brought to an end by the provisions of this Act and decided to contest the stand of the State Government.Â It filed a suit in this

court for declaration of its ownership and that the Abolition Act had no application to the lands in question.Â Though the suit was contested by the

State Government, later on, there was a consent decree.Â Consequently, the Development Plan for City of Bombay, including Vikhroli, was published

on 7th January, 1967 and the next development plan was published in 1991.Â In both the plans, the disputed land was described as residential.Â

Thereafter, Godrej applied for and sought development permissions.Â Later on, the Urban Land (Ceiling and Regulation) Act, 1976 intervened, but

M/s. Godrej earned an exemption from the State Government so that the provisions of this Act do not apply to the lands and they were exempted

accordingly.Â After this order of exemption was passed, Godrej applied for and was granted permission by the Municipal Corporation of Greater

Mumbai to construct multi-storeyed buildings and it constructed 40 residential (ground + 4 and ground + 7) buildings, one club house and five electric

substations.Â Over a couple of thousand families occupy these buildings.Â Further construction was also made for a management institute and other

residential buildings.

73. That is how it was aggrieved by a notice bearing no. WT/53 issued to Godrej under section 35(3) of the Act of 1927 and which was published in

the Bombay Government Gazette of 6th September, 1956.Â Godrej contested that and even when they had filed the earlier suit and the consent

decree was passed therein on 8th January, 1962, issuance of such a notice was never made known to them.Â It was stated that it searched the

details of this notice in the Department of Archives.Â The notice, as published in the Official Gazette, bore no date and according to Godrej, it was

not served upon it.Â It was never acted upon.Â The subsequent events raised doubt whether the notice was issued or served on Godrej.

74. It is in such a factual scenario that the attention of the Hon'ble Supreme

Court was invited to the provisions of the Act of 1927, the Act of 1975, the affidavits and the assertions placed therein and the judgment of a five-Judge Bench of this court in the case of J. C. Waghmare (supra). After referring to all these materials, the Hon'ble Supreme Court came to the conclusion that its earlier judgment in the case of Chintamani Gajanan Velkar (supra) is no longer a good law.

75. Dr. Sathe has brought to our notice certain paragraphs of this judgment and which, according to him, lay down the absolute principle that so long

as a land is a forest within the meaning of section 2(c)(i) of the Act of 1975, the later provisions and particularly the definition of the term "private

forest" would not come into play. In other words, a land has to be a forest and only private forests, which are not the property of the Government,

vest in the State by virtue of the Act of 1975. Once the lands are not forest lands at all, then, the Act of 1975 could not be invoked and that is the

principle laid down in Godrej's case. We are sorry to say and with greatest respect, that Godrej does not lay down such a principle. In the facts

and circumstances of the Godrej's case, the issue raised was as to whether the lands of Godrej could be termed as forest at all. In other words, they

were not forest lands. That is how the Act of 1975 could not have been applied and invoked. This was all in the context of the challenge to the

mutation entry in relation to the Godrej's land, made by the State Government and particularly the Revenue Department officials. They entered the

name of the Maharashtra Government on the basis that the lands are private forests. For that, they relied upon the notices issued from 1956-57 up

to 1975 and argued that these are pipeline notices and once there is a proof of issuance thereof, it is immaterial whether there is proof or otherwise of

a service of the notices issued under section 35(3) of the Act of 1927. It is in that context that M/s. Godrej's arguments were accepted.

76. The relevant paragraphs of the judgment in the case of Godrej and Boyce (supra) heavily relied upon by Dr. Sathe are as under:-

43. The initial question is whether the disputed land is at all a forest within the meaning of Section 2(c-i) of the Private Forests Act.

44. It is quite clear from a reading of Waghmare that the "means and includes" definition of forest in Section 2(c-i) of the Private Forests Act

does not detract or take away from the primary meaning of the word "forest"

forestâ?? We are in agreement with this view.

45. In *Jagir Singh v. State of Bihar* the interpretation of the word 'owner' in Section 2(d) of the Bihar Taxation on Passengers and Goods

(Carried by Public Service Motor Vehicles) Act, 1961 came up for consideration. While interpreting 'owner' which 'means' and

'includes', this Court held:

'The definition of the term 'owner' is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a

public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition

given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner.'

46. The proposition was more clearly articulated in *Black Diamond Beverages v. Commercial Tax Officer* wherein this Court considered the use of

the words 'means' and 'includes' in the definition of 'sale price' in Section 2(d) of the W.B. Sales Tax Act, 1954. It was held in

paragraph 7 of the Report:

'The first part of the definition defines the meaning of the word 'sale price' and must, in our view, be given its ordinary, popular or natural

meaning. The interpretation thereof is in no way controlled or affected by the second part which 'includes' certain other things in the definition.

This is a well-settled principle of construction.'

47. In coming to this conclusion, this Court referred to a passage from *Craies on Statute Law*[20] which in turn referred to the following passage from

Robinson v. Barton Eccles Local Board:

'An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be

properly applicable, but to enable the word as used in the Act to be applied to something to which it would not ordinarily be applicable.'

48. In the case of *Godrej*, the admitted position, as per the consent decree dated 8th January 1962 is that the disputed land was not a waste land nor

was it a forest. In so far as the other appeals are concerned, the disputed lands were built upon, from time to time, either for industrial purposes or for

commercial purposes or for residential purposes. Under the circumstances, by no stretch of imagination can it be said that any of these disputed lands

are “forest” within the primary meaning of that word, or even within the extended meaning given in Section 2(c-i) of the Private Forests Act.

49. The next question is whether the notice said to have been issued to Godrej being Notice No. WT/53 can be described as a “pipeline notice”.

Again, the answer must be in the negative in as much as it cannot be reasonably said that the pipeline extends from 1956-57 up to 1975. Assuming

that a notice issued in 1956-57 is a pipeline notice even in 1975, the question before us would, nevertheless, relate to the meaning and impact of

“issued” of Section 2(f)(iii) of the Private Forests Act read with Section 35 of the Forest Act. This is really the meat of the matter.

50. Undoubtedly, the first rule of interpretation is that the words in a statute must be interpreted literally. But at the same time if the context in which a

word is used and the provisions of a statute inexorably suggest a subtext other than literal, then the context becomes important.

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54. Applying the law laid down by this Court on interpretation, in the context of these appeals, we may be missing the wood for the trees if a literal

meaning is given to the word “issued”. To avoid this, it is necessary to also appreciate the scheme of Section 35 of the Forest Act since that

scheme needs to be kept in mind while considering “issued” in Section 2(f)(iii) of the Private Forests Act.

