Supreme Court of India
Maharashtra Land Development Corporation Vs. State Of Maharashtra & ... on 11 November, 2010
Author: . M Sharma
Bench: Mukundakam Sharma, Anil R. Dave
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2147-2148 OF 2004

MAHARASHTRA LAND DEVELOPMENT

CORPORATION & ORS. ....Appellant(s) Versus

STATE OF MAHARASHTRA & ANR. .....Respondent(s) JUDGMENT

Dr. Mukundakam Sharma, J.

1. Since the issues raised and argued in these matters are inter-connected, we propose to dispose both of them by this Order. Civil Appeal No. 2147 is filed by the Maharashtra Land Development Corporation against the State of Maharashtra seeking to challenge the judgment and order of the Bombay High Court dated October 8, 2003 in Writ 1

Petition No. 1052 of 1998. Civil Appeal No. 2148 is filed by K.N. Shaikh against the State of Maharashtra seeking to challenge the judgment and order of the Bombay High Court dated October 8, 2003 in Writ Petition No. 1383 of 2002.

2. At the first stage we will deal with Civil Appeal No. 2147, and after pronouncing the judgment herein we shall deal with Civil Appeal No. 2148.

Civil Appeal No. 2147 of 2004

3. By the judgment in Writ Petition No. 1052 of 1998, the High Court reversed the order and concurrent findings recorded by the Sub-Divisional Officer on 23rd April, 1985 and the Maharashtra Revenue Tribunal on 21st February, 1998 wherein it was held that the land in question is neither "forest" nor "private forest" as referred to in the Maharashtra Private Forests (Acquisition) Act, 1975 (hereinafter referred to as "the Act"). 2

4. The gamut of events that led to the passing of the impugned judgment and order of the High Court may be elaborated here. The land in question was part of an original Survey No. 345 in village Dahisar, Maharashtra, measuring about 650 acres. At all relevant times, it was shown as "forest land" in the Revenue records. In or about 1947, out of 650 acres, around 365 acres was acquired for the purpose of creating a National Park at Borivli. Original Survey No. 345 was subsequently divided into three survey numbers, being Survey Nos. 345-A, 345-B and 345-C. The land which was acquired was Survey No. 345-B. From the remaining land, land admeasuring about 75 acres was given Survey No. 345-C and the land in question admeasuring about 209 acres was given Survey No. 345-A.

5. It is the case of the State of Maharashtra that village Dahisar was Ex-Khot village. The whole land of Survey No. 345 of village Dahisar was originally owned by ex-khot of the area by name Haji Ali Kasam Agboatwala, who expired in the year 1945. Administration Suit No. 3415 of 1957 was 3

filed in the High Court of Judicature at Bombay and the Court Receiver, High Court of Bombay was appointed as the Court Receiver for administration and management of the estate belonging to Agboatwala. In 1962, in pursuance of an order passed by the High Court, the suit land was sold which was purchased by one M/s. Veekaylal Investment Company ("Company" for short) from the Court Receiver. According to the case of the State, even at that juncture the suit land was "forest land". In 1963-64, proceedings were initiated under the Bombay Salsette Estate Abolition Act, 1951, and vide an order dated 24th December, 1964, the entire land bearing Survey No. 345-A was held "forest" and vested in the State under Section 4 of the said Act.

6. On 27th August, 1975, a notice was issued by the State Government to the Company under sub-Section (3) of Section 35 of the Indian Forest Act, 1927 calling upon the Company, the owner of the land, to show cause as to why notification under sub-Section (1) of Section 35 of the Act should not be issued for regulating and/or prohibiting the 4

non-forest activities on the land. The said notice was issued in respect of total area of land bearing Survey No. 345-A admeasuring 209 acres.

7. On 30th August, 1975, the Maharashtra Private Forests (Acquisition) Act, 1975 came into force under which allegedly land bearing Survey No. 345-A stood acquired and vested in the State Government on the appointed day i.e. August 30, 1975. Accordingly, on October 8, 1975, the Sub- Divisional Officer, Bombay Sub-urban District, in exercise of power under Section 5 of the Act, issued notice to the company to hand over possession of the entire land of Survey No. 345-A admeasuring 209 acres. The company filed a reply to the said notice contending that the land bearing Survey No. 345-A was not "forest", much less a "private forest". The company also called upon the Collector to hear and decide the question as to whether or not the land was "forest" or "private forest" and whether it vested in the State Government under the Act. An inquiry was conducted under Section 6 of the Act by the Sub-Divisional 5

Officer, Bombay Suburban District, wherein notices were issued to the company, being the owner of the land as well as to the Court Receiver. Subsequently, by an order dated 12th November, 1975, the Sub-Divisional Officer held the land to be "private forest" and also held that the land stood acquired and vested in the State of Maharashtra. The company was, therefore, called upon to hand over possession of the land within 10 days to the Collector of Bombay.

