
(2014) 11 BOM CK 0127
In the Bombay High Court
Case No : Writ Petition No. 2084 of 2013

Satelite Developers Ltd. and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Forest Act, 1927 — Section 35, 35(1), 35(3), 35(4), 35(5)

Maharashtra Private Forests (Acquisition) Act, 1975 — Section 2(c-i), 2(f)(ii), 2(f)(iii)

Citation : (2015) 2 ABR 173 : (2015) 3 ALLMR 781

Hon'ble Judges : V.M. Kanade, J; Anuja Prabhudesai, J

Bench : Division Bench

Advocate : Mustafa Doctor, Senior Counsel and Gaurav Mehta i/b Mahimtura and Co, Advocates for the Appellant; J.S. Saluja, A.G.P., J.G. Reddy i/b Vijay Patil, Advocates for the Respondent

Judgement

V.M. Kanade, J.—Heard the learned Senior Counsel appearing on behalf of the Petitioners and the learned AGP appearing on behalf of the State. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking an appropriate writ order or direction that the provisions of the Maharashtra Private Forest (Acquisition) Act, 1975 have no application to the Petitioners' land and for other consequential reliefs.

2. Shri Doctor, the learned senior Counsel appearing on behalf of the Petitioners submitted that the question raised in this Petition is squarely covered by the judgment of the Apex Court in Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others, . He has invited our attention to the judgment of the Apex Court in the said case and submitted that the ratio of the said judgment is squarely applicable to the facts of the present case.

3. It is not in dispute that notices under section 35(3) of the Indian Forest Act, 1927 were issued sometime in 1956 in respect of these lands. However, after issuance of notices, no steps were taken for giving hearing to the owners of the

said land and final Notification under section 35(1) was never issued. However pursuant to the PIL filed in this Court, directions were given by this Court to the State Government to alter revenue entries in 2006 mentioning that the lands were forest lands. Accordingly, entries were made in the revenue records and these lands were shown as forest lands. Division Bench of this Court had an occasion to look into this issue in Chintamani Gajanan Velkar v. State of Maharashtra, Order dated 11.12.1997 in L.P.A. No. 199 of 1997 in W.P. No. 4779 of 1996, in which case this Court held that once a notice under section 35(3) is issued, the said land would be deemed to be a forest land. The view taken by this Court was affirmed by the Apex Court in Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, .

4. Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others, by filing a Writ Petition in this Court, also challenged the said entries and sought a declaration which is similar to the declaration sought by the Petitioners in this case. However, Division Bench of this Court, relying on the judgment of the Apex Court in Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, , dismissed the said Petition and, therefore, the Godrej & Boyce Mfg. Co. Ltd., filed an SLP before the Apex Court which came up before three Judge Bench of the Apex Court and, finally, the three Judge Bench of the Apex Court decided the said SLP on 30/01/2014 and overruled the view taken by the Apex Court in Chintamani Gajanan Velkar (supra). The three Judge Bench of the Apex Court held that mere issuance of notice under section 35(3) was not sufficient since the notice which was issued had limited shelf life and unless further steps were taken as envisaged under sub-section (3) and final Notification under section 35(1) was not issued, such a notice would not be treated as notice which would indicate that the land was a deemed forest land as laid down under the Maharashtra Private Forests (Acquisition) Act, 1975 and more particularly under section 2(c-i), 2(f)(ii) and 2(f)(iii) of the said Act, 1975.

5. The State of Maharashtra has filed a detailed affidavit-in-reply dated 18/03/2014. In the said reply, it is in terms stated that the lands of the Petitioners are identical to the lands which were held by the Petitioners in Chintamani Gajanan Velkar's case. There is further averment in the reply that in view of this the judgment of the Apex Court in Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, would squarely apply to the facts of the present case. Surprisingly, though the affidavit was affirmed on 18/03/2014, no reference has been made in the entire affidavit to the judgment of the Apex Court in Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others, which was delivered just two months prior to the affidavit being affirmed viz. on 30/01/2014.

6. When the matter came up for admission, this Court was informed that the review petition was filed in the Apex Court in Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others, and, therefore, by way of interim relief, Division Bench of this Court by its order dated 31/07/2014

observed that the respondents are at liberty to process the petitioners' application for redevelopment in accordance with law and the same, however, would be subject to the result of this Petition. The Division Bench also observed that even if the application is processed and allowed no further work would be carried out by the Petitioners. It is submitted that in view of this, hearing of the Petition may be postponed till the review petition is heard and disposed of.