55. A notice under Section 35(3) of the Forest Act is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a

regulatory or a prohibitory measure be not made in respect of that forest. It is important to note that such a notice pre-supposes the existence of a

forest. The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead

evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on the objections. This

entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service

of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision.

56. Additionally, Section 35(3) of the Forest Act provides that a notice under Section 35(3) of the Forest Act may provide that for a period not

exceeding six months (extended to one year in 1961) the owner of the forest can be obliged to adhere to one or more of the regulatory or prohibitory measures mentioned in Section 35(1) of the Forest Act. On the failure of the owner of the forest to abide by the said measures, he/she is liable to imprisonment for a term upto six months and/or a fine under Section 35(7) of the Forest Act. Surely, given the penal consequence of non-adherence to a Section 35(4) direction in a Section 35(3) notice, service of such a notice must be interpreted to be mandatory. On the facts of the case in *Godrej*, such a direction was in fact given and *Godrej* was directed, for a period of six months, to refrain from the cutting and removal of trees and timber and the firing and clearing of vegetation. Strictly speaking, therefore, despite not being served with Notice No. WT/53 and despite having no knowledge of it, *Godrej* was liable to be punished under Section 35(7) of the Forest Act if it cut or removed any tree or timber or fired or cleared any vegetation.

57. This interplay may be looked at from another point of view, namely, the need to issue a direction under Section 35(4) of the Forest Act, which can be only to prevent damage to or destruction of a forest. If the notice under Section 35(3) of the Forest Act is not served on the owner of the forest, he/she may continue to damage the forest defeating the very purpose of the Forest Act. Such an interpretation cannot be given to Section 35 of the Forest Act nor can a limited interpretation be given to the word 'issued' used in the context of Section 35 of the Forest Act in Section 2(f)(iii) of the Private Forests Act.

58. Finally, Section 35(5) of the Forest Act mandates not only service of a notice issued under that provision 'in the manner provided in the Code of Civil Procedure, 1908, for the service of summons' (a manner that we are all familiar with) but also its publication 'in the manner prescribed by rules'. This double pronged receipt and confirmation of knowledge of the show cause notice by the owner of a forest makes it clear that Section 35(3) of the Forest Act is not intended to end the process with the mere issuance of a notice but it also requires service of a notice on the owner of the forest. The need for ensuring service is clearly to protect the interests of the owner of the forest who may have valid reasons not only to object to the issuance of regulatory or prohibitory directions, but 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.

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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 â??issueâ?? 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 â??issuedâ?? in Section 2(f)(iii) of the Private Forests Act

must include service of the show cause notice as postulated in Section 35 of the Forest Act.

62. We have no option, under these circumstances, but to hold that to this extent, Chintamani was incorrectly decided and it is overruled to this extent.

We may add that in Chintamani the land in question was factually held to be a private forest and therefore the subsequent discussion was not at all

necessary.

63. Assuming that the word â??issuedâ?? as occurring in Section 2(f)(iii) of the Private Forests Act must be literally and strictly construed, can it be

seriously argued that it also has reference to a show cause notice issued under Section 35(3) of the Forest Act at any given time (say in 1927 or in

1957)? Or would it be more reasonable to hold that it has reference to a show cause notice issued in somewhat closer proximity to the coming into

force of the Private Forests Act, or a â??pipeline noticeâ?? as Mr. Nariman puts it?

64. In the absence of any time period having been specified for deciding a show cause notice issued under Section 35 of the Forest Act, it must be

presumed that it must be decided within a reasonable time. Quite recently, in Ramlila Maidan Incident, In re[29] it was held:

â??229. â?|..Â It is a settled rule of law that wherever provision of a statute does not provide for a specific time, the same has to be done within a

reasonable time. Again reasonable time cannot have a fixed connotation. It must depend upon the facts and circumstances of a given case.â??

65. Similarly, in Mansaram v. S.P. Pathak it was held:

â??But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable

manner inheres the concept of its exercise within a reasonable time.â??

66. So also, in *Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale* it was held:

“It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power

can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be

unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised

by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.”

67. According to the State, a show cause notice was issued to Godrej in 1957 (and assuming it was served) but no decision was taken thereon till 1975

that is for about 18 years. “This is an unusually long period and undoubtedly much more than a reasonable time had elapsed for enabling the State to

take a decision on the show cause notice. Therefore, following the law laid down by this Court, the show cause notice must, for all intents and

purposes be treated as having become a dead letter and the seed planted by the State yielded nothing.

68. The entire problem may also be looked at from the perspective of the citizen rather than only from the perspective of the State. No citizen can

reasonably be told after almost half a century that he/she was issued a show cause notice (which was probably not served) and based on the show

cause notice his/her land was declared a private forest about three decades ago and that it vests in the State. Is it not the responsibility of the State to

ensure that its laws are implemented with reasonable dispatch and is it not the duty of the State to appreciate that statute books are not meant to be

thrown at a citizen whenever and wherever some official decides to do so? Basic principles of good governance must be followed by every member

of the Executive branch of the State at all times keeping the interests of all citizens in mind as also the larger public interest.

69. In our opinion, the failure of the State to take any decision on the show cause notice for several decades (assuming it was served on Godrej) is

indicative of its desire to not act on it. This opinion is fortified by a series of events that have taken place between 1957 and 2006, beginning with the

consent decree of 8th January 1962 in Suit No. 413 of 1953 whereby the disputed land was recognized as not being forest land; permission to

construct a large number of buildings (both residential and otherwise) as per the Development Plans of 1967 and then of 1991; exemptions granted by

the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 leading to Godrej making unhindered but permissible constructions;

and finally, the absence of any attempt by the State to take possession of the forest land under Section 5 of the Private Forests Act for a

couple of decades. The subsequent event of the State moving an application in Godavarman virtually denying the existence of a private forest on the

disputed land also indicates that the State had come to terms with reality and was grudgingly prepared to accept that, even if the law permitted, it was

now too late to remedy the situation. This view was emphatically reiterated by the Central Empowered Committee in its report dated 13th July 2009.

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71. It is difficult at this distant point of time to conclude, one way or the other, whether there was or was not any collusion (as alleged) or whether it

was simply a case of poor governance by the State. The fact remains that possession of the disputed land was not taken over or attempted to be taken

over for decades and the issue was never raised when it should have been. To raise it now after a lapse of so many decades is unfair to Godrej, the

other appellants, the institutions, the State and the residents of the tenements that have been constructed in the meanwhile.

