SUPREME COURT OF INDIA

Godrej & Boyce Mfg.Co.Ltd.

Vs.

State of Maharashtra

C.A.No.1102 of 2014

(R.M.Lodha, Madan B. Lokur and Kurian Joseph JJ.)

30.01.2014

JUDGMENT

MADAN B. LOKUR, J.

1. Leave granted.

2. The principal question for consideration is whether the mere issuance of a notice under the provisions of Section 35(3) of the Indian 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 Indian 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.

3. A tertiary question that arises is, assuming the disputed lands are forest lands, can the State be allowed to demolish the massive constructions made thereon over the last half a century. Given the facts and circumstances of these appeals, our answer to this question is also in the negative.

4. This is a batch of 20 appeals and they were argued on the basis of the facts as in the appeal of Godrej. In each appeal, the minute details would, of course, be different but the legal issues are the same and all the appeals were argued by

learned counsel on the basis that the legal issues and questions of law are the same. For convenience, we have taken into consideration the facts in the appeal of Godrej. Facts

5. Godrej acquired land in Vikhroli in Salsette taluka in Maharashtra by a registered deed of conveyance dated 30th July 1948 from Nowroji Pirojsha, successor in interest of Framjee Cawasjee Banaji who, in turn, had been given a perpetual lease/kowl for the land by the Government of Bombay on 7th July 1835.

6. The land was described in the perpetual lease/kowl as "waste land" and one of the purposes of the lease was to cultivate the waste land. We are concerned in this appeal with an area of 133 acres and 38 gunthas of land bearing Old Survey Nos. 117,118 and 120 (New Survey Nos. 36 (Part), 37 and 38). For convenience this land is hereafter referred as the "disputed land".

Consent decree in the Bombay High Court

7. On 27th August 1951 the Legislative Assembly of the State of Bombay passed the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951. This statute was brought into force on 1st March 1952. Section 4 of the Salsette Estates Act provided that waste lands granted under a perpetual lease/kowl not appropriated or brought under cultivation before 14th August 1951 shall vest in and be the property of the State.[1]

8. According to the State, the disputed land was not appropriated or brought under cultivation before 14th August 1951 and, therefore, it vested in or was the property of the State by virtue of Section 4 of the Salsette Estates Act.

9. This factual position was disputed by Godrej and to resolve the dispute, Suit No. 413 of 1953 was filed by Godrej in the Bombay High Court praying, inter alia, for a declaration that it was the owner of the disputed land in village Vikhroli as the successor in title of Framjee Cawasjee Banaji; that the provisions of the Salsette Estates Act had no application to the disputed land and, that the disputed land had been appropriated by Godrej before 14th August 1951 for its industrial undertaking.

10. The suit was contested by the State by filing a written statement but eventually the Bombay High Court passed a consent decree on 8th January 1962 to the effect that except for an area of 31 gunthas, all other lands were appropriated and brought

under cultivation by Godrej before 14th August 1951 and are the property of Godrej. The consent decree reads, inter alia, as follows:-

> "AND THIS COURT by and with such consent DOTH FUTHER DECLARE that it is agreed by and between the parties of the following lands namely
>
> S. No. Area
>
> A.G.A.
>
> 15 Part 0-21-0
>
> 16 Part 0-10-0
>
> 0-31-0
>
> in the village of Vikhroli vest in Government under Section 4(c) of the said Act" [Salsette Estates Act].
>
> "AND THIS COURT by and with such consent DOTH FURTHER DECLARE that it is agreed by and between the parties that save and except the lands mentioned above all other lands in the village of Vikhroli were appropriated or brought under cultivation before the fourteenth day of August one thousand nine hundred and fifty-one and are the property of the Plaintiff…."

11. These events establish two facts: (i) Even according to the State, the disputed land was 'waste land' and not a 'forest'. This is significant since the Indian Forest Act, 1927 did not apply to 'waste land' (due to the Indian Forest (Bombay Amendment) Act, 1948) with effect from 4th December 1948. (ii) It was acknowledged by the State that the disputed land (even if it was a forest) was appropriated or brought under cultivation by Godrej before 14th August 1951.

Development Plan for the City of Bombay

12. A development plan for the City of Bombay (and Greater Bombay including Vikhroli) was published on 7th January 1967 and the next development plan was published in 1991. In both development plans, the disputed land was designated as

'R' or 'Residential'. On publication of the first development plan, Godrej applied for and was granted permission, on various dates, by the Municipal Corporation of Greater Bombay to construct residential buildings on the disputed land. Godrej is said to have constructed four such buildings on the basis of permissions granted from time to time and these building were occupied for residential purposes by its staff.

13. On 17th February 1976 the Urban Land (Ceiling and Regulation) Act, 1976 came into force. Since the disputed land was in excess of the ceiling limit, Godrej filed statements (under Section 6 of the Act) and sought exemption from the Competent Authority for utilizing the excess/surplus vacant lands for industrial and residential purposes (under Section 20 of the Act). Pursuant to the request made by Godrej, it was granted exemption by the State Government, as prayed for and subject to certain conditions which included (both initially and subsequently by a corrigendum) the construction of tenements for the benefit of its employees to be used as staff quarters.