8. The company challenged the said order passed by the Sub- Divisional Officer by filling an appeal before the Maharashtra Revenue Tribunal and the Maharashtra Revenue Tribunal vide its order dated 20th March, 1976 dismissed the appeal, upholding and confirming the order passed by Sub-Divisional Officer and observing that the land in question was "forest" within the meaning of Section 2(c-i) of the Act of 1975. It was also held to be "private forest" falling under Section 2(f) of the Act and as such, stood acquired and vested in the State of Maharashtra. The 6

said order was never challenged in further proceedings by the company and became final, conclusive and binding on the parties.

9. It may be stated that when the question of handing over actual and physical possession of land bearing Survey No. 345-A came up, it was revealed that out of 209 acres of land of Survey No. 345-A, land admeasuring about 53 acres was in possession of the Maharashtra Land Development Corporation (the appellant herein), and 50 acres was in possession of K.N. Shaikh (appellant in Civil Appeal No. 2148 of 2004). The Company, in the circumstances, handed over to the Respondent-State, possession of land admeasuring about 106 acres of land out of 209 acres of Survey No. 345-A.

10. The appellant-Corporation herein objected to handing over possession of the land which was with it. It filed Miscellaneous Petition No. 512 of 1976 in the Bombay High Court challenging the notice issued by Sub-Divisional Officer. It also challenged an order dated November 12, 7

1975 passed by Sub-Divisional Officer, holding the land to be "forest" as also judgment and order dated March 20, 1976 passed by Revenue Tribunal confirming the order passed by Sub-Divisional Officer. The orders were not challenged by the aggrieved party and they had become final. The appellant-Corporation herein challenged the above decisions, contending that they were inter alia in violation of principles of natural justice. The said Miscellaneous Petition No. 512 of 1976, however, came to be settled on the basis of consent terms arrived at between the parties on 19th April, 1984. The consent terms, inter alia, provided that fresh inquiry will be conducted under Section 6 of the Act regarding vesting of the property admeasuring 53 acres in possession of the appellant- Corporation. It was also ordered that in case the authority comes to the conclusion that the land in possession of appellant-Corporation is a "forest" and "private forest" and that it stood acquired and vested in the Government of Maharashtra, the appellant-Corporation would hand over possession of the land to the Sub-Divisional Officer. 8

11.In pursuance of the consent terms arrived at between the parties, the Sub-Divisional Officer conducted fresh inquiry under Section 6 of the Act, after issuing necessary notice to the appellant-Corporation herein. After hearing the appellant-Corporation, the Sub-Divisional Officer, by an order dated 23rd April, 1985, held that land admeasuring 53 acres out of Survey No. 345-A in possession of the appellant-Corporation was neither a forest nor "private forest" and as such did not stand acquired and vested in the Government of Maharashtra in accordance with the provisions of the Act.

12.The Respondent State challenged the said order passed by the Sub-Divisional Officer by filing an appeal before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal, vide its judgment and order dated 29th September, 1986, allowed the appeal, set aside the order passed by the Sub-Divisional Officer and declared that the land admeasuring 53 acres in possession of respondent No. 1 as 'forest" and "private forest" as defined in the Act. The 9

Tribunal also held that in accordance with the provisions of the Act, the land stood acquired and vested in the State of Maharashtra.

13.Aggrieved with the order passed by Maharashtra Revenue Tribunal dated 29th September, 1986, the appellant- Corporation filed Writ Petition No. 4726 of 1986 in the Bombay High Court. A Division Bench of the Bombay High Court vide its judgment and order dated 13/17th March, 1992 confirmed the order passed by Maharashtra Revenue Tribunal, holding that the land in possession of respondent No. 1 was "forest" and "private forest", and as such, stood acquired and vested in the State of Maharashtra.

14.The appellant-Corporation challenged the order passed by the Maharashtra Revenue Tribunal and confirmed by a Division Bench of the Bombay High Court by carrying the matter to this Court. This Court, by an order dated 27th August, 1992, allowed the appeal, set aside the order passed by this Court as well as by Maharashtra Revenue Tribunal and remanded the matter to the Tribunal, 10

directing it to dispose of the appeal afresh by affording to both the parties an opportunity of adducing additional evidence.

15.After remand, the matter was placed before the Maharashtra Revenue Tribunal. It was re-heard and vide its judgment and order dated 4th December, 1992, the Tribunal held that the entire land bearing Survey No. 345-A admeasuring 209 acres was neither "forest" nor "private forest" and did not stand acquired and vested in the State of Maharashtra.

16.The Department of Forest, being aggrieved by the above decision of Maharashtra Revenue Tribunal, filed Writ Petition No. 2023 of 1994 in the Bombay High Court and the High Court vide its judgment and order dated 11/15/16/17th April, 1996 allowed the petition and quashed and set aside the order passed by Maharashtra Revenue Tribunal concluding that the entire land bearing Survey No. 345-A, admeasuring 209 acres was "forest" and 11

"private forest" which stood vested in the Government of Maharashtra under the provisions of the Act of 1975.

