

Bombay High Court

Lalit A. Sangtani Through His Poa ... vs State Of Maharashtra And Ors on 12 January, 2016

Bench: A.S. Oka

1 WP.9537.2014(12) Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELATE JURISDICTION

WRIT PETITION NO. 9537 OF 2014

Lalit A. Sangtani
through his Power of Attnorney
Rajiv L. Sangtani

...Petitioner

Vs.

State of Maharashtra & Ors.

...Respondents

Mr. S.C. Naidu i/b. Mr. Shikrishna R. Ganbavale for the Petitioner

Mr. A.I. Patel, AGP for the Respondent Nos. 1 to 4

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CORAM : A.S.OKA, &

C.V. BHADANG, JJ.

DATE : JANUARY 12, 2016 ORAL JUDGMENT (PER A.S. OKA, J.)

1. Heard the learned Counsel appearing for the petitioners.

On 15th June 2015, this Court passed an order directing disposal of this petition at admission stage.

2. The land subject matter of this petition is a part of the land bearing Gat No.1072 admeasuring 6 hectares 96.1 Ares situated at village Khanapur, Taluka Haveli, District Pune. The petitioner is claiming to be the purchaser of an area admeasuring about 5 Acres (for short "the said land") out of

the land bearing Gat No.1072 B. Even according to the affidavit-in-reply of Mr. Vijay Gajanan Mane, Assistant Conservator of Forests, Pune, the land bearing Gat No.1072 B corresponds to old Survey Nos.185 and 187 as well as New Survey No.302B/2 of village Khanapur. Even according to the said affidavit, now the name of the said village is Manerwadi.

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3. The Mutation entry No.273 dated 11th May 2006 was certified on 16th May, 2006 by which an entry was made in Revenue record in respect of the said land stating that it is a private forest under the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 (for short "Private Forests Act"). It is disclosed in the affidavit of Shri Vijay Gajanan Mane that initially the lands bearing old survey No.185 and 187 of the village Khanapur were converted into survey No.302B/2 which was numbered as Gat No.1072 B of the village Manerwadi. The said Mutation Entry is in respect of Survey No.302. An appeal was preferred by the petitioner under 247 of the Maharashtra Land Revenue Code, 1966 against the said Mutation Entry before the Sub Divisional Officer, Pune. In the said appeal, reliance was placed by the State Government on the notice dated 26 th April, 1965 issued under the Indian Forest Act 1947 (for short Forest Act). It was contended on behalf of the State Government that the Private Forests Act is applicable to the said land. By the judgment and order dated 31st December, 2010, the Sub Divisional Officer dismissed the appeal by holding that the said land is a private forest within the meaning of Private Forests Act. A dispute under Section 6 of the Private Forests Act was raised by the petitioner before the Collector by contending that the said land is not a private forest.

4. In the affidavit-in-reply filed by Shri Vijay Gajanan Mane, in paragraph 4, a specific reliance is placed on sub-clause (iii) of Clause (f) for Section 2 of the Private Forests Act. Relevant portion of paragraph 4 reads thus :

3 WP.9537.2014(12)Judgment "4. Although being "private forests" as per inclusive definition of the phrase given in its basic definition read with meaning of the word "forests" as per Sec.2 (c-i) of the Act is sufficient for its acquisition, the said land may also be "private forests" as per Sec.2(f)(iii) of the Act because the then owner(s) of the said lands was earlier issued notices under Sec.35(3) of the Indian Forest Act. This is an established position since long as illustrated in the State Government's letter No.PRF-1476/136990/F-6 dated 07.03.1980. Hereto annexed and marked as Exhibit-1, is copy of the State Government's letter dated 07.03.1980, which clarifies that the acquisition and taking over possession of private forests under the Forests Acquisition Act were generally not linked with the process defined in Chapter V including notifications under Sec.35(1) or notices under Sec.35(3) of the Indian Forests Act".

(Underline supplied)

5. A reliance was placed on the circular dated 7 th March 1980 issued by the State Government in the Revenue and Forest Department. The contention in the affidavit-in-reply is that on and from 30th August, 1975 the said land being a private forest vests in the State Government. What is material is the averments made in paragraph 7 of the reply. The relevant portion of paragraph 7

reads thus :

"As the said land was a forest a notice under Section 35 (3) of the Indian Forest Act, 1927 was issued and served 4 WP.9537.2014(12) Judgment on the then owner of the said land. I further state and submit that as the said land stood vested in the State Government with effect from 30/8/1975 the rights of the then holders of the said land were extinguished in respect of that land and therefore Babu Anaji Jadhav had no right title or interest in the said land and consequently Shri. Kishor Arjun Mansukhani did not acquire any right title or interest in the said land by virtue of any sale deed dated 16/4/1985".