14. Pursuant to the grant of exemption, Godrej applied for and was granted permission by the Municipal Corporation of Greater Bombay to construct multi-storeyed buildings on the disputed land. According to Godrej, over a period of time, it has constructed more than 40 multi- storeyed residential buildings (ground+4 and ground+7), one club house and five electric sub-stations. It is said that over a couple of thousand families are occupying these buildings and that further construction has also been made, pursuant to permission granted, of a management institute and other residential buildings.

Amendments to the Indian Forest Act, 1927

15. Chapter V of the Indian Forest Act, 1927 relates to the control over forests and lands not being the property of government. It was amended (as far as we are concerned) on three occasions by the State of Bombay or Maharashtra, as the case may be.[2]

16. The first amendment was by the Indian Forest (Bombay Amendment) Act, 1948 being Bombay Act No. 62 of 1948. By this amendment (which came into force on 4th December 1948), the three significant changes that we are concerned with were: (i) Insertion of Section 34A in the Forest Act[3] whereby an inclusive definition of "forest" was incorporated for the purposes of the chapter; (ii) Substitution of Section 35(1) of the Forest Act[4] dealing with protection of forests

for special purposes, including regulatory and prohibitory measures; (iii) The words ‘waste lands’ or ‘land’ occurring in sub-sections (2) and (3) of Section 35 of the Forest Act[5] were deleted. Therefore, ‘waste lands’ were taken out of the purview of the Forest Act (as applicable to the State of Bombay) with effect from 4th December 1948.

17. The next amendment was made by the Indian Forest (Bombay Amendment) Act, 1955 being Bombay Act No. 24 of 1955. The three significant changes that we are concerned with were: (i) Amendment to Section 35(3) of the Forest Act;[6] (ii) Insertion of sub-sections (4), (5) and (6) in Section 35 of the Forest Act;[7] (iii) Insertion of Section 36A (manner of serving notice and order under Section 36) in the Forest Act.[8]

18. The next amendment was by the Indian Forest (Maharashtra Unification and Amendment) Act, 1960 being Maharashtra Act No. 6 of 1961. The two changes brought about were: (i) The words “six months” in sub-section (4) of Section 35 of the Forest Act were substituted by the words “one year”;[9] (ii) Sub-sections (5A) and (7) were inserted in Section 35 of the Forest Act.[10]

Notice issued to Godrej

19. Completely unknown to Godrej and not disclosed by the State in Suit No. 413 of 1953 even till 8th January 1962 when the consent decree was passed by the Bombay High Court, a Notice bearing No. WT/53 had been issued to Godrej under Section 35(3) of the Forest Act (as amended) and published in the Bombay Government Gazette of 6th September 1956 in respect of the disputed land in village Vikhroli. Godrej subsequently learnt of the notice from a search in the records of the Department of Archives. The search revealed that the notice, as published in the Gazette, bore no date and according to Godrej, the notice was not served upon it and, it was submitted, that the notice was never acted upon. Indeed, subsequent events cast a doubt on whether the notice was at all issued to or served on Godrej. Notice No. WT/53 reads as follows:-

> “Notice.
>
> No.WT/53
>
> In pursuance of sub-section (3) of section 35 of the Indian Forest Act, 1927 (XVI of 1927), read with rule 2 of the rules published in Government

Notification, Agriculture and Forests Department, No.5133/48513-J, dated the 19th day of September, 1950, I, J.V. Karamchandani, the Conservator of Forests, Western Circle, hereby given notice to – The Manager, Godrej Boyce & Manufacture Factory, at and post Vikhroli, B.S.D.calling on him to appear within two months from the date of receipt of this notice before the Divisional Forest Officer, West Thana, to show cause why the accompanying notification (hereinafter referred to as "the notification") should not be made by the Government of Bombay under sub-section (1) of the said section 35 in respect of the forest specified in the Schedule hereto appended and belonging to him.

2. If the said The Manager, Godrej Boyce and Manufacture Factory, at and post Vikhroli, B.S.D., fails to comply with this notice, it shall be assumed that the said The Manager, Godrej Boyce and Manufacture Factory, at and post Vikhroli, B.S.D., has no objection to the making of the notification.

3. I further require that for a period of six months or till the date of the making of the notification, whichever is earlier, the said The Manager, Godrej Boyce and Manufacture Factory, at and post Vikhroli, B.S.D. and all persons who are entitled or permitted to do, therein, any or all of the things specified in clause (1) of sub-section (1) of the said section 35, whether by reason of any right, title or interest or under any licence or contract, or otherwise, shall not after the date of this notice, and for the period or until the date aforesaid, as the case may be, do any of the following things specified in clause (1) of sub-section (1) of the said section 35, namely :-

(a) the cutting and removal of trees and timber

(b) the firing and clearing of the vegetation.

Schedule

District Thana, taluka Salsette, village Vikhroli S.No.118; area, 63 acres 23 gunthas, Boundaries:- North-Boundary of Pavai; East-Boundary of Haralayi; South-S.No.117; West- Boundary of Ghatkopur.