17.The judgment and order of the Bombay High Court was again challenged by the appellant-Corporation, approaching this Court by way of Special Leave Petition No. 14259 of 1996 and this Court vide its order dated 24th September, 1996, again set aside the order of the High Court and remanded the matter to the Maharashtra Revenue Tribunal by granting liberty to the parties to lead further evidence before the Tribunal and by directing the Tribunal to reach a decision having regard to the material on record as also which might be brought on record by the parties.

18.The Maharashtra Revenue Tribunal, in pursuance of the direction issued by the Apex Court, considered the question in the light of the rival contentions and the evidence before it and by an order dated 21st February, 1998, and once again held that the land in question cannot be treated as "forest" or "private forest" under the Act of 1975, and hence no action could be taken under the said Act. The appeal 12

filed by the Respondents came to be dismissed. It is that order passed by the Maharashtra Revenue Tribunal on 21st February, 1998 which was challenged by the respondent in Writ Petition No. 1052 of 1998 before the Bombay High Court.

19.The Bombay High Court, however, allowed the petition (Writ Petition No. 1052 of 1998] and decided in favour of the State of Maharashtra, Respondent herein. In deciding the matter, the Bombay High Court held:

"81. The Tribunal then stated:

"In this view of the admitted position, we cannot altogether refrain ourselves from finding some substance in the submission of respondent No. 1 to the effect that in the absence of any fresh evidence from the appellant, there is no fresh material to disturb the finding of the Maharashtra Revenue Tribunal as given in its last judgment of 4th December, 1992."

With respect, the above approach of the Maharashtra Revenue Tribunal is not in consonance with law and cannot be approved. It is not open to the Tribunal to proceed on the basis that since "there is no fresh material to disturb the finding" of the MRT as given in its judgment dated 4th December, 1992, the said finding called for no interference. Once a petition was filed against the said judgment in the High Court and the High Court set aside that judgment and the 13

Supreme Court allowed the appeal directing the Tribunal to consider and decide the matter afresh, in the eye of law, it cannot be said that there were "findings" by the Tribunal in its earlier judgment and in absence of "fresh evidence", those findings need not be disturbed. To us, therefore, it is clear that this is a jurisdictional error committed by the Maharashtra Revenue Tribunal and the order is indeed vulnerable.

...104. On various grounds discussed by us in earlier part of the judgment, the Maharashtra Revenue Tribunal has committed an error of law apparent on the face of the record by holding that the land bearing Survey No. 345-A of village Dahisar was neither "forest" nor "private forest" and by taking such view, it exceeded jurisdiction and hence, the said decision deserves to be quashed by this Court by exercising powers under Articles 226 and 227 of the Constitution and accordingly, the said decision is quashed and set

aside.

105. For the aforesaid reasons, in our opinion, the petition (Writ Petition No. 1052 of 1998) deserves to be allowed and is accordingly allowed. The order passed by the Maharashtra Revenue Tribunal on 21st February, 1998 in Appeal No. Forest-3 of 1997 is quashed and set aside and the land bearing Survey No. 345-A situate at Dahisar is held to be "private forest" under the provisions of the Maharashtra Private Forests (Acquisition) Act, 1975 and deemed to have vested in the State Government. Rule is accordingly made absolute. In the facts and circumstances, however, there shall be no order to costs."

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Aggrieved by the decision of the High Court, the appellant- Corporation has approached this Court by way of appeal.

20. In this appeal, we heard the learned counsel appearing for both parties. Mr. Ashok Desai, Senior Advocate and Mr. Jay Savla, appearing on behalf of the appellant- Corporation, submitted that the findings of the Sub-Divisional Officer in concluding that the appellant- Corporation's land was not a `private forest' on the appointed day, i.e. 30.08.1975, would be final, subject to the decision of the Tribunal. Such a conclusion, according to the counsel for the appellant-Corporation, stemmed from the language of Section 6 of the Act. Emphasis was also placed by the counsel on the fact that the Sub-Divisional Officer, while deciding the matters, considered the fact that the land was dropped from acquisition in earlier land acquisition proceedings and it was not found suitable for the development of a National Park.

21. According to the counsel for the appellant-Corporation, the Indian Forest Act, 1927 clearly differentiates between 15

"Government Forest" and "Privately Owned Forest". While it was admitted that the Government can regulate or prohibit certain activities in such land, ownership would continue to vest with the private party. It was the counsel's submission that there is therefore, no automatic vesting of a privately owned forest, i.e. "private forest'" with the Government. Learned counsel also took us through the reasons behind the decision of Maharashtra Revenue Tribunal to buttress his arguments. Adjudication as to the nature of land whether it is "forest" or "private forest", according to Counsel for the appellant-Corporation, had to be done in accordance with the provisions of 1975 Act.

