
(1995) 09 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No's. 5437 and 5438 of 1985 and W.P. No. 1552 of 1986

Yakub Haji Haroon Khan

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 06-09-1995

Acts Referred:

Maharashtra Private Forests (Acquisition) Act, 1975 — Section 18

Citation : (1996) 2 BomCR 42 : (1996) 98 BOMLR 42 : (1996) 1 MhLj 171

Hon'ble Judges : S.M. Jhunjhunwala, J;B.P. Saraf, J

Bench : Division Bench

Advocate : M.U. Pandey and S.D. Nevatia, in W.P. Nos. 5437 and 5438 of 1985 and B.C. Pradhan, in W.P. No. 1552 of 1986, for the Appellant; M.N. Zambre, A.G.P. for respondent Nos. 1 to 6, in W.P. Nos. 5437 and 5438 of 1985 and W.P. No. 1552 of 1986 and S.P. Keshwani, for the respondent Nos. 7 and 8, in W.P. No. 1552 of 1986, for the Respondent

Final Decision : Allowed

Judgement

S.M. Jhunjhunwala, J.—Since the petitioners in these writ petitions seek to have the order dated 15th October, 1985 passed by the Additional Commissioner, Konkan Division, Bombay in Case No. Appeal/Desk/279 quashed and set aside and as common question of fact and law are involved in these petitions, the same are being disposed of by this common judgment.

2. One Anand Chintaman Oze and respondent No. 13 in Writ Petition No. 5437 of 1985 (for short, "the said respondent") were the owners of lands bearing Gat Nos. 51, 87 and 70/1 situate in village Barwai, Taluka Panvel in Raigad (Kolaba) District (for short, "the said lands"). The said Anand Chintaman Oze was ancestor of respondents 7 to 12 in Writ Petition No. 5437 of 1985 (for short, "the said respondents"). A notice dated 24th January, 1969 was issued to the predecessor-in-title of the said respondents and to the said respondent u/s 35 of the Indian Forest Act, 1927, to the effect that the Forest Department of the 1st respondent intended to protect forest in the lands mentioned therein. Though the

said notice was issued on 24th January, 1969, no steps in furtherance thereof were taken by the Forest Department of the 1st respondent for a period of over one year. The Maharashtra Private Forests (Acquisition) Act, 1975 (for short, "the Private Forest Act") was enacted which came into force on 30th August, 1975. On 24th September, 1979, the Deputy Collector, Private Forest, the 3rd respondent in Writ Petition No. 5437 of 1985 passed an order declaring the entire said lands as forest and that the same stood acquired u/s 3 of the Private Forest Act and vested in the State of Maharashtra, the 1st respondent in Writ Petition No. 1552 of 1986, addressed a letter to the 3rd respondent inter alia contending that the said order dated 24th September, 1979, passed by the 3rd respondent was passed without notice to him and as such invalid. On 23rd February, 1981, the said Anand Chintaman Oze and the said respondent filed an appeal before the Maharashtra Revenue Tribunal, Bombay, u/s 13 of the Private Forest Act and challenged the said order dated 24th September, 1979 passed by the 3rd respondent. In the appeal, the Maharashtra Revenue Tribunal on 19th October, 1981, held that the said order dated 24th September, 1979 passed by the 3rd respondent was without any notice to show cause and without giving an opportunity of hearing to the said Anand Chintaman Oze and the said respondent and as such, was not sustainable in law. The said order dated 24th September, 1979, passed by the 3rd respondent was quashed and set aside by the Maharashtra Revenue Tribunal and the case was remanded to the 3rd respondent for de novo enquiry u/s 9 of the Private Forest Act after issuing notices to the parties in accordance with law.

3. It appears that after the said order dated 19th October, 1981 was passed by the Maharashtra Revenue Tribunal and the case was remanded to the 3rd respondent, the 3rd respondent could not make up his mind as to whether the entire matter with regard to the acquisition of the Private Forest was remanded back or the only question of fixation of compensation payable to the said Anand Chintaman Oze and the said respondent was remanded. On 1st February, 1982 the 3rd respondent addressed a letter to the Maharashtra Revenue Tribunal seeking clarification in this regard. By his letter dated 19th February, 1982 addressed by the Registrar of the Maharashtra Revenue Tribunal under directions from the Maharashtra Revenue Tribunal, the registrar communicated to the 3rd respondent that the said order dated 24th September, 1979 passed by the 3rd respondent was set aside in its entirety. In the de novo enquiry held by the 3rd respondent, the 3rd respondent passed an order on 28th February, 1983 declaring only 16 acres and 16 gunthas of said lands as forest out of the said three survey numbers including Survey No. 79/1. The said order was passed after recording the statements of the Forest Officer to the effect that only that much area of the said lands was liable to be declared as forest. No appeal from the said order passed on 28th February, 1983 was preferred by either of the parties. Accordingly, the said order dated 28th February, 1983 became final and binding on the parties.