S.No.117; area, 36 acres, 35 gunthas, Boundaries:- North- S.No.118; East-S.No.120; South-S.No.112; West-Boundary of Ghatkopur.

S.No.120; area, 33 acres, 13 gunthas. Boundaries:- North- Boundary of Haralayi; East-Agra Road; South-S.No.115; West- S.Nos.116, 117."

Maharashtra Private Forests (Acquisition) Act, 1975

20. Sometime in 1975 the State Legislature passed the Maharashtra Private Forests (Acquisition) Act, 1975. The Private Forests Act came into force on 30th August 1975 when it was published in the Official Gazette. We are concerned with the definition of "forest" and "private forest" as contained in Section 2(c-i) and Section 2(f) respectively in the Private Forests Act. These definitions read as follows:

"2(c-i) "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-logged 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 or let for purpose of agriculture or for any purposes ancillary thereto;

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

"2(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;

(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;"

21. We are also concerned with Section 3 (vesting of private forests in State Government), Section 5 (power to take over possession of private forests) and Section 6 (settlement of disputes) of the Private Forests Act. These provisions read as follows:

"Section 3 - Vesting of private Forests in State Government

(1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document, with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in, and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government, and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished.

(2) Nothing contained in sub-section (1) shall apply to so much extent of land comprised in a private forest as in held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by section 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Mah. XXVII of 1061), for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under sub- section (1) shall be deemed to be reserved forests within the meaning of the Forest Act."

"Section 5 - Power to take over possession of private forests

Where any private forest stands acquired and vested in the State Government under the provisions of this Act, the person authorised by the State Government or by the Collector in this behalf, shall enter into and take over possession thereof, and if any person resists the taking over of such possession, he shall without prejudice to any other action to which he may be liable, be liable to be removed by the use or such force as may be necessary."

"Section 6 - Settlement of disputes

Where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the Tribunal in appeal which may be preferred to the Tribunal within sixty days from the date of the decision of the Collector, or the order of the State Government under section 18, be final."

22. Finally, it may be mentioned that by Section 24 of the Private Forests Act, Sections 34A, 35 and 36A of the Forest Act were repealed.[11]

23. The narrative of the events discloses that Notice No. WT/53 after its publication in the Gazette was not acted upon either under the provisions of the Forest Act as amended from time to time or under the Private Forests Act. Admittedly, no attempt was made by the State to take over possession of the

disputed land at any point of time. On the contrary permissions were granted to Godrej from time to time for the construction of buildings on the disputed land, which permissions were availed of by Godrej for the benefit of thousands of its employees.

Judgment in the case of Waghmare

24. The constitutional validity of the Private Forests Act (including Section 3 thereof) was challenged in the Bombay High Court on the ground of legislative competence of the State Legislature to enact the statute. This issue was referred to a Bench of five Judges and the decision of the High Court is reported as Janu Chandra Waghmare v. State of Maharashtra.[12] During the course of hearing, the Bench also considered as to "what is it that the State legislature has intended to include in the expression 'forest produce' for the purpose of vesting the same in the State Government under -Section 3 of the Act." While answering this question, the High Court felt it necessary to "consider the true effect of the artificial definitions of the two expressions 'forest' and 'private forest' given in Section 2(c-i) and Section 2(f) read with Section 3 of the impugned Act".

25. In doing so, the High Court held that a land owner who had been issued a notice under Section 35(3) of the Forest Act (but was not heard) has an opportunity to contend that his or her land is not a 'forest' within the meaning of Section 2(c-i) of the Private Forests Act and that the land does not vest automatically in the State by virtue of Section 3 of the Private Forests Act. This position was not contested, but conceded by learned counsel appearing for the State of Maharashtra in the High Court.

26. The High Court held in paragraph 30 of the Report as follows:- "It is thus clear that Sub-clauses (i), (ii) and (iv) of Section 2(f) deal with declared, adjudicated or admitted instances of forests. Sub-clause (iii) of Section 2(f) no doubt seeks to cover land in respect of which merely a notice has been issued to the owner of a private forest under Section 35(3) and his objections may have remained unheard till 30-8-1975 as Section 35 has stood repealed on the coming into force of the Acquisition Act. Here also, as in the case of owners of land falling under Sub-clause (iii) of Section 2(c-i), his objections, if any, including his objection that his land cannot be styled as forest at all can be heard and disposed of under Section 6 of the Acquisition Act, and this position was conceded by Counsel appearing for the State of Maharashtra. Sub-clause (v) includes within the definition of private forest the interest of another person who along with Government is jointly

interested in a forest, while Sub-clause (vi) includes sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of forest and lands appurtenant thereto."