22. It was submitted that the respondent-State had two opportunities in separate rounds of litigation to produce evidence, documentary or otherwise, and despite such opportunities, no evidence was adduced. Counsel for the appellant-Corporation stated that twice the matter had reached upto the highest Court of the country and that on both the occasions, the Supreme Court allowed the appeal 16

filed by the appellant-Corporation, remanded the matter to the Maharashtra Revenue Tribunal and granted liberty to the parties to adduce additional evidence. It was the contention that additional evidence had not been led by the respondent herein but further materials had been produced on record by the first respondent and that if on the basis of such materials, the Tribunal had decided the matter in favour of the appellant-Corporation, counsel contended, the State [respondent herein] had no right to make grievance against such order.

23. As regards the Bombay High Court's reliance on the decision of this Court in T.V. Godavarman Thirumulpad v. Union of India, reported at (1997) 2 SCC 267, it was pleaded by the counsel for the appellant-Corporation that "forest land" as considered by this Court in the light of the Forest Conservation Act, 1980, must be understood according to its literal, dictionary meaning, and must not be understood to include any area recorded as forest in the 17

Government records irrespective of ownership. Moreover, it was also contended that the provisions of the Forest Conservation Act, 1980 do not deal with the acquisition or vesting of `privately owned land' or `forest' as the case may be. Lastly, it was also contended by the counsel for the appellant-Corporation that the notice purportedly issued under Section 35(3) of the Indian Forest Act, 1927 declaring the land to be a `private forest' was never produced in previous stages of litigation, and no opportunity to dispute the particulars of the notice was ever provided to the appellant-Corporation.

24. On behalf of the respondent-State, it was submitted that in the proceedings initiated under Section 37 of the Bombay Land Revenue Code, and in the enquiry held in respect of the applicability of the Bombay Salsette Estate Abolition Act, 1951, it was found that the land in Survey No. 345 is a forest land. Before the Mamlatdar, evidence was adduced by the predecessor-in-interest of the appellant-Corporation, M/s. Veekaylal Investment Company, to the effect that 18

Survey No. 345 was a `jungle'. It was contended by the learned counsel appearing for the respondent-State that the Company at the time took the stand that the land in question is a jungle, and not a waste land, with a view to prevent its vesting in the State Government under Section 4 of the Bombay Salsette Estate Abolition Act, 1951. It was urged before this Court that the appellant-Corporation, now as the successor-in-interest of M/s. Veekaylal Investment Company is adopting a diametrical opposite stand that the said land is not a forest land and hence is not permissible.

25. Counsel for the Respondent-State also contended that Survey No. 345-A in its entirety is part of Sanjay Gandhi National Park Division. In view of the interim orders passed by the Bombay High Court from time to time, and in particular, of the orders dated 7th May 1997 and 17th July 1999 which applied to the said land, according to counsel for the State Government, the land over which the State Government claimed ownership was "forest" and "private forest" and vested in the State Government. It was also 19

submitted that irrelevant and extraneous factors have been kept in mind by the Tribunal for coming to the conclusion that the land was not forest/private forest. Counsel contended that the Maharashtra Revenue Tribunal did not take into account and consider in their proper perspective, the relevant provisions of the Indian Forest Act, 1927, Maharashtra Private Forest (Acquisition) Act, 1975 as well as other Acts and various decisions of the Supreme Court, including T.V. Godavarman Thirumulpad v. Union of India, reported at (1997) 2 SCC 267.

26. It was also the submission of the respondent-State that the provisions of the Maharashtra Private Forest (Acquisition) Act, 1975 must be given an expansive interpretation in view of the fact that the Act was introduced to ameliorate grave concerns over the fact that private forests in Maharashtra had been severely depleted due to unregulated, unrestricted and excessive exploitation. A bare reading of the Act, it was contended, would make it clear that the definition of "forest" under Section 2 (c-i) (ii) includes land which was part of a 20

forest in addition to land which is presently part of one, and even for lands which could be treated as forests in the future. Moreover, the State submitted, the definition of `private forests' in Section 2 (f) of the Act is not only confined to any `forest' which is not the property of the Government, but also includes, inter alia ,any `land' in respect of which a notice has been issued under Section 35(3) of the Indian Forest Act. As long as it was established that the land was subject to such a notice, the learned counsel contended, it was enough to vest the land in the State Government without any enquiry.

27. This case is placed in the context of the State Government's attempt to acquire the land in question as a "private forest", amidst the efforts of the Maharashtra Land Development Corporation to continue its quarrying operations in the area. Therefore, this case is one that must seek to attain a fine balance between the process of development on the one hand, and the ecological imperative of preserving the environment on the other. This Court has for long been an 21

outspoken critic of attempts to degrade the environment, and a vocal supporter of sustainable development.