72. Given this factual scenario, we agree that Section 2(f) (iii) of the Private Forests Act is not intended to apply to notices that had passed their shelf-

life and that only pipeline notices issued in reasonably close proximity to the coming into force of the Private Forests Act were live

and could be acted upon.

73. In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai 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 M.P. v. Vishnu Prasad Sharma and Khub Chand v. State of Rajasthan. 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.

74. The fact that the Private Forests Act repealed some sections of the Forest Act, particularly Sections 34A and 35 thereof is also significant.

Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act but which

could not, for want of adequate time be either withdrawn or culminate in the issuance of a regulatory or prohibitory final notification under Section

35(1) of the Forest Act, depending on the objections raised by the land owner. Looked at from any point of view, it does seem clear that Section 2(f)

(iii) of the Private Forests Act was intended to apply to â??liveâ?? and not stale notices issued under Section 35(3) of the Forest Act.â??

77. These paragraphs are also relied upon by Mr. Chagla and Mr. Seervai as well.

78. These observations are in the context of the primary and principal question framed by the Hon'ble Supreme Court itself. Secondly, all these

observations cannot be read, torn from the context and the factual background.Â M/s. Godrej continued to be owners of the lands, which the State

identified and termed as private forests.Â The Hon'ble Supreme Court found from the record in M/s. Godrej's case that it had derived title to these

lands as a successor of the said Banaji.Â Banaji claimed these lands under a lease from the Government of Bombay dating back to 1835.Â In

relation to such lands, which were acquired by M/s. Godrej, their identification being of salsette lands, a contest was raised when that salsette estate

came to be abolished by the act of Legislature.Â M/s. Godrej brought a suit and said that their estate cannot be brought within the purview of the

Salsette Abolition Act of 1951.Â Godrej claimed declaration of title in its favour in the suit and urged that the Abolition Act will not take within its

purview their lands.Â The State admitted this position by withdrawing its opposition or contrary stand and that is how consent terms were drawn

between the parties, namely M/s. Godrej and Boyce and the State of Maharashtra.Â A consent decree was passed in pursuance of those agreed

terms.Â Thus, way back in 1962 and much before the Act of 1975, the State Government gave up the contest and agreed and admitted that the

owners of the land were M/s. Godrej.Â If it had done so in 1962, the State could not have relied upon a notice purportedly issued under section 35(3)

of the Act of 1927 and claimed that these very lands are private forests and

vests in the State Government by virtue of the Act of 1975.Â It is that part of the undisputed factual scenario, which enabled M/s. Godrej to argue that they are not in receipt of any notice under section 35(3) of the Act of 1927 and the State Government's records, in fact, do not proclaim that the notice was issued at all.Â Even if it was taken to be issued, it was never served and M/s. Godrej went as far as filing affidavit of one of its employee, who was in its service even in 1956-57.Â It is in these circumstances that all above observations are made and if one has to take them as a principle of law applicable to every case of the nature brought before us, it would mean total destruction of greens and forest cover in the State.Â It is not and cannot be the pronouncement of the highest court in the country that despite no resistance to the proceedings from the owners or their successors in title, challenge to a mutation entry made by the State Government and of the present nature can be raised in the year 2014, 2015, 2016 and 2017.Â These are thus a belated challenge to the concluded acts of the State Government.Â The Hon'ble Supreme Court has been careful in holding that given the factual scenario, it agrees with the contention of M/s. Godrej that section 2(f)(iii) of the Act of 1975 is not intended to apply to the notices that have passed their shelf life.Â The issue of stale notices was thus an observation and conclusion to fortify the Hon'ble Supreme Court's interpretation of the legal provisions in question. It is that interpretation, which enabled the Hon'ble Supreme Court to overrule its earlier view in the case of Chintamani Gajanan Velkar (supra). It is to strengthen and fortify that conclusion and overruling of Chintamani Gajanan Velkar judgment (supra) that the Hon'ble Supreme Court made all these observations and heavily relied upon.Â No assistance or support can be derived from these observations by the petitioners before us.Â They have, in their pleadings, made no positive assertions and of the nature made by M/s. Godrej and Boyce.Â Each of these petitioners have made guarded and, at times, vague statements about the issuance and service of the notices.Â True it is that the notices have not only to be issued, but served and proof of both, their service and receipt has to be produced.Â However, it cannot be forgotten that the records on which the State asserts that the erstwhile owners have accepted the Government's action cannot be ignored and brushed aside at the instance of parties like the petitioners.Â The parties like

the petitioners were nowhere on the scene and as clarified above, from the date of issuance of the notices till the appointed day, namely, 30th August,

1975.Â The notices have been issued in 1961 in most of the cases.Â The notices have been also served is the clear assertion of the State

Government, based on official documents or contemporaneous record such as communications from the District Collectorate to the Revenue and

Forest Department and particularly the communications from the Chief Conservator of Forest.Â There is a village-wise data arranged and with

specific survey numbers. This data reveals that the lands situate and located in the concerned villages were already identified as private forests.Â It

is only the consequential steps or measures, namely, to mutate or enter the name of the State Government/Forest Department or an entry relating to

forest remained to be carried out.Â That be done expeditiously is the direction from one statutory authority to its subordinate so that these lands are

not claimed by those who are out to exploit their commercial potential.Â These are huge tracts of land.Â The villages near Pune have become

accessible because of development of roads and other infrastructure.Â Naturally, there is temptation to develop these lands by constructing high rise

buildings and sell the units or flats therein and therefore, unscrupulous parties have prepared documents such as power of attorney or agreement for

sale or conveyance deeds showing the names not of erstwhile owners, but of those who claim that the erstwhile owners transferred these lands to

them and which, in turn, are made over to the petitioners before us.Â Pertinently, these claimants or persons rely on documents drawn up much after

the date of vesting of these lands as private forests in the State Government.Â Hence, the State Government says and rightly so that all of them had

lost their right, title and interest in the lands on the appointed day.Â Now, a consequential ministerial or administrative act being allegedly not

performed earlier, then, after it is performed, it is not open for the petitioners to claim these lands, much less develop them.Â Once their status is of a

private forest vesting in the State Government, then, none of the petitioners could have ever claimed these lands.Â Their claim being founded on

suspicious and doubtful assertions, that cannot be accepted is the stand of the State Government and we have no hesitation in accepting it.