4. By a conveyance dated 8th December, 1983, the petitioner in Writ Petition No.

5437 of 1985 had purchased the land admeasuring about 13 acres 6 gunthas out of the land bearing said Survey No. 79/1 of the said village Borvai from the said Anand Chintaman Oze and the said respondent. On 10th December, 1993, the petitioner in Writ Petition No. 5438 of 1985 had purchased land admeasuring about 2 acres 35 gunthas from the land bearing the said Survey No. 79/1 also from the said Anand Chintaman Oze and the said respondent. Since the petitioner in Writ Petition No. 5437 of 1985 as also the petitioner in Writ Petition No. 5438 of 1985 acquired rights in respect of the lands purchased from the said Anand Chintaman Oze and the said respondent, Writ Petitions bearing Nos. 5437 of 1985 and 5438 of 1985 have been filed by the respective petitioners therein to have the said order dated 15th October, 1985 quashed and set aside. Writ Petition No. 1552 of 1986 has been filed by said Kashinath Chintaman Oze, the said respondent, who is one of the original owners of the said lands also to have the said order dated 15th October, 1985 quashed and set aside.

5. As per section 18 of the Private Forest Act, where no appeal has been filed within the period provided for it against a decision, order or award of the Collector, the State Government may, within a period not exceeding one year from the date of such decision, order or award call for the record of any enquiry or proceedings of the Collector for the purpose of satisfying itself as to the legality or propriety of any decision, order or award and as to the regularity of the proceedings of, such Collector, as the case may be, and pass order thereon as it deems fit. It is submitted on behalf of the petitioners in the writ petitions that after the said order dated 28th February, 1983 was passed by the 3rd respondent, the 2nd respondent called for the records of the proceeding before the 3rd respondent in which the said order dated 28th February, 1983 was passed on 4th January, 1985 i.e. after the expiry of the period of one year and 10 months from 28th February, 1983, being the date of the said order. Though the sufficient opportunity was given to the learned Assistant Government Pleader, appearing for respondents 1 to 6 in Writ Petition No. 5437 of 1985, to produce the original records of the proceeding before the 3rd respondent as also of the proceedings before the 2nd respondent, no such records have been produced. Even on 4th September, 1995, we had adjourned the hearings of these writ petitions till today to give a last chance to the learned Assistant Government Pleader to produce the records of the said proceedings. However, no such records have been produced before us. We have nothing before us to controvert the statements of the petitioners on oath in these writ petitions to the effect that the 2nd respondent had called for the records of the proceeding culminating into the said order dated 28th February, 1983 on 4th January, 1985 i.e. after expiration of the period of one year and 10 months from the date of the said order. In that view of the matter, we are of the view that the action taken by the 2nd respondent in calling for the records of proceedings before the 3rd respondent was after the expiration of the period of limitation as prescribed in section 18 of the Private Forest Act and as such, the action taken by the 2nd respondent after expiration of the said prescribed period of limitation was without jurisdiction. In

that view of the matter, we do not propose to go into rival contentions on merits as also the other legal issue raised by the petitioners to the effect that no suo-moto action u/s 18 of the Private Forest Act could be taken by the State Government at the behest of any of the parties to the proceeding before the 3rd respondent.

6. Mr. Zambre, learned Assistant Government Pleader has submitted that the action taken by the 2nd respondent for calling for the records on 4th January, 1985 was not barred by limitation since, in his submission, the limitation of one year as mentioned in section 18 of the Private Forest Act is not to be reckoned from the date of the said order from the date of its communication but from the date of acquisition of knowledge by the 2nd respondent of the so called irregularity. In support of his submission, Mr. Zambre has put reliance on the judgment of the Hon'ble Supreme Court of India in the case of State of Maharashtra and another Vs. Rattanlal, . In view of the explicit language of section 18 of the Private Forest Act and the facts of the present case, we are unable to accept the submission made by Mr. Zambre. After carefully going through the judgment relied upon by Mr. Zambre, we find that ratio laid down therein by the Hon'ble Supreme Court has no applicability to the facts in the present case.

7. In the result, each of the petitions is allowed in terms of prayer (a) thereof and the rules are accordingly made absolute with no order as to costs. Needless to say that in view of the order passed in the writ petitions all pending Civil Applications also stand disposed of with no order as to costs.