28. Since Independence, India has travelled a long way on the path of progress and industrialization to achieve a better quality of life. A developing country like ours cannot afford to ignore the growing needs of teeming millions, but this development shall have to resonate with the preservation of the environment. Mahatma Gandhi once said that earth provides enough to satisfy every man's need but not every man's greed. It is the greed of the mankind which has brought environment degradation and pollution. Preservation of the eco-system is an immutable duty under the Constitution - a fine balance must be struck between environmental protection and development. Many regions in India are biodiversity `hotspots', known to host a staggering variety of flora and fauna. However, they are under the constant threat of environmental degradation and rapid depletion of natural resources, due to various factors, including the desire to earn quick money. Consequently, a 22

major challenge in this backdrop is to arrive at a successful model of sustainable development - one that aims to preserve the rich ecosystem, while addressing the economic needs of the people in the region.

29. In as recently as September 2010, this Court has observed in Glanrock Estates v. State of Tamil Nadu [Writ Petition (Civil) Nos. 242 of 1988 and 408 of 2003] that : "8. [....] [F]orests in India [are] an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in the case of T.N. Godavarman v. Union of India (Writ Petition No. 202 of 1995), it has been held that "inter- generational equity" is part of Article 21 of the Constitution. What is inter-generational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then inter-generational equity would stand violated. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The "precautionary principle" and the "polluter pays principle" flow from the core value in Article 21. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about inter-generational equity and sustainable development, we are elevating an ordinary principle of equality to the level of over- arching principle."

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30. However, it is pertinent to note here that the primary issue involved in this case is as to whether on the appointed day, i.e., 30.08.1975 under the Maharashtra Private (Acquisition) Forest Act, 1975 the Appellant's land of 53 acres was a "private forest" or not. In this regard, we have perused the relevant sections of the Act, and the same may be produced herein. The Preamble of the Act reads thus: "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 [...]

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 quarries) whose total holdings of 24

lands became less than twelve hectares on the appointed day on account of acquisition of their forest lands under this Act, or whose total holdings 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 revested in, them, so that their total holdings of lands may be twelve hectares or else, 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."

The State Act defines "forest" in section 2(c-i) thus: "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 lies within it or was part of a forest or was lying within a forest on the 30th day of August, 1975:

(iii) such pasture land, water-lodged or cultivable or non-cultivable land, lying within or linked to a forest, as may be declared to be forest by the State Government:

(iv) forest land held to let for purpose of agriculture or for any purposes ancillary thereto:

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(v) all the forest produce therein, whether standing, felled, found or otherwise;"

It also defines "private forest" in Clause (f) of section 2 which reads as under:-

"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 34-A 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."

31. Section 3 of the Act mandates that all private forests will vest in the State Government. Section 4 enumerates steps 26

to be taken by the Government on acquisition of private forests. Section 5 enables the State Government to take over possession of private forests. Sections 6 to 19 deal with settlement of disputes, determination of amount to be paid to the owners of private forests, deduction of amount of encumbrances and extinguishment of rights of other persons, appeals, revisions etc. Section 21 empowers the State Government to declare certain lands as private forests. It also provides that on publication of the notification by the State Government regarding declaration of any land as private forests, certain consequences would ensue.

32.In the context of this legislative scheme, the primary argument of the appellant-Corporation has been that the State's contention to give an expansive interpretation to the term `forest' as defined in Clause (c-i) of section 2 of the Act is erroneous. The State has submitted that `forest' would include even land which was a forest in past irrespective of whether on the appointed day, i.e, 30.8.1975, the same was 27

not a forest. According to the appellant, accepting such an interpretation would tantamount to land which was a forest even 50 or 100 years ago, to stand vested and acquired on the appointed day, resulting in an absurdity. To buttress this argument, it has been the endeavour of the appellant to prove that the said portion of the land was not a forest on the appointed day.

33. The appellant-Corporation has pointed out to us the conclusions reached by both the Authorities in their orders dated 23.4.1985 and 21.2.1998. These orders relied on the fact that the portion of the said land was under quarrying operations, and that it was too rocky and devoid of tree growth. Moreover, land acquisition proceedings initiated vide order dated 15.9.1973 were withdrawn on the recommendation of the Forest Department. All these findings were put forth by the appellant-Corporation to contend that the land was not a forest as per the provisions of the Act.

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34. Despite these averments, we are unable to agree with the contention of the appellant-Corporation. The definition of a `forest' as enunciated in Section 2 (c-i) (ii) of the Act specifically includes &quot;land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the 30th day of August, 1975&quot;. It is already established that subsequent to proceedings initiated under the Bombay Salsette Estate Abolition Act, 1951, the entire land bearing Survey No. 345-A was held to be a &quot;forest&quot; vide an order dated 24th December, 1964. A bare reading of the provision also indicates that the definition of `forest' is an inclusive definition and therefore, it could have a wider connotation and it would not be appropriate to give it a restrictive meaning. Every word and phrase of the Act is to be understood in its context and must be given significance so that they are not rendered redundant. The appellant has steadfastly maintained that the interpretation of the provisions cannot mean land which was a forest in the past (i.e. before 30th August, 1975) to be a `forest' according to the Act. This argument might have had some force had the 29

time period in question related to many decades or even a century before. The aforementioned proceedings were concluded in proximity to the appointed day in question, and the character of land cannot be said to have changed over such a relatively short period of time. It is beyond doubt that the land which encompassed the said portion of 53 acres belonging to the appellant-Corporation was a `forest' on the appointed day. In our considered opinion, the facts on record seem to overwhelmingly support such a conclusion.