It was further held in paragraph 32 of the Report as follows:

> "In the first place, the scheme [of the Private Forests Act] clearly shows that under Section 3 all private forests vest in the State Government and since both the expressions - 'forest' as well as 'private forest' - have been defined in the Act what vests in the State Government is 'private forest' as per Section 2(f) and in order to be 'private forest' under Section 2(f) it must be 'forest' under Section 2(c-i) in the first instance and read in this manner the expression 'all the private forests' occurring in Section 3 will include 'forest produce.' It is not possible to accept the argument that the word 'forest' occurring in the composite expression 'private forest' should not be given the meaning which has been assigned to it in Section 2(c- i)…….. Definitions in Interpretation Clauses may have no context (though this may not be true of all definitions) but therefore, all the more reason, why the word 'forest' in the composite expression 'forest-produce' in Section 2(f) should be given the meaning assigned to it in Section 2(c-i). Moreover, as stated earlier, the scheme itself suggests that what vests in the State under Section 3 are private forests as defined by Section 2(f) but such private forests must in the first instance be 'forests' as defined by Section 2(c-i) and read in that manner the forest produce would vest in the State Government along with the private forest under Section 3 of the Act."

27. The view of the High Court has been accepted by the State of Maharashtra and has not been challenged and has now attained finality.

28. It is important to note that the High Court was not concerned with, nor did it advert to the right of a land owner to object to the notice under Section 35(3) of the Forest Act before the Private Forests Act came into force on the ground that his land was not a forest as defined in or notified under Section 34A of the Forest Act. This will be dealt with below.

Judgment in the case of Chintamani Velkar

29. The right to file objections to a notice under Section 35(3) of the Forest Act came up for consideration in Chintamani Gajanan Velkar v. State of

Maharashtra.[13] In that case, Chintamani was issued a notice under Section 35(3) of the Forest Act on 29th August 1975. The notice was served on him on 12th September 1975. In the meanwhile, the Private Forests Act came into force on 30th August 1975. Chintamani raised a dispute under Section 6 of the Private Forests Act (as postulated in Waghmare) contending that his land was not a forest and did not vest in the State in terms of Section 3 of the Private Forests Act.

30. The only question that arose for consideration was whether or not Chintamani's land was a forest within the meaning of that word as defined in Section 2(c-i) of the Private Forests Act. That issue had already been decided, as a matter of fact, by the Maharashtra Revenue Tribunal against Chintamani and it was held that his land was a forest. The matter ought to have rested there. However, this Court went into a further question, namely, whether the mere issuance of a notice under Section 35(3) of the Forest Act per se attracted Section 2(f)(iii) of the Private Forests Act. This Court noticed (in paragraph 18 of the Report) that where a final notification is issued under Section 35(1) of the Forest Act (obviously after hearing the objections of the land owner in compliance with the requirements of Section 35(3) thereof), the entire land of the land owner would automatically vest in the State on the appointed date, that is, 30th August 1975 when the Private Forests Act came into force. In such a case, the land owner would, ex hypothesi have an opportunity of showing in the objections to the Section 35(3) notice that the land is not a 'forest' as defined under Section 34A of the Forest Act. If the land owner succeeded in so showing, then clearly a final notification under Section 35(1) of the Forest Act could not be issued. But if the land owner did not succeed in so showing, only then could a final notification under Section 35(1) of the Forest Act be issued. It must be recalled, at this stage, that the words "or land" under Section 35(3) of the Forest Act had been deleted by the Indian Forest (Bombay Amendment) Act, 1948 being Bombay Act No.62 of 1948 and, additionally therefore, such an objection could validly have been raised.

31. Consequently, the situation that presented itself in Chintamani was that though a notice was issued to the land owner under Section 35(3) of the Forest Act before 30th August 1975, it could not be decided before that date when the Private Forests Act came into force. (Such a notice was referred to as a 'pipeline notice' by Mr. F.S. Nariman). Clearly, the recipient of a pipeline notice would be entitled to the benefit of Waghmare but this seems to have been overlooked by this Court in Chintamani. However, to mitigate the hardship to a pipeline noticee who is not given the benefit of Waghmare this Court read Section 2(f)(iii) of the Private Forests Act and observed (perhaps as a sop to the land owner) that the

"Maharashtra Legislature thought that the entire property covered by the notice in the State need not vest but it excluded 2 hectares out of the forest land held by the landholder. That was the consideration for not allowing the benefit of an inquiry under Section 35(3) and for not allowing the notification to be issued under Section 35(1) of the 1927 Act".

32. It is in this background that this Court narrowly construed the words "a notice has been issued under sub-section (3) of section 35 of the Forest Act" occurring in Section 2(f)(iii) of the Private Forests Act as not requiring "service of such notice before 30-8-1975, nor for an inquiry nor for a notification under Section 35(1)."[14]

33. In a sense, therefore, not only is there a difference of views between Waghmare and Chintamani but Chintamani has gone much further in taking away the right of a landholder.

Proceedings in the High Court

34. On or about 24th May 2006, Godrej received six stop-work notices issued by the concerned Assistant Engineer of the Bombay Municipal Corporation stating that the Deputy Conservator of Forests, Thane Forest Division, by a letter dated 8th May 2006 had informed that the disputed land was "affected" by the reservation of a private forest and therefore no construction could be carried out therein without the permission of the Central Government under the Forest (Conservation) Act, 1980.