79. Mere reliance upon the judgment in the case of Godrej and Boyce (supra) will not enable each of these petitioners to reopen the concluded

proceedings or nullify the effect of vesting of these private forests in the State Government.Â A mutation entry in its favour is not the only basis on

which the State is asserting that these are private forests.Â Rather, its argument is that the mutation entry was carried out belatedly and on account

of inaction of the Revenue officials., who were from time to time pulled up by their higher officials and the State Government's Forest Department.Â

That act was not performed for decades together, but came to be performed in the year 2002 does not mean that the State's assertion about its title is

based on only

these revenue entries.Â The assertion is based on public documents and official records, which long precede the consequential revenue entries.Â It

is well settled that a mutation entry or a revenue entry is not a document of title, much less a conclusive proof thereof.Â It is the prior or preceding

declaration of its title, which would enable the State Government to enter the remark ""private forest"" in the revenue records in relation to these

lands.Â That valid declaration of State's title is apparent from the official records, presumption of validity, authenticity and legality is not rebutted by

most of the petitioners before us.Â That is apparent from a reading of the memo of the petitions and the unclear, vague and ambiguous pleas

therein.Â Once the petitioners could not and do not question the preceding lawful acts of the State Government, then, they have no right to challenge

the revenue entries.Â If they are allowed to challenge them belatedly and that too on the basis of some general averments, then, we would be

defeating an equally binding order of this court in a PIL. In PIL No. 17 of 2002, an order was passed by this court after hearing both sides on 25th

October, 2004 in the following terms:-

Â 1. Application for intervention is allowed.

2. The petitioner has filed this petition in which it is prayed that the work of rectification and/or updating of the land records be commenced in the

State of Maharashtra and, specifically, the Record of Rights, in respect of all lands under private forests so as to reflect the acquisition and vesting of

such lands in the State Government and completed expeditiously.Â From the previous orders it is abundantly clear that some directions have been

given by the Court and despite the Court's directions, the process of rectification and updating of the land records has not been completed.Â We

direct the concerned Secretary of the State of Maharashtra to file a comprehensive affidavit dealing with updating of the land records in the State of Maharashtra.Â Looking to the gravity of the matter, we deem it appropriate to request the Advocate General for the State to appear in this matter.

Notice be sent to the Advocate General requesting him to appear on 8th September, 2004.

List this matter on 8th September, 2004.â??

80. Pursuant to this order, the Government of Maharashtra issued a comprehensive circular on 16th December, 2004, which reads as under:-

â??Violation of Section 2 of the Forest (Conservation) Act, 1980, following the order passed by Collectors under Section 6 & 22A of Maharashtra

Private Forests (Acquisition) Act, 1975, and approval from Government of India prior to issue of such order, by Collectors.

GOVERNMENT OF INDIA

Circular No. FLD/1000/CR 243/F-3, Revenue & Forests Department, Mantralaya, Mumbai-400 032. Dated the 16th December 2004

CIRCULAR

Attention of all Collectors is invited to the Government of Maharashtra's Letter No. FLD/1000/CR 243/F-3 dated 298-2000 and Letter No. S-

30/2001/CR-180/F-3 dated 1-11-2001 circulated earlier on the subject above.Â It has been found that in spite of all these communications, the

Collectors/Deputy Collectors have been issuing certificates under Sections 6 and 22A under the provisions of Maharashtra Private Forests

(Acquisition Act, 1975.

2. It is emphasised for the information of all concerned that the Forest (Conservation) Act, 1980, Section 2 provides that -

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except

with the prior approval of the Central Government, any order directing -

(i) that any reserved forest (within the meaning of the expression â??reserved forestâ? in any law for the time being in force in that State) or any

portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation,

agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it

for reafforestation.

This being the Act of parliament, its provisions would override the provisions of Maharashtra Private Forests (Acquisition) Act, 1975. In view of

this, it is clarified that no certificate should be issued under Section 6 of 22A of Maharashtra Private Forests (Acquisition) Act, 1975 unless approval

from the Government of India is obtained under section 2 of Forest (Conservation) Act, 1980. This provision should be followed scrupulously. A

Violation, if any, in future should be dealt with strictly by initiating the departmental action against the concerned officer.

3. The Hon'ble Supreme Court in its judgment on 12-12-1996 in the Writ Petition No. 202/95 & 171/96 T. N. Godavarman versus Union of India and

others has removed all the ambiguity regarding the Section 2 of Forest (Conservation) Act, 1980. The Hon'ble Supreme Court made it clear that -

The Forest (Conservation) Act, 1980, was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and,

therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the

nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description

covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of "forest".

4. Hon'ble High Court of Bombay in its order on 10-10-2001 in Writ Petition No. 2801/2001 has ordered that the Collector of the districts are directed

not to issue any certificate under Section 6 of Maharashtra Private Forests (Acquisition) Act, 1975, without obtaining prior approval from Government

of India under Section 2 of Forest (Conservation) Act, 1980. They shall also initiate proceedings for the recall/cancellation of all such certificates

that they may have been issued in breach of Section 2 of the Forest (Conservation) Act, 1980, after the same came into force. In view of this all

the orders that have been passed under Section 6 of Maharashtra Private Forests (Acquisition) Act, 1975, will need revision and may be issued only

after getting the approval from Government of India under Section 2 of Forest (Conservation) Act, 1980.Â This action should be taken in a time-

bound manner.

5. Procedure for issuing this certificate under Section 6 and 22A of the Maharashtra Private Forests (Acquisition) Act, 1975, is prescribed as below:

(a) The Collector shall prepare the proposal and submit to the Government of India for seeking approval under Section 2 of Forest (Conservation) Act,

1980, as per the procedure laid down under Rule 4 of Forest (Conservation) Rules, 1981.

(b) After receiving the approval from Government of India the Collector shall issue order under Section 6 and 22A of Maharashtra Private Forests

(Acquisition) Act, 1975.

By order and in the name of the Governor of Maharashtra,

Â (Ashok Khot)

Additional Chief Secretary (Forests)â??

81. Since there was no compliance with this circular, another direction was issued in writing on 22nd February, 2005 inviting the attention of all

concerned that immediate entries be made in relation to the forest land in matters which are not pending and particularly in relation to those where

there are no legal proceedings pending, the name of the Forest Department be forthwith entered in the revenue records.Â There are further

directions in order to effectively implement this court's directions in PIL No. 17 of 2002.Â Then, on 22nd June, 2005, this court passed a further order

on this PIL. All mutation entries and subject matter of these petitions have thus been made much before filing of these petitions and pursuant to the

binding orders and directions of this Court. They have a statutory backing and support as well.Â Nothing preceding or succeeding these entries is

challenged by the owners of these lands.