7. It is an admitted position that, so far, review petition has not been taken up for hearing by the Apex Court nor any stay has been granted to the proceedings which are pending in this Court. In this view of the matter, we are of the view that it is not necessary to stay the hearing of this Petition merely because review petition has been filed by the State of Maharashtra in the Apex Court.

8. We have gone through the judgment of the Apex Court in *Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others*, . The Apex Court in the said judgment has observed in paras 1, 54, 55, 61, 62, 63, 72, 74 as under:--

"1. Leave granted. The Principal question for consideration is whether the mere issuance of a notice under the provisions of Section 35(3) of the Forest Act, 1927 is sufficient for any land being declared a "private forest" within the meaning of that expression as defined in Section 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975. In our opinion, the question must be answered in the negative. Connected therewith is the question whether the word "issued" in Section 2(f)(iii) of the Maharashtra Private Forests Acquisition Act, 1975 read with Section 35 of the Forest Act, 1927 must be given a literal interpretation or a broad meaning. In our opinion the word must be given a broad meaning in the surrounding context in which it is used. A tertiary question that arises is, assuming the disputed lands are forest lands, can the State be allowed to demolish the massive constructions made there over the last half a century? Given the facts and circumstances of these appeals, our answer to this question is also in the negative."

"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 presupposes the existence of a forest. The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on the objections. This entire procedure obviously cannot be

followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision."

"61. It is true, as observed above, that a word has to be construed in the context in which it is used in a statute. By making a reference in Section 2(f)(iii) of the Private Forests Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes. Once that is appreciated (and it was unfortunately overlooked in Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, then it is quite clear that "issued" in Section 2(f)(iii) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act."

"62. We have no option, under these circumstances, but to hold that to this extent, Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, was incorrectly decided and it is overruled to this extent. We may add that in Chintamani Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, 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 "issued" as occurring in Section 2(f)(iii) of the Private Forests Act must be literally and strictly construed, can it be seriously argued that it also has reference to a show-cause notice issued under Sections 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 "pipeline notice" as Mr. Narinman puts it?"

"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."

"74. The fact that the Private Forests Act repealed some sections of the Forest Act, particularly Sections 34-A 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 landowner. 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 "live" and not stale notices issued under Section 35(3) of the Forest Act."

9. We are of the view that ratio of the said judgment would squarely apply to the facts of the present case. Therefore, merely because entries are made in the revenue records in 2006 pursuant to the directions given by this Court in PIL that by itself would not vest these lands in the State Government since, admittedly,

no further proceedings as contemplated under sections 35(3), 35(4) and 35(5) were initiated. As observed by the Apex Court, since the notices which were issued under section 35(3) had limited shelf life, merely because the notices were issued in 1956 issuance of these notices by itself would not vest these lands in the State Government nor these lands would be deemed to be the forest lands. We have, therefore, no hesitation in coming to the conclusion that the issue involved in this case is no loner res integra and is squarely covered by the judgment of the Apex Court in *Godrej and Boyce Mfg. Company Ltd. and Another Vs. The State of Maharashtra and Others*, .

10. For the aforesaid reasons, the entries made in the revenue record by the revenue authorities on the basis of notices which were issued under section 35(3) of the Indian Forest Act are set aside. It is clarified that though these notices were issued under section 35(3) since there being no final Notification issued under section 35(1), provisions of section 2(f)(ii) and 2(f)(iii) of the Maharashtra Private Forests (Acquisition) Act, 1975 would not apply to the facts of the present case and these lands, therefore, would not be deemed to be the forest lands, unless the procedure prescribed under the Act is followed which, admittedly, has not been followed in this case. It has to be remembered that the State has a right to acquire the land or declare that the land vests in the State Government. Such a right can be exercised only after the procedure which is prescribed under the Act is followed. It is no doubt true that the question of environment is a burning issue and has to be taken into consideration. However, at the same time, rights of the citizens cannot be taken away without following the due process of law. In the present case, after 1956, no steps have been taken by the State Government and, therefore, we are of the view that citizens cannot be deprived of the rights in respect of the property owned by them. Petition is, therefore, allowed in the aforesaid terms and disposed of.