35. On enquiries made by Godrej subsequent to the receipt of the stop- work notices, it came to be known that the Bombay High Court had given a direction on 22nd June 2005 in PIL No. 17/2002 (Bombay Environment Action Group v. State of Maharashtra) on the claim of the petitioner therein that in the entire State of Maharashtra the land records were incomplete and a large number of problems were encountered because of not updating the land records which in any event is also an obligation on the State. Accordingly, the High Court gave a direction granting time to the State of Maharashtra up to 31st May 2006 to complete the entire land records in the State and further directed that quarterly reports regarding the progress of the work be filed before the Registrar General of the High Court.

36. Godrej learnt that this triggered an ex parte mutation of the revenue records by the State to show that the disputed land was 'affected' by the provisions of the

Private Forest Act. Godrej also learnt that the Notice No. WT/53 (referred to above) had been published in the Bombay Government Gazette of 6th September 1956, but not served on it.

37. On these broad facts, Godrej filed Writ Petition No. 2196 of 2006 in the Bombay High Court praying, inter alia, for a declaration that the lands owned by it in village Vikhroli are not forest land; that the letter dated 8th May 2006 issued by the Deputy Conservator of Forest as well as six stop- work notices dated 24th May 2006 be declared as illegal, ab initio null and void and that the mutation in the revenue records be also declared illegal.

38. During the proceedings in the High Court it came to be known that about 170 notices similar to notice No. WT/53 had been issued to various parties in 1956-57, including to the Bhabha Atomic Energy Complex and the Employees State Insurance Scheme Hospital. However, the lands of Bhabha Atomic Energy Complex and the Employees State Insurance Scheme Hospital were not touched by the State.

39. The writ petition (along with several other similar writ petitions) was contested by the State and it was submitted inter alia that in view of the judgment of this Court in Chintamani, the disputed land stood vested in the State in terms of Section 3 of the Private Forests Act. By the impugned order dated 24th March 2008, the High Court dismissed all the writ petitions. Among other things, it was held in paragraph 152 of the impugned judgment:

> "In the light of the authoritative pronouncement in Chintamani's case we see no substance in the argument that the construction activities on the land being in accordance with the sanctioned plans and approvals so also the lands being part of the development plan and affected by Urban Land Ceiling Act, State's action impugned in these petitions is without any jurisdiction or authority in law. All arguments with regard to the user of the land today has no legal basis. User today is after development or continuing development. Once development is on private forest, then, the same could not have been permitted or carried out. Mere omission or inaction of the State Government cannot be the basis for accepting the arguments of the petitioners."

40. The High Court rejected the contention that "mere issuance of a notice under Section 35(3) without any notification being published in the official gazette within

the meaning of Section 35(1) would not mean that the land is excluded from the purview of the Private Forest (Acquisition) Act enacted by the Maharashtra Government."[15]

It was also held that:

"Once the State Government issues such notice [under Section 35(3) of the Forest Act], then, the intention is apparent. The intention is to regulate and prohibit certain activities in forest. Merely because such a notice is issued by it in 1957 and 1958 but it did not take necessary steps in furtherance thereof, does not mean that the notices have been abandoned as contended by the petitioners. There is no concept of "abandonment or disuse" in such case. Apart from the fact that these concepts could not be imported in a modern statute, we are of the view that they cannot be imported and read into statute of the present nature. Statutes which are meant for protecting and preserving forests and achieve larger public interest, cannot be construed narrowly as contended. The interpretation, therefore, if at all there is any ambiguity or scope for construction has to be wider and sub-serving this public interest so also the intent and object in enacting them. The reason for the State Government not being able to pursue the measures for preserving and protecting the forest wealth is obvious."[16]

Further, it was held that:

"The Development Plan proposal and designation so also the user cannot conflict with the character of the land as a private forest. To accept the arguments of the petitioners would mean that despite vesting the private forest continues as a land covered by the development plan and being within the municipal limits it loses its character as a private forest. A private forest is a forest and upon its vesting in the State Government by virtue of the Private Forest (Acquisition) Act would remain as such. Therefore, we see no conflict because of any change in the situation. Vesting was complete on 30th August, 1975. On 30th August, 1975 the lands with regard to which the notice was issued under Section 35(3), being a private forest vested in the State, it was a private forest always and, therefore, there is no question of the development plan or any proposal therein superimposing itself on its status."[17]

41. Feeling aggrieved by the dismissal of the writ petitions in the Bombay High Court, Godrej and other aggrieved writ petitioners preferred petitions for special leave to appeal in this Court.

Proceedings in this Court

42. During the pendency of these appeals, the State filed I.A. Nos. 2352- 2353 of 2008 in W.P. No. 202 of 1995 [T.N. Godavarman v. Union of India (Forest Bench matters)] in which it was prayed, inter alia, as follows: 1) The lands coming under the provisions of the Maharashtra Private Forests (Acquisition) Act 1975 which were put to non forestry use prior to 25th October 1980 [when the Forest (Conservation) Act,1980 came into force] by way of having been awarded Approval of Plans, Commencement Certificates, IODS or Non Agriculture Permissions by the Competent Authorities be treated deleted from the category of forests and the non forestry activity be allowed on such lands without charging CA, NPV or equivalent non forest land or any charges whatsoever.

