

Pallavi

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.961 OF 2021**

Shabbir Gulam Hussain Morbiwala and Anr ...Petitioners

Versus

State of Maharashtra and Ors ...Respondents

**Mr SS Patwardhan, with Bhavin Gada, Chirag Desai & Aayush
Shah, i/b Solicis Lex, for the Petitioners.**

Mr KS Thorat, AGP, for the Respondents.

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.**

DATED: 14th July 2022

PC:-

1. Rule, returnable forthwith, and taken up for hearing and final disposal.

2. We do not understand why this Petition was even necessary. The Petitioners were admittedly, on an intervention application that was allowed, among the petitioners involved in the matter that led to the decision of the Supreme Court in *Godrej & Boyce Manufacturing Co Ltd & Anr v State of Maharashtra & Ors.*¹ Not only were the Petitioners specifically impleaded and referred to in that decision and by reference to the Civil Application that was allowed, but the

1(2014) 3 SCC 469.

Petitioners' lands were also the subject matter of the final judgment. Just because the Petitioners' name may not appear in the reported judgment does not mean that the Petitioners were not covered by the Supreme Court decision. The decision of the Supreme Court clearly was that where no notice under section 35(3) of the Indian Forest Act was shown to have been issued *and* served, there would be no vesting or deemed acquisition of the land under the Maharashtra Private Forest (Acquisition) Act, 1976.

3. Despite this, and despite the Petitioners having constantly tried to represent to the authorities in the Maharashtra State Government's Forest Department that the necessary mutation entries would have to be cancelled, no action is being taken and those mutation entries are not being reversed. Instead, order after order is being passed as if the lands in question are outside the frame of *Godrej & Boyce*, i.e., on the basis that they are forest lands.

4. It is evident from the reported judgments that Survey No.62, Hiss Nos.2, 3, 4, 5, 6, 7, 8 & 9 of village Warle, Taluka Wada, District Palghar are covered by the Supreme Court decision in *Godrej & Boyce* referred to above. It is in respect of these lands that the Supreme Court has inter alia held that there is no vesting in the State Government and that these cannot be said to be reserved forests or private forests within the meaning of the Maharashtra Act.

5. Necessarily, the Petition succeeds and rule is made absolute in terms of prayer clauses (a) to (f) which are at pages 27 to 29 and are set out below:-

(a) This Hon'ble Court be pleased to issue Writ of Mandamus or any other appropriate writ and/or orders/ directions to the respondents to declare and record that Land bearing Survey No.62, Hissa No.2, 3, 4, 5, 7, 8, 9 of village - Warle, Taluka - Wada, District - Palghar is not a "Private Forest" within the meaning of Sub-clause (iii) of clause (f) of section 2 of Maharashtra Private Forest (Acquisition) Act, 1975 and hence, the said lands never vested in the State of Maharashtra by virtue of Sub-section (1) of Section 3 of Maharashtra Private Forest (Acquisition) Act, 1975;

(b) This Hon'ble Court be pleased to issue appropriate writ of mandamus or any other appropriate writ or directions to Respondent No.6 and 7 to Cancel Mutation Entry No.698 with respect to Land bearing Survey No.62, Hissa No.2, 3, 4, 5, 7, 8, 9 of village - Warle, Taluka - Wada, District - Palghar and restore names of the petitioners as owners of the said lands;

(c) This Hon'ble Court be pleased to order or direct to call for records and proceedings relied upon by the Respondent No.5 i.e. Additional Collector and additional District Magistrate, Jawhar for passing impugned order dated 24th October, 2011 under section 256 of Maharashtra Land Revenue Code, 1966 against the execution of order dated 16th June, 2004 and after having examined the legality, validity and propriety thereof be pleased to quash and set aside the same;

(d) This Hon'ble Court be pleased to call for records and proceedings in Application bearing No.11/2010-11 before the Respondent No.10 the Authorised Officer, and

Assistant Conservator of Forest at Dhanu; and after having examined the legality, validity and propriety thereof this Hon'ble Court be pleased to quash and set aside order dated 10th February, 2012 passed by Respondent No.10, the Authorised Officer, and Assistant Conservator of Forest at Dhanu;

(e) This Hon'ble Court be pleased to order or direct to call for records and proceedings in Appeal bearing No.2/Jawhar/2012 decided by Respondent no.9 and after having examined the legality, validity and propriety thereof this Hon'ble Court be pleased to quash and set aside order dated 24.04.2012 passed by the Respondent no.9, the Deputy Conservator of Forest (Appellate Authority);

(f) This Hon'ble Court be pleased to order or direct to call for records and proceedings in Revision Petition bearing No.223 of 2012 decided by Respondent no.8 and after having examined the legality, validity and propriety thereof this Hon'ble Court be pleased to quash and set aside order dated 26.09.2012 passed by the respondent no.8, the Additional Commissioner, Konkan Divisional.”

6. Given how much the Petitioner have had to struggle, although we are disposing of the Petitions today.

7. We list the matter 28th July 2022.

(Madhav J. Jamdar, J)

(G. S. Patel, J)