82. It is thus apparent that this is not a collusion, as found in the case of Godrej and Boyce (supra). The Bombay Environment Action Group, the PIL

petitioner alleged that there was a collusion between Godrej and the State Government to defeat the purpose of the Act.Â However, the Hon'ble

Supreme Court in paras 70 and 71 of the judgment in the case of Godrej and Boyce (supra) found that this allegation was unfair to Godrej as for

decades, this issue was never raised and there was no material in that behalf. However, before us, we have material to hold that the present petitions

are nothing but an attempt to defeat and frustrate the Act of 1975.Â That all the erstwhile owners of these lands, which were identified as private

forests, but vesting in the State pursuant to the Act of 1975, accepted the genuineness, correctness and authenticity of the public documents and

official record produced before us.Â There was never any challenge unlike M/s. Godrej and other cases, raised by them.Â These persons never

proclaimed that there was no notice issued under section 35(3) of the Act of 1927 nor was it ever served on them.Â These persons never proclaimed

that they had developed the lands and they are not forests at all.Â They accepted that there was a natural growth of trees and shrubs and these lands

could safely assume the status or character of a forest.Â However, these were private forests and that is why the vesting of the same in the State

Government was not possible until the Act of 1975 intervened. Merely because it intervened, it could have been invoked and applied to these private

forests and the owners unless the statutory pre-requisites were complied with.Â To enable the State Government to acquire and vest the private

forests in it, the Act of 1975 was invoked and the pre-requisite for the vesting was whether any steps or measures in relation to these lands were

taken under the Central law, namely, the Act of 1927.Â Once there is proof of such steps being taken, as is evident in this case, by issuance of

Gazette Notification and produced on record, there being no doubt about its existence, then, we have no hesitation in concluding that the vesting is final

and complete.Â Every person's title to these forest lands was extinguished and by a process known to law and in compliance therewith.

83. Hence, it is as an afterthought that these petitions are brought by those having commercial interest and at their behest, it would be highly unsafe to

reopen the matters.Â Our order should not result in total defeat and frustration of the comprehensive directions issued in the PIL.Â The anxiety of

this court is to maintain the forest cover in the State.Â The anxiety of the PIL petitioners was found to be genuine and of substance.Â Their

complaint was that the authorities are not implementing the binding orders and directions issued under valid powers conferred in them by the Act of

1975.Â Their inaction, utter neglect and at times collusion would totally deplete the forest cover in the State and we would witness total destruction of the greens and forests in the State.Â It is with that aim in mind, this court stepped in and issued these directions so as to effectively monitor and supervise the implementation of the law.Â We cannot by our orders contravene these comprehensive directions, based on which the Revenue entries have been made.Â It would be improper to rely upon the one sided version of the petitioners, some of whom are but builders and developers and negate binding directions of this court or enable the defeat and frustration thereof.Â We are in agreement with Mr. Seervai that these petitions are not bona fide.

84. There is a writ petition being Writ Petition (O. S.) No. 853 of 2017 and the petitioners therein, unlike others, have specifically stated that the petition covers the following piece and parcels of land:-

â??2. The petitioners are the absolute owners of several pieces of land situate at village Sai, Taluka Borivali, District Mumbai Suburban, including lands bearing:

- (a) Survey No. 5, admeasuring 14 acres 8 gunthas;
- (b) Survey No. 6 admeasuring 3 acres and 1Â¾ gunthas;
- (c) Survey No. 10 admeasuring 2 acres and 19Â½ gunthas; and
- (d) Survey No. 11 admeasuring 1 acre and 13 gunthas

85. It is claimed that these are part of a larger parcel of land situated at village Sai, Taluka Borivali, district Mumbai Suburban, used by the petitioners

and their ancestors for various agricultural operations from the past 80 years.Â The petitioners claim to have cultivated the lands also. At any rate,

they are claiming that the ancestor of the petitioners was Dr.Eruchshaw Hakim.Â He acquired these lands under a deed of conveyance dated 23rd

October, 1924.Â That is a registered deed of conveyance. Since that time till date, the lands have been in possession of the petitioners.Â Their title

also was never in dispute and it is stated, with reference to Exhibit â??A-1â? to Exhibit â??A-4â?, which are copies of the 7X12 extracts in relation

to these lands, that one Dhanjishah Jehangir, the husband of the first petitioner and the father of the second petitioner, who expired, are reflected

therein. It is only in the year 2014, the petitioners noticed Mutation Entry No. 25

recorded in respect of the subject lands. The said mutation entry referred to the following orders, communications, circulars and show cause notices:-

(i) Letter dated 22 February 2006 addressed by Deputy Conservator, Forest, Forest Department, Thane;

(ii) Circular dated 14 July 2005 issued by Revenue and Forest Department, State of Maharashtra;

(iii) Decision dated 9 July 2002 issued by Revenue and Forest Division;

(iv) Circular dated 19 July 2002 issued by Revenue and Forest Division;

(v) Circular dated 28 January 2003 of Commissioner, Konkan Division;

(vi) Order dated 24 May 2006 issued by Tahsildar, Borivali;

(vii) An alleged Order u/s 22A of the Private Forest Act, 1975 allegedly passed prior to 25 October 1980;

(viii) Four alleged Show Cause Notices presumably alleged to have been issued u/s 35(3) of the Forest Act, 1927 bearing WT/621 dated 23 April

1957; WT/622 dated 13 April 1957;

WT/626 dated 24 April 1957; and WT/627 dated 24 April 1957.

86. The petitioners say that there is nothing to show that in relation to these lands any notice under section 35(3) of the Act of 1927 was ever issued

and/or served. It is stated that the petitioners' name appear throughout and continues to appear as owners of these lands. Mutation Entry No. 25

dated 4th May, 2006 is referred in para 10 and its copy is annexed as Exhibit B1. It is stated that several communications were addressed

under the RTI, but they have not met with any response. The following are the details with regard to the

communications/applications made from time to time by the petitioners:-

(i) Application dated 2 June 2014 made by Navin Bhatia, Advocate to Tahsildar, Borivali;

(ii) RTI Application dated 16 June 2014 made to the Office of learned Tahsildar, Borivali;

(iii) RTI Application dated 16 June 2014 made to the office of learned Collector, Mumbai Suburban District, Bandra (East);

(iv) First Appeal dated 16 July 2014 under Section 19(1) of the Right to Information Act, 2005 made to the office of learned Tahsildar, Borivali;

(v) Application dated 23 may 2014 made to the Office of the Deputy Conservator of Forest;

(vi) First Appeal dated 8 August 2014 under Section 19(1) of the Right to Information Act, 2005 made to the Office of the Deputy Conservator of Forest.â??