35. The appellant has submitted that although the word `Forest' was added in the Record of Right after such proceedings, it was later dropped when the matter went up in appeal to the Commissioner. Even if this were to be considered, it is to be noted that the preponderance of evidence seems to indicate the land in Survey No. 345 was considered as `forest'. This is amply supported by documentary evidence, including the mortgage deed of 1900, and the revenue records of the past 50 years. Moreover, the conveyance deed dated 29.3.1975 30

which was executed by the Court Receiver to the appellant, clearly describes the land as "piece or parcel of forest land with structures". This is further buttressed by the mutation entries till 1969-70 which described the land as a forest. Even the mutation entries from 1970-71, have only changed the recording to `huts, quarry and grass' which does not in any way dispute the nature of the land. That apart in the enquiry conducted under sub-Section(2) of Section 37 of the Bombay Land Revenue Code, it was admitted by the Company through whom the appellant had derived title that the land was forest land. Therefore, there is overwhelming documentary evidence and also contemporaneous evidence on record to prove and establish that the land, in question, even in recent times was considered as forest land and also retained its character as

such.

36.Therefore, the issue of whether the land in question was a `forest' on the appointed day, has to be seen in the context of whether the entire land that encompassed the disputed area was a `forest' on the said date. In order to seek the 31

reasons behind such an analysis, we need only look into the legislative scheme of the Act, which has been elaborated hereinabove. The Statement of Objects and Reasons, which supplement and aid in the interpretation of the provisions, state:

"The total forest area in the State [of Maharashtra] is approximately 21 per cent of the total area. This is less that the national average and is also substantially less that the 33 1/3 per cent recommended by the National Forest Policy Out of the total area under Forests, a considerable area is private forests. While no detailed survey has been made, a Committee appointed a decade ago estimated the same as approximately 8,985 sq.kms. These forests are in a very bad state of regression. On the one hand, they have been severely depleted due to unregulated, unrestricted and excessive exploitation, and on the other hand, there has been a lack of fresh plantation and investment in these areas. Of late, there has been an excessive spurt of indiscriminate fellings and these valuable forests are fast disappearing. As owners of such forests have failed to reboise these areas, large areas have been rendered barren and uncultivable and more and more areas are increasingly being brought to the same state..."

37. The Preamble to the Act, which is the guiding light to its interpretation, also expresses similar concerns as to the 32

depletion of forest cover in the State. In this light, it is important to construe the provisions of the Act in tune with the purpose of its enactment. Such a rule of interpretation has been supported by the decisions of this Court in a catena of cases. In Union of India v. Ranbaxy Laboratories Ltd., reported at (2008) 7 SCC 502, this Court observed that all statutes have to be considered in light of the object and purport of the Act. In Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors., reported at (1987) 1 SCC 424, this Court held that:

"Interpretation [of statutory provisions] must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by 33

the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation, Statutes have to be construed so that every word has a place and everything is in its place."

In Chief Justice of Andhra Pradesh and Others v. L. V. A. Dixitulu and Others, reported at (1979) 2 SCC 34, a Constitutional Bench of this Court observed: "The primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they that made it' (Code). Normally, such intent is gathered from the language of the provision. If the language of the phraseology employed by the legislation is precise and plain and thus by itself, proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, or evocative or can reasonably bear meaning more

than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provision and to call in aid other well-recognised rules of construction such as its legislative history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of 34

the legislation, the object sought to be achieved and the consequences that may flow from the adoption of one in preference to the other possible interpretation."

38. Therefore it is clear that the purpose of the statute and the intention of the legislature in enacting the same must be of paramount consideration while interpreting its provisions. In this instance, moreover, the provisions of the Act present no apparent conflict with the overarching objective of vesting `private forests' with the State in the Government's efforts to protect them. Further, it is important to note that the said area was being used for quarrying operations by the appellant-Corporation. That the said portion in the area of Survey 345-A measuring 209 acres is claimed to be rocky and devoid of growth certainly does not change the character of the forest land. It cannot be disputed that within forest areas, there exists water bodies swamp land, grass land etc. The very existence of such land within the forest area would and could not change the nature and character of the forest land and the same would still 35

continue to be treated as forest land. In many instances across the country, mining and quarrying operations, while regulated, do take place in forest land, and they can very well be considered as forest produce. However, the harmful effects of the ecological imbalance that may result as a consequence of quarrying operations in a forest zone is also to be considered.