2) -3) The Collectors of all the districts be directed to pass appropriate orders under section 6 or 22A of the Maharashtra Private Forests (Acquisition) Act, 1975 either on an application or suo motu as provided for it under the Act, for all the pieces of lands coming under the provisions of the Act under their jurisdiction within 30 days.

4) For the lands restored under the Act on which residential complexes have come up/are coming up wherein Non Agriculture Permissions (N.A.) and buildings were fully constructed and completion certificate and occupation certificate were issued by the Competent Authorities after 25th October, 1980 but before 18th May 2006 when the "stop construction work" notices were issued, only afforestation charges be collected for afforesting equivalent forest land. Neither equivalent non forest land nor the Net Present Value be charged to them, as these areas are their own private lands."

Significantly, it was stated in the applications as follows:-

"26. As stated earlier since the records did not reveal that these are acquired Private Forests the erstwhile owners went on selling these lands to several persons who also in turn went on selling them to the strangers without there being any fault on their part. Subsequently developers purchased these lands and after getting requisite permissions from the Planning Authority carried

on constructions thereon. Thereafter individuals and members of the public who wanted accommodation for housing probably invested their lifetime savings and/or raising loans entered into transactions of purchasing the flats constructed on these lands without their fault. In some of these areas commercial activities have also come up with due permission from the Government authorities. In such cases, injustice is being alleged by the subsequent purchasers who claimed to be bonafide purchasers. This has necessitated the State of Maharashtra to come out with the present application. Abstract of constructions made on private forest lands in Mumbai Suburban and Thane City makes it very clear that the problem is more severe for the common man. Errors were also committed while declaring the lands as having been acquired by the Government under the Maharashtra Private Forest (Acquisition) Act, 1975. Some of the lands/properties owned by the Government like Bhabha Atomic Energy complex and Employees State Insurance Scheme hospital also came to be declared as acquired under the Maharashtra Private Forest (Acquisition) Act, 1975."

43. The Forest Bench referred the matter to the Central Empowered Committee which, in its Report dated 13th July 2009 noted in paragraphs 25 and 26 as follows:-

"25. It is thus clear that after the issue of notices under Section 35(3) or Notification under 35(1) of the Indian Forest Act, no follow-up action was taken by the State Govt. Even after the Private Forest Act came into force, neither physical possession of the land was taken nor were the areas recorded as 'forest'. A substantial part of such area falls in urban conglomerations and have been used for various non-forest purpose including construction of buildings for which permissions have been granted by the concerned State Government authorities. Sale/purchase and resale have taken place and third party interests have been generated. People are residing for last 30-40 years in hundreds of buildings constructed with the then valid approvals. It was only after the order dated 26.5.2005 of the Hon'ble Bombay High Court, that these areas are now being treated as falling in category of "forest". Many of such areas are surrounded all around by other buildings and within metropolitan areas and are no longer suitable for afforestation or to be managed as 'forest'.

> "26. In the above complex background, at this belated stage, it is neither feasible nor in public interest to demolish the existing buildings/structures, re-locate the existing occupants/owners and physically convert such area into forest. The CEC in these circumstances considers that the balance of convenience lies in granting permission under the Forest (Conservation) Act for de-reservation and non-forest use of such area on a graded scale of payment depending upon the category/sub-category in which such land falls."

44. The Central Empowered Committee made certain other recommendations as a result of which Godrej paid an amount of Rs.14.7 crores towards NPV and this has been recorded in the order passed by the Forest Bench in its order dated 17th February 2010. The relevant extract of the order dated 17th February 2010 passed by the Forest Bench reads as under:- "Pursuant to the report filed by the C.E.C. regards the property owned and possessed by the Godrej and Boyce Mfg. Co. Ltd., a sum of Rs.14,71,98,590/- was deposited as NPV and the deposit of this amount has been confirmed by the learned counsel appearing for the State.

> We have passed an interim order of status quo restraining the petitioners from further construction on the lands and also not to create third party rights. That interim order is vacated. The petitioners are at liberty to go on with the construction and complete it. The direction of not to create third party rights is also vacated. This order is subject to the order, if any, to be passed by MOEF in this regard and also subject to the final outcome of this matter.
>
> Learned counsel for the petitioner states that he will not claim any refund of the amount so deposited. "

45. When the present set of appeals came up for hearing before this Court on 9th February 2011, the correctness of Chintamani was doubted by learned counsel on the question whether the word "issued" as occurring in Section 2(f)(iii) of the Private Forest Act in the context of "any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act" should be interpreted literally or whether it postulates service of notice on the landholder. It is under these circumstances that these appeals were listed before us.

The primary question

46. The initial question is whether the disputed land is at all a forest within the meaning of Section 2(c-i) of the Private Forests Act.