87. The reply to these communications was that relevant information is not available and/or not traceable.Â It is in these circumstances that the

petitioners assert that the most relevant document, namely, copy of the show cause notice under section 35(3) of the Act of 1927 and the alleged

order under section 22-A of the Act of 1975 are not available in the records.Â Once these details are not provided, then, the argument is that with

reference to a Register and its extract, the respondents cannot assert that the notices referred in this Register are those addressed to the

petitioners/owners without indicating the proof of its service.Â It is claimed that the only communication is dated 20th January, 2017 (Exhibit 'I' to the

petition), by which, the petitioners are informed that there is a report of Talithi, SajjaGoregaon dated 12th January, 2017, which makes a reference to a

Government Circular dated 14th July, 2005.Â It also makes a reference to the Judgment of the Hon'ble Supreme Court in the case of Godrej and

Boyce (supra).Â It is thus claimed that the benefit of this judgment would not be available to the petitioners and therefore, that mutation entry cannot

be deleted.Â It is aggrieved by such actions that the instant petition has been filed.

88. An affidavit in reply has been placed on record, in which, respondent nos. 1 and 2 have categorically admitted that various files and records

pertaining to action under the Act of 1975 are not traceable.Â That record is of 1959.Â Hence, that could not be traced and relied upon.Â

However, in this affidavit, the deponents make the following positive statements:-

â??4. â?|.Â Although application of clause (iii) of Section 2(f) is not essential for acquisition, it is submitted, the notice under Section 35(3) of Indian

Forest Act, 1927 No. WT-621, dated 13.04.1957 for land admeasuring 14-08 Acre in Survey Number 5, WT-622, dtd. 13.04.1957 for land

admeasuring 301-0 Acre in Survey Number 6, No. WT-626, dated 24.04.1957 for land admeasuring 01-19-4 Acre in Survey Number 10 and WT-627,

dtd. 24.04.1957 for land admeasuring 1-13-0 Acre in Survey Number 11 were

issued to the then owner Shri Baimanije J. Ardesar Doctor. The copies of the relevant pages of the Register having entries of issuing notices for Survey No.5 and 6 Gazette Notifications for Survey No. 10 and 11 are annexed and marked as Exhibit-1 to 3. Notice shows that these Survey numbers are surrounded by Reserved Forest, hence, it is forest as per section 2(c-i) of Maharashtra Private Forests (Acquisition) Act, 1975.

89. Thus, consistent with the above averments, it is claimed that the writ petition be dismissed. Exhibit-'1' to this affidavit in reply is claimed to be an extract of the register and it is stated that this denotes, together with Exhibit-'2' that the notice was duly issued and published in the Official Gazette as well. In the rejoinder affidavit, the petitioners have reiterated the factual position and stated that though these Exhibits '1' and '2' are referring to a copy of an alleged notice WT/626 dated 24th April, 1957, the details are that this was served on one Baimanije J. Ardesar Doctor. It is stated that if this notice has been served purportedly on Mr. Baimanije at the address C/o. Francis Manvel, at post Marol via Andheri, that does not mean that it has been served on Baimanije. It is claimed that in terms of the judgment in the case of M/s. Godrej and Boyce (supra), reliance is placed only on the notice WT/627 in respect of Survey Nos. 10 and 11. The petitioners admit that Manijeh Ardeshir Doctor is the maternal grandmother of petitioner no. 2, who was, at the material time, owner, inter alia, of Survey Nos. 10 and 11, but the notices themselves show that they were not issued to Manijeh Ardeshir Doctor, but to the C/o. Francis Manvel. It is claimed that record is available to establish that Francis Manvel was a trespasser, who had no interest whatsoever in any of the lands, including land bearing Survey Nos. 10 and 11. However, there is no proof that the owner Manijeh Ardeshir Doctor received the alleged notices. In any event, there have been no steps taken in pursuance of these notices and that is how the law laid down in terms of Godrej and Boyce (supra) would squarely apply. In any event, it is stated that the lands bearing Survey Nos. 5 and 6 are forest and private forests. Thus, out of the lands involved in the petition, details of which are to be found in para 2, there is no record in relation to Survey Nos. 5 and 6 at all. The panchanama, copy of which is at Exhibit-'5' to the affidavit in reply would not establish the compliance with the pre-conditions stipulated by law. Hence, it is submitted that the writ petition be

allowed.

90. We have heard petitioner no. 2 in-person and consistent with the pleadings, he has argued that petitioner no. 1-Siloo Mistri was born in 1926 and

she has categorically averred that no notice under section 35(3) of the Act of 1927 has been served ever on the petitioners or any member of their

family.Â At material times i.e. 1924 till date, the petitioners and their family members have been in absolute possession of the lands covered by the

deed of conveyance dated 23rd October, 1924.Â In any event, no steps have been taken by the Government, even if the Government seeks to rely

upon the notices purportedly served and evidenced by Exhibits '1' and '2' of the affidavit in reply.Â These notices have never been followed up with a

notification under section 35(1) of the Act of 1927.Â If the Government's affidavit is to be relied upon, it is only in respect of two pieces i.e. Survey

Nos. 10 and 11.Â A notice has been purportedly issued, but there is nothing in the affidavit in reply or the exhibits thereto, which would establish and

prove that the notices were served on the owner of the land. The address mentioned on the notice itself is of a C/o. address and not that of

Baimanije.Â It is in these circumstances that for more than 49 years, the Conservator of Forest has failed to act upon the notices in relation to Survey

Nos. 10 and 11.Â With regard to other lands, there is absolutely no action taken at all.

91. We are of the view on a perusal of these pleadings and hearing the counsel of both sides, this is a peculiar case, where the petitioners are not

claiming through some others styled as owners.Â In the other petitions, the owners have never complained and lost right, title and interest in relation

to the lands long before those subsequently stepping in.Â This is a case where both, the title and possession is claimed and it is stated that the subject

lands are not forests.Â To our mind, this is a fit case to invoke section 6 of the Act of 1975, which reads as under:-

â??6. Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested

in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the

question, and the decision of the Collector shall, subject to the decision of the tribunal in appeal which may be preferred to the tribunal within sixty

days from the date of the decision of the Collector, or the order of the State Government under section 18, be final.â??