39. Thus, in light of the legislative scheme of the Act, and the provisions discussed herein, we are of the considered opinion that the said portion of the land, measuring 53 acres will vest with the respondent-State as a `private forest'. That the area fell within a part designated as `forest' on the 30th of August, 1975 is beyond dispute and is supported by the evidence on record. Therefore, by virtue of Section 2 (c-i) (ii) of the Act, the portion in dispute will also be designated as a `private forest' under Section 2(f) of the Act, and the authorities are directed to maintain it as such.

40. It may also be cursorily mentioned here that both parties have made submissions with regard to the requirement of 36

issuance of notice as per Section 35(3) of the Act. Neither the issuance and service of the notice, nor its publication in the Government Gazette could be challenged as both the exercises have been done in the present case. The High Court in its impugned order has extensively dealt with the same and has recorded a finding that notice was issued to the registered owner and served. These conclusions have not been specifically challenged by the appellant. It is proved and also recorded that the notice under Section 35(3) of Forest Act was issued to the owner on 8.8.1975 and was served on the recorded owner. Since the notice was issued and served on the recorded owner, the same was sufficient compliance. In order to fortify our conclusions we also rely on the judgment of this Court in Chintamani Gajaman Velkar Vs. State of Maharashtra & Ors. reported in (2003) 3 SCC 143, wherein this Court held that irrespective of whether the notice was served on the land owner before the appointed date or not, issuance of notice before that day would itself be sufficient for vesting the land in the State.

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41. The appellant-Corporation has also alleged that the State's decision to consider the disputed land as automatically vested with the Government was irrational and disproportionate. In this regard, it was the argument of the learned counsel for the appellant that while it may be possible for the Government to regulate and prohibit certain activities in `forest' lands, the ownership would continue to vest with the private owners,

and there cannot be any automatic vesting of the same. Thus it was argued that taking away the ownership of the land was wholly disproportionate in nature.

42. Being called upon to review this administrative action, we have examined as to whether the same amounts to irrational or disproportionate. The common yardstick to determine whether the act on the part of the Government violates established principles of administrative law has been the Wednesbury principle of unreasonableness, employed both by English and Indian Courts. The Wednesbury principle was enunciated by Lord Greene MR 38

in Associated Provincial Picture Houses Limited v. Wednesbury Corporation reported at (1947) 2 All ER 680. To quote the learned Judge on the principle enunciated: "What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind. The exercise of such discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question; the authority must disregard those irrelevant collateral matters."

43. However, the Wednesbury principle of reasonableness has given way to the doctrine of proportionality. Through his decision in the celebrated case of Council of Civil Services Unions v. Minister for the Civil Services reported at [1985] AC 374, Lord Diplock widened the grounds of judicial review. He mainly referred to three grounds upon which administrative action is subject to control by judicial 39

review. The first ground being "illegality", the second "irrationality" and the third `procedural impropriety'. He also mentioned that by further development on a case to case basis, in due course, there may be other grounds for challenge. He particularly emphasized the principles of proportionality. Thus, in a way, Lord Diplock replaced the language of `reasonableness' with that of `proportionality' when he said:

"By `irrationality' I mean what can by now be succinctly referred to as `Wednesbury unreasonableness'...It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it...."

44. The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between particular goals and the means employed to achieve those goals, so that administrative action impinges on the individual rights to the minimum extent to preserve public interest. Thus implying that administrative action ought to 40

bear a reasonable relationship to the general purpose for which the power has been conferred. The principle of proportionality therefore implies that the Court has to necessarily go into the advantages and disadvantages of any administrative action called into question. Unless the impugned administrative action is advantageous and in public interest such an action cannot be upheld. At the core of this principle is the scrutiny of the administrative action to examine whether the power conferred is exercised in proportion to the purpose for which it has been conferred. Thus, any administrative authority while exercising a discretionary power will have to necessarily establish that its decision is balanced and in proportion to the object of the power conferred.

45.This principle has found favour in recent times with this Court, and a number of decisions reflect the shift towards the doctrine of proportionality.

46. In Bhagat Ram v. State of Himachal Pradesh reported at (1983) 2 SCC 442, this Court held that if the penalty 41

imposed is disproportionate to the gravity of the misconduct, it would violate Article 14 of the Constitution.

47. In Ex-Naik Sardar Singh v. Union of India and Ors reported at (1991) 3 SCC 213 where instead of one bottle of brandy that was authorized, the delinquent was found carrying four bottles of brandy while going home on leave. He was sentenced to three months rigorous imprisonment and dismissal from service which was found by this Court to be disproportionate to the gravity of the offence proved against him.

48. In Coimbatore District Central Coop. Bank v. Employees Assn. reported at (2007) 4 SCC 669 this Court stated that the doctrine of proportionality has not only arrived in our legal system but is here to stay. With the increasing presence and visibility of administrative law and the need to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by reference to which the action of such authorities can be judged. If any action taken by an authority is 42

contrary to law, improper, irrational or otherwise unreasonable, a court competent to do so can interfere with the same while exercising its power of judicial review.