47. It is quite clear from a reading of Waghmare that the "means and includes" definition of forest in Section 2(c-i) of the Private Forests Act does not detract or take away from the primary meaning of the word 'forest'. We are in agreement with this view.

48. In Jagir Singh v. State of Bihar[18] the interpretation of the word "owner" in Section 2(d) of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 came up for consideration. While interpreting "owner" which 'means' and 'includes', this Court held:

> "The definition of the term "owner" is exhaustive and intended to extend the meaning of the term by including within its sweep bailee of a public carrier vehicle or any manager acting on behalf of the owner. The intention of the legislature to extend the meaning of the term by the definition given by it will be frustrated if what is intended to be inclusive is interpreted to exclude the actual owner."

49. The proposition was more clearly articulated in Black Diamond Beverages v. Commercial Tax Officer[19] wherein this Court considered the use of the words 'means' and 'includes' in the definition of "sale price" in Section 2(d) of the W.B. Sales Tax Act, 1954. It was held in paragraph 7 of the Report:

> "The first part of the definition defines the meaning of the word "sale price" and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the second part which "includes" certain other things in the definition. This is a well-settled principle of construction."

50. In coming to this conclusion, this Court referred to a passage from Craies on Statute Law[20] which in turn referred to the following passage from Robinson v. Barton-Eccles Local Board[21]:

> "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable, but to enable the word as used in the Act … to be applied to something to which it would not ordinarily be applicable."

51. In the case of Godrej, the admitted position, as per the consent decree dated 8th January 1962 is that the disputed land was not a waste land nor was it a forest. In so far as the other appeals are concerned, the disputed lands were built upon, from time to time, either for industrial purposes or for commercial purposes or for residential purposes. Under the circumstances, by no stretch of imagination can it be said that any of these disputed lands are 'forest' within the primary meaning of that word, or even within the extended meaning given in Section 2(c-i) of the Private Forests Act.

52. The next question is whether the notice said to have been issued to Godrej being Notice No. WT/53 can be described as a 'pipeline notice'. Again, the answer must be in the negative in as much as it cannot be reasonably said that the pipeline extends from 1956-57 up to 1975. Assuming that a notice issued in 1956-57 is a pipeline notice even in 1975, the question before us would, nevertheless, relate to the meaning and impact of "issued" of Section 2(f)(iii) of the Private Forests Act read with Section 35 of the Forest Act. This is really the meat of the matter.

53. Undoubtedly, the first rule of interpretation is that the words in a statute must be interpreted literally. But at the same time if the context in which a word is used and the provisions of a statute inexorably suggest a subtext other than literal, then the context becomes important.

54. In R.L. Arora v. State of U.P.[22] it was observed that "a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute."

> Similarly, in Tata Engg. & Locomotive Co. Ltd. v. State of Bihar[23] it was held:
>
> "The method suggested for adoption, in cases of doubt as to the meaning of the words used is to explore the intention of the legislature through the words, the context which gives the colour, the context, the subject-matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their

literal sense are interpreted from the context and scheme underlying in the text of the Act."

Finally, in Joginder Pal v. Naval Kishore Behal[24] it was held: "It is true that ordinary rule of construction is to assign the word a meaning which it ordinarily carries. But the subject of legislation and the context in which a word or expression is employed may require a departure from the rule of literal construction."

55. 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.

56. 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 pre-supposes 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.

57. Additionally, Section 35(4) of the Forest Act provides that a notice under Section 35(3) of the Forest Act may provide that for a period not exceeding six months (extended to one year in 1961) the owner of the forest can be obliged to adhere to one or more of the regulatory or prohibitory measures mentioned in Section 35(1) of the Forest Act. On the failure of the owner of the forest to abide by the said measures, he/she is liable to imprisonment for a term upto six months and/or a fine under Section 35(7) of the Forest Act. Surely, given the penal consequence of non-adherence to a Section 35(4) direction in a Section 35(3) notice, service of such a notice must be interpreted to be mandatory. On the facts of the case in Godrej, such a direction was in fact given and Godrej was directed, for a period of six months, to refrain from the cutting and removal of trees and timber and the firing and clearing of vegetation. Strictly speaking, therefore,

despite not being served with Notice No. WT/53 and despite having no knowledge of it, Godrej was liable to be punished under Section 35(7) of the Forest Act if it cut or removed any tree or timber or fired or cleared any vegetation.

58. This interplay may be looked at from another point of view, namely, the need to issue a direction under Section 35(4) of the Forest Act, which can be only to prevent damage to or destruction of a forest. If the notice under Section 35(3) of the Forest Act is not served on the owner of the forest, he/she may continue to damage the forest defeating the very purpose of the Forest Act. Such an interpretation cannot be given to Section 35 of the Forest Act nor can a limited interpretation be given to the word "issued" used in the context of Section 35 of the Forest Act in Section 2(f)(iii) of the Private Forests Act.