92. We, therefore, direct the Collector, Mumbai Suburban District to decide two questions in terms of this provision, firstly, â??whether any forest is a

private forest or whether or not any private forest or portion thereof has vested in the State Governmentâ?.Â Secondly, the decision of the Collector

shall abide by the further remedy stipulated in section 6 itself.Â We clarify that we have expressed no opinion on the rival contentions.Â This is a

dispute distinct from others and is, therefore, fit to be decided by the Collector himself.Â There are several factual aspects involved and it is not

possible in our limited jurisdiction to pronounce either way.Â In these circumstances, by clarifying that this order is passed in the peculiar facts and

circumstances and restricted to Writ Petition (O. S.) No. 853 of 2017, we direct the Collector to conclude the inquiry as expeditiously as possible and

in any event, within a period of six months from the date of the appearance of the petitioners before him.Â All contentions of both parties are kept

open.

93. Finally, what remains to be considered is the reliance by almost all counsel on certain orders passed by this court. Dr.Sathe laid heavy emphasis on

these orders.Â He would submit that in Writ Petition (O.S.) No. 2084 of 2013, decided on 26th November, 2014 (Satelite Developers Limited and

Anr. vs. State of Maharashtra and Ors.), this court upheld almost identical contentions of the petitioners.Â We do not think so.Â That writ petition

was filed by Satelite Developers Limited and another against the State and seeking an appropriate writ, order or direction to the effect that the Act of

1975 has no application to their lands and for other consequential reliefs.Â This court, in para 4, noted that notices under section 35(3) of the Act of

1927 were issued sometime in 1956 in respect of the lands covered by that petition.Â However, after issuance of notices, no steps were taken for

giving hearing to the owners of the lands and final notification under section 35(1) was never issued.Â Pursuant to the order passed by this court in a

PIL, directions were given by the Government to alter revenue entries mentioning that the lands were forest lands.Â It is in these circumstances,

after noticing the law laid down in the case of Chintamani Gajanan Velkar (supra) and Godrej and Boyce (supra), this court held that the State

Government filed an affidavit, but made no reference to the judgment of the Hon'ble Supreme Court in the case of Godrej and Boyce (supra).¹

Further, there was an interim order in the writ petition.² It is then claimed that the issue raised in the petition stands fully covered in terms of the

judgment of the Hon'ble Supreme Court for mere entries in the revenue records, based on directions of this court, would not indicate compliance with

the pre-requisites.³ A proof of compliance of the pre-requisite steps or pre-conditions has to be produced.⁴ Mere reliance on issuance of a notice

issued in the year 1956, therefore, would not suffice. Hence, the question was decided in the peculiar factual backdrop by following the judgment in

the case of Godrej and Boyce (supra). Hence, this order is of no assistance to the petitioners before us.

94. In Writ Petition (L) No. 922 of 2015 filed on the Original Side of this court and decided on 18th June, 2018 (Ozone Land Agro Private Limited vs.

State of Maharashtra and Ors.), once again, the lands covered by this petition were sought to be acquired by relying on the Act of 1975.⁵ However,

following the earlier order in the case of Satelite Developers Limited (supra) and holding that mere entries in the register indicating issuance of a show

cause notice would not establish and prove that the Act of 1975 is applicable, this writ petition was allowed.⁶ Thus, this case turns on its peculiar

facts, which were undisputed.

95. Then, reliance is placed on several orders passed by a Bench presided over by the Hon'ble Mr. Justice A. S. Oka.⁷ For instance, in the case of

Sinhagad Technical Education Society vs Deputy Conservator of Forest and Ors., decided on 3rd February, 2015 (Writ Petition No. 7235 of 2013).⁸

There, the court found that there were certain non-forest activities commenced and when action was sought to be taken against the petitioners, that

writ petition was filed.⁹ In the affidavit in reply, it was stated that a notice under section 35(3) of the Act of 1927 was issued to the owner on 5th

November, 1958 in relation to certain survey numbers.¹⁰ Hence, the claim was that these lands, which are private forests, are now covered by the

Act of 1975.¹¹ Therefore, reference was made to the proceedings against the petitioner. This court found from a perusal of the record and

consideration of the rival contentions that the judgment and order in the case of Godrej and Boyce (supra) would apply.¹² In para 22 of this judgment,

it is clarified that the Bench has examined the issue raised only in the context of the contents of the impugned notice dated 19th June, 2013 that the

lands constitute private forest under the Act of 1975.Â That assertion was based on issuance of a notice dated 5th November, 1958 under section

35(3) of the Act of 1927.Â However, this court immediately clarified that it has not examined the question of applicability of the provisions of the Act

of 1927 and the Act of 1980 on any other ground.Â The court made no adjudication on the status of the land except the issue whether the same are

private forests in accordance with sub-clause (iii) of clause (f) of section 2 of the Act of 1927.Â It is stated that though reliance is placed on the

issuance of notice to the owner, but no notification is issued under sub-section (1) of section 35 of the Act of 1927 in relation to the land.Â Apart

therefrom, it is stated that reliance is placed only on the notice dated 5th November, 1958, which does not relate to the land bearing Gat No. 310 at all

and it relates to Gat No. 311 and Gat Nos. 313 and 314, with which the Bench was not concerned.Â Further, the Bench observed that no case is

made out of the notice having been served on the predecessor in title of the petitioner.Â In the absence of proof of service of notice, the Act of 1975

would not be applicable to the land bearing Gat No. 311.Â Hence, this land cannot beÂ said to be private forest.Â On the strength of the notice

dated 5th November, 1958, this land will not vest in the State Government under the Act of 1975.Â It is in these circumstances that the writ petition

was allowed.Â Once again, these are peculiar facts, but while allowing the writ petition, this court issued the following clarifications:-

â??22. We must make it clear that we have examined the issues raised only in the context of the contention in the impugned notice dated 19th June,

2013 that the said lands constituted private forests under the said Act of 1975 on the basis of the notice dated 5th November, 1958 under subsection

(3) of section 35 of the said Act of 1927.Â We make it clear that we have not examined the question of applicability of the provisions of the said Act

of 1927 and the said Act of 1980 on any other ground.Â We have made no adjudication on the status of the said lands except the issue whether the

same are private forests in accordance with Sub-Clause (iii) of Clause (f) of Section 2 of the said Act of 1927.Â The finding recorded in this

Judgment is only to the extent that the said lands bearing Gat Nos. 310 and 311 are not â??private forestsâ? within the meaning of Sub-Clause (iii) of

Clause (f) of Section 2 of the said Act of 1975 and not vest in the State Government under section 3 of the said Act of 1975.â??