49. In Charanjit Lamba vs. Commanding Officer, Southern Command and Ors, reported at AIR 2010 SC 2462, it was held that

"The constitutional requirement for judging the question of reasonableness and fairness on the part of the statutory authority must be considered having regard to the factual matrix obtaining in each case. It cannot be put in a straitjacket formula. It must be considered keeping in view the doctrine of flexibility. Before an action is struck down, the court must be satisfied that a case has been made out for exercise of power of judicial review. We are not unmindful of the development of the law that from the doctrine of Wednesbury unreasonableness, the court is leaning towards the doctrine of proportionality...."

50. The test of proportionality is therefore concerned with the way in which the decision-maker has ordered his priorities, i.e., the attribution of relative importance to the factors in the case. Thus, it is not so much the correctness of the decision that is called into question, but the method to reach the same. In this context, we are to see if the decision of the respondent-State in considering the disputed 43

property to be automatically vested with the Government is commensurate with public interests, in a way that affects individual rights in a minimal way.

51.The decision of the Government, as we have elucidated earlier, has been guided by the provisions in the Act, which seek to conserve and protect private forests in the State of Maharashtra that have been facing severe depletion and exploitation. Therefore, the Act, which provides for the vesting of private forests with the Government, does so in the general interests of the public in tune with principles of environmental protection and sustainable development, to which we have alluded at the outset. In our opinion, the respondent-State was only acting in accordance with the principles envisaged in the Act. This action cannot in any way said to be disproportionate or irrational solely because it divests the appellant-Corporation of the land within Survey 345-A. The circumstances of this case, especially in so far as it relates to the quarrying operations conducted by the appellant-Corporation in the said area, merit that the 44

State protects the interests of the general public by acquiring the land as a private forest.

52.Therefore, after giving thoughtful consideration to the issues, we find that the appellant has failed to make out any case before us for interference with the orders passed by the High Court. Hence, in the light of the aforesaid issues, principles and precedents in question, we are of the considered opinion that the appeal is

without merit and deserves to be dismissed.

Civil Appeal No. 2148 of 2004

53.Civil Appeal No. 2148 is filed by K.N. Shaikh [appellant herein] against the State of Maharashtra seeking to challenge the judgment and order of the Bombay High Court dated October 8, 2003 in Writ Petition No. 1383 of 2002. The said Writ Petition was preferred against the decision of the Maharashtra Revenue Tribunal upholding the order of the Sub-Divisional Officer declaring that the survey No. 345-A constitutes a private forest in terms of 45

Section 2(f) of the Maharashtra Private Forest Act, 1975 and that it stood vested in the State Government in terms of Section 3(1) thereof. The Bombay High Court, while dismissing Writ Petition No. 1383 of 2002, held: "So far as Writ Petition No. 1383 of 2002 is concerned, the Maharashtra Revenue Tribunal considered the matter again after the review petition was allowed by this Court and dismissed the appeal filed by the petitioner appellant. We see no infirmity in the reasons recorded and conclusions reached by the Tribunal. In our opinion, the said decision requires no interference. The petition, therefore, deserves to be dismissed and is accordingly dismissed."

54.Before this Court, Counsel for the appellant herein has contended that the Bombay High Court failed to consider the additional submissions put forth by the appellant, and proceeded to dismiss the appeal in a common judgment. However, upon hearing the learned counsel and on perusal of the submissions, we find that the appellant herein has placed similar, if not identical, arguments to that of the Maharashtra Land Development Corporation. 46

55.Counsel for the appellant herein has primarily contended that the meaning of `forest' must be understood in its ordinary sense, and that it would be inconceivable to think of forest land without trees and shrubbery. Consequently, it was submitted, the rocky area devoid of growth cannot be considered a `forest' and must instead be understood as a wasteland that cannot vest with the State Government. For reasons elaborated in the previous appeal, we are unable to agree with the learned counsel for the appellant. The land in question remains, in essence, a forest and the mere purported presence of a rocky area therein cannot change its character.

56.Moreover, it is pertinent to observe that the appellant has based his claim on the basis of possession of land without any deed of conveyance or sale deed to support the same. Moreover, such a claim is not based on any interest on the land, but on the fact that the appellant used to perform quarrying operations on the same. Therefore, the Maharashtra Revenue Tribunal while holding that the land 47

in question cannot be treated as "forest" or "private forest" under the Act of 1975, still chose to dismiss the claim of the appellant herein. In appeal, the High Court was also inclined to do the same. Consequently, it is clear that the appellant stands on the same, if not weaker, footing as the Corporation. In the light of the reasons that we have enunciated in Civil Appeal No. 2147 of 2004, which are entirely applicable to the case at hand, we find that the appeal is without merit and deserves to be dismissed. .....J. [Dr. Mukundakam Sharma]

.....J.

[Anil R. Dave]

New Delhi,

November 11, 2010.

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