6. Thus, the specific contention raised in the reply is that a notice under Sub Section 3 of Section 35 of the Forest Act was issued and served on the then owner of the said land and that is why the said land stood vested in the State Government with effect from 30th August, 1975. On the earlier date, this Court had called upon the learned AGP to produce a copy of the notice under Sub Section 3 of Section 35 of the Forest Act and the proof of the service of the said notice to the the owner. The learned AGP has produced for perusal of this Court an undated notice of the year 1975 served on one Babu Jadhav. We have perused the said notice. We find that the said notice is issued under the provisions of the Private Forests Act and not under Sub Section 3 of Section 35 of the Forest Act.

7. The learned AGP in response to a specific query made by the Court stated that there is no other material available on record to show that a notice under Sub Section 3 of Section 35 of the Forest Act was served upon the then owner of the said land.

8. The submission of the learned Counsel appearing for the 5 WP.9537.2014(12) Judgment petitioner is that the law laid down by the Apex Court in the case of Godrej and Boyce Manufacturing Company Limited and Another Vs. State of Maharashtra and Others¹ will squarely apply to the facts of the case as there is no evidence of service of notice under Sub Section 3 of Section 35 of the Forest Act.

9. The learned AGP placed on record a circular dated 19th March, 2014 issued by the Ministry of Forests, the Government of India. On the basis of the said circular, he states that the said land is a forest land within the meaning of Forest (Conservation) Act, 1980 and therefore, no interference is called for.

10. We have considered the submissions. The only issue which arises in this petition is whether the said land claimed by the petitioner is a private forest within the meaning of the Private Forests Act. As stated earlier, the specific stand of the respondents is that as a notice under Sub Section 3 of Section 35 of the Forest Act was served to the then owner, the said land becomes a private forest under sub-clause (iii) of Clause (f) of Section 2 of the Private Forests Act.

11. Therefore, it will be necessary to make reference to the relevant part of clause (f) of Section 2 of the Private Forests Act, which reads thus:

"(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;

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(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;"

(Underline added)

12. According to the respondents, the said land becomes a private forest by virtue of sub-clause (iii) of Clause (f) of Section

2. In the case of Godrej and Boyce (supra) the Apex Court held that a restricted meaning cannot be given to the word 'issued' under the aforesaid sub-clause (iii) of Clause (f) of Section 2. The Apex Court observed that a broad meaning will have to be assigned to the word "issued". In paragraph 61 of the said decision, the Apex Court held thus:

"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 [Chintamani Gajanan Velkar V. State of Maharashtra, (2000) 3 SCC 143]) 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".

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13. In the present case, though opportunities were granted, the respondents could not produce any evident to show the service of notice under Sub Section 3 of Section 35 of the Forest Act to the original owner. Therefore, in view of the law laid down by the Apex Court in the case of Godrej and Boyce (supra), sub-clause

(iii) of Clause (f) of Section 2 of the Private Forests Act will not apply to the said land and on that ground, the respondents cannot claim that the said land is a private forest and that it vests in the State Government from 30th August, 1975.

14. Therefore, the only conclusion which can be drawn is that as sub-clause (iii) of Clause (f) of Section 2 of the Private Forest Act is not applicable to the said land, the said land cannot be held to be private forest within the meaning of the Private Forests Act on the basis of aforesaid sub-clause (iii) of Clause (f) of Section

2. Accordingly, the petition must succeed.

15. We, however, make it clear that we have not examined question of applicability of other provision of the Private Forests Act, the Forest Act as well as the Forest (Conservation) Act, 1980 to the said land. We have also made no adjudication on any other issue except the issue whether the said land is a private forest in accordance with the sub-clause (iii) of Clause (f) of Section 2 of the Private Forests Act.

16. Hence, subject to the aforesaid clarification, the petition must succeed and we pass the following order:

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(i) Rule is made absolute in terms of prayer clause (b)

with the clarification that the said land cannot be held to be a private forest only on the basis of sub-clause (iii) of Clause (f) of Section 2 of the Private Forests Act;

(ii) On the basis of this judgment and order, necessary Mutation Entries shall be made in the Revenue records in relation to the said land subject matter of this petition.

Necessary mutation entry shall be made by the appropriate Survey Officer under the Maharashtra Land Revenue Code 1966 within a period of two months from the date on which an authenticated copy of this order is produced before the concerned Officer.

(C.V. BHADANG, J.)

(A.S.OKA, J.)