96. The Bench presided over by Hon'ble Mr. Justice A. S. Oka, in its subsequent orders passed in Writ Petition No. 9969 of 2013 (Dr. Arjun Sitaram

Nitanwar vs. The Tahsildar, District Thane and Ors.) as well found the factual position to be identical.Â There, the mutation entry in relation to the

lands involved, showed the name of the Government of India in â?? possessionâ?? column through Investment Provident Company.Â The name of one

Shri. G. G. Pradhan as the Manager of the said company also appeared in the â?? possessionâ? column.Â The name of one Ashwin Chunilal Dalal

appeared along with four others in column â??other rightsâ?? and

â??cultivationâ? column.Â It is in these circumstances that the another Mutation Entry No. 616 was made on 23rd May, 2006 in relation to the said

lands and that refers to a notice under section 35 of the Act of 1927.Â At the same time, it is stated that an enquiry under the Act of 1975 was

pending.Â It is in these circumstances that the name of the State of Maharashtra was entered in the â??possessionâ? column in the place of

Government of India and an entry as â??reserved forestâ? was also made in the possession column.Â There is reliance placed by the petitioners on

the letter dated 30th August, 2007 issued by the Assistant Conservator of Forest-cum-Public Information Officer of Sanjay Gandhi National Park,

Borivali stating that the lands have not been transferred to the Forest Department.Â In the affidavit in reply, reliance is placedÂ upon a circular

dated 22nd February, 2005 and no proof of the notice dated 13th April, 1957 referable to section 35(3) of the Act of 1927 being served on the original

owner, the controversy stands covered by the judgment in the case of Godrej and Boyce (supra).Â Yet, in the operative order, this court clarified that

it has not made any adjudication on the question whether the Act of 1927 and the provisions of the Forest (Acquisition) Act, 1980 are otherwise

applicable to the said land and that issue is expressly kept open.Â That is how the mutation entry challenged in the petition was directed to be deleted.

97. Once again, in Writ Petition No. 10338 of 2014, decided on 7th January, 2016 (Nana Govind Gavate (since deceased) through legal heirs A to J

and Ors. vs. State of Maharashtra and Ors.), the issue was that notices had been issued, but there was no proof of service of the said notice.Â In

that backdrop, this court negated the contention of the Government, firstly that there is an alternate equally efficacious remedy available to the

petitioners and secondly that the lands are private forests covered by the Act of 1975.Â In fact, there was enough evidence to the contrary and this

court referred to the arguments of the petitioners therein that the lands were under cultivation, which fact is acknowledged by the revenue

authorities.Â Thus, this is also an order passed on facts and therefore, clearly distinguishable from the present cases.

98. In Writ Petition No. 9537 of 2014, decided on 12th January, 2016 (Lalit A. Sangtani vs. State of Maharashtra and Ors), once again the Bench

presided over by Hon'ble Mr. Justice A. S. Oka relied upon the peculiar factual position of non-production of proof relating to service of the notice

under section 35(3) of the Act of 1927.Â Another peculiar aspect was that the copy of the notice produced before this court was undated and stated

to be of the year 1975.Â That was issued to one Babu Jadhav.Â In these circumstances, with similar clarification as above, that writ petition was

disposed of.

99. Then, in other batch of petitions, above orders of Division Benches presided over by Hon'ble Mr. Justice V. M. Kanade and the Hon'ble Mr.

Justice A. S. Oka followed, but there has been no principle of law discussed.Â There is nothing, which would enable us to hold that these judgments

take a view that the law laid down in the judgment of Godrej and Boyce (supra) would apply irrespective of the stand taken before us by the

respondents and noted above.Â In these circumstances, none of these orders are of any assistance to the petitioners before us.

100. The reliance on a Full Bench judgment of this court in the case of Janu Chandra Waghmare and Ors. vs. The State of Maharashtra and OrsA IR

1978 Bombay 119.Â and several paragraphs thereof would indicate that this court upheld the constitutional validity of the law and did not in any

manner go beyond such of the issues, as were raised concerning the validity and legality of its provisions. We do not think that this judgment can be of

any assistance to the petitioners.Â More so, when it is also referred in the judgment of the Hon'ble Supreme Court in the case of Godrej and Boyce

(supra).

101. Dr. Sathe sought to place reliance on a judgment of the Hon'ble Supreme

Court rendered in the case of Government of NCT of Delhi vs. Manav

Dharam Trust and Anr. (2017) 6 SCC 751. We do not see how this judgment has any application to the facts of the present case. There, the

controversy was whether a transferee of the land, after publication of preliminary notification can maintain a writ petition challenging the acquisition

for all of them have an interest in the property/land sought to be acquired. Therefore, mere repeal of the Land Acquisition Act, 1894 does not mean that

subsequent purchasers cannot claim compensation on such acquisition being complete and valid. The subsequent purchasers can claim compensation,

being persons interested despite having no locus standi to challenge the acquisition proceedings. We do not see any similarity in the issue

decided by the Hon'ble Supreme Court to the issue before us.

102. Mr. Chagla relied upon the judgment of the Hon'ble Supreme Court in the case of M/s. Mahalakshmi Oil Mills versus State of Andhra Pradesh

(1989) 1 SCC 164. This judgment is also on the point as to how the statutory definitions employing the words "means" and "includes" have

to be interpreted. Pertinently, these words, when appearing in a definition section, the principle would be as set out in this judgment and the

judgments following it and that it may afford an exhaustive explanation of the meaning, which, for the purpose of the Act, must invariably attach to

these words or expressions. The attempt of Mr. Chagla was to reinforce his argument that outside the Act of 1975 and particularly section 2(f), there

is nothing like a private forest and that private forest for being covered by the Act of 1975, must comply with the subclauses of this clause (f) of

section 2 of the Act of 1975. While the section, which is a definition section may contain these expressions "means" and "includes", but

we are, therefore not called upon to construe and interpret the definition. We are only called upon to decide as to whether the assertion of the

petitioners that the judgment of the Hon'ble Supreme Court in the case of Godrej and Boyce (supra) would cover the controversy. We have held

above that the petitioners before us, save and except two or three cases, cannot derive any benefit from the judgment in the case of Godrej and Boyce

(supra). Beyond that, we have not rendered any positive declaration. Not all the petitioners can rely on the judgment in the case of Godrej and

Boyce (supra).

103. For the reasons recorded hereinabove, we are of the view that in all these writ petitions, the following order should be passed:-

(i) Rule in Appellate Side Writ Petition Nos. 12542 of 2015, 11382 of 2016 and Original Side Writ Petition No.853 of 2017 is made partly absolute in

terms of the above discussion and ultimate direction.

(ii) Rule in all other writ petitions is discharged.

104. All the writ petitions are disposed of.Â There would be no order as to costs.

105. In the light of the disposal of the writ petitions, all the pending civil applications stand disposed of.