59. Finally, Section 35(5) of the Forest Act mandates not only service of a notice issued under that provision "in the manner provided in the Code of Civil Procedure, 1908, for the service of summons" (a manner that we are all familiar with) but also its publication "in the manner prescribed by rules". This double pronged receipt and confirmation of knowledge of the show cause notice by the owner of a forest makes it clear that Section 35(3) of the Forest Act is not intended to end the process with the mere issuance of a notice but it also requires service of a notice on the owner of the forest. The need for ensuring service is clearly to protect the interests of the owner of the forest who may have valid reasons not only to object to the issuance of regulatory or prohibitory directions, but to also enable him/her to raise a jurisdictional issue that the land in question is actually not a forest. The need for ensuring service is also to prevent damage to or destruction of a forest.

60. Unfortunately, Chintamani missed these finer details because it was perhaps not brought to the notice of this Court that Section 35 of the Forest Act as applicable to the State of Maharashtra had sub-sections beyond sub-section (3). This Court proceeded on the basis of Section 35 of the Indian Forest Act, 1927 as it existed without being aware of the amendments made by the State of Maharashtra and the erstwhile State of Bombay. This, coupled with the factually incorrect view that two hectares of forest land[25] were excluded for the benefit of the landholder led this Court to give a restrictive meaning to "issue".

61. In Chintamani this Court relied on the decision rendered in CIT v. Bababhai Pitamberdas (HUF)[26] to conclude that a word has to be construed in the context in which it is used in a statute and that, therefore, the decisions rendered in Banarsi

Debi v. ITO[27] and CWT v. Kundan Lal Behari Lal[28] to the effect that "the word 'issue' has been construed as amounting to 'service' are not relevant for interpreting the word 'issued' used in Section 2(f) [of the Private Forests Act]." 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) 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 was incorrectly decided and it is overruled to this extent. We may add that in Chintamani 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 Section 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. Nariman puts it?

64. In the absence of any time period having been specified for deciding a show cause notice issued under Section 35 of the Forest Act, it must be presumed that it must be decided within a reasonable time. Quite recently, in Ramlila Maidan Incident, In re[29] it was held: "It is a settled rule of law that wherever provision of a statute does not provide for a specific time, the same has to be done within a reasonable time. Again reasonable time cannot have a fixed connotation. It must depend upon the facts and circumstances of a given case."

65. Similarly, in Mansaram v. S.P. Pathak[30] it was held: "But when the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time."

> So also, in Santoshkumar Shivgonda Patil v. Balasaheb Tukaram Shevale[31] it was held:

> "It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein."

66. According to the State, a show cause notice was issued to Godrej in 1957 (and assuming it was served) but no decision was taken thereon till 1975 that is for about 18 years. This is an unusually long period and undoubtedly much more than a reasonable time had elapsed for enabling the State to take a decision on the show cause notice. Therefore, following the law laid down by this Court, the show cause notice must, for all intents and purposes be treated as having become a dead letter and the seed planted by the State yielded nothing.

67. The entire problem may also be looked at from the perspective of the citizen rather than only from the perspective of the State. No citizen can reasonably be told after almost half a century that he/she was issued a show cause notice (which was probably not served) and based on the show cause notice his/her land was declared a private forest about three decades ago and that it vests in the State. Is it not the responsibility of the State to ensure that its laws are implemented with reasonable dispatch and is it not the duty of the State to appreciate that statute books are not meant to be thrown at a citizen whenever and wherever some official decides to do so? Basic principles of good governance must be followed by every member of the Executive branch of the State at all times keeping the interests of all citizens in mind as also the larger public interest.

68. In our opinion, the failure of the State to take any decision on the show cause notice for several decades (assuming it was served on Godrej) is indicative of its desire to not act on it. This opinion is fortified by a series of events that have taken place between 1957 and 2006, beginning with the consent decree of 8th January 1962 in Suit No. 413 of 1953 whereby the disputed land was recognized as not being forest land; permission to construct a large number of buildings (both residential and otherwise) as per the Development Plans of 1967 and then of 1991; exemptions granted by the Competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 leading to Godrej making unhindered but permissible

constructions; and finally, the absence of any attempt by the State to take possession of the 'forest land' under Section 5 of the Private Forests Act for a couple of decades. The subsequent event of the State moving an application in Godavarman virtually denying the existence of a private forest on the disputed land also indicates that the State had come to terms with reality and was grudgingly prepared to accept that, even if the law permitted, it was now too late to remedy the situation. This view was emphatically reiterated by the Central Empowered Committee in its report dated 13th July 2009.

69. In its written submissions, the Bombay Environment Action Group has alleged collusion between Godrej and other appellants and the State of Maharashtra to defeat the purpose of the Private Forests Act. It is stated that prior to the said Act coming into force, the Secretary in the Revenue and Forests Department of the State Government had written to the Collector on 27th August 1975 enclosing a copy of the said Act and informing that under Section 5 thereof, the Range Forest Officers and the Divisional Forest Officers will be authorized to take possession of the private forests from the land owners. It is stated that the letter was issued to enable the Collector to coordinate with the Divisional Forest Officers to ensure that the large private forests are taken over physically as early as possible. Subsequently, by another letter (variously described as dated 3rd February 1977, 14th February 1977 and 3rd February 1979) the Secretary in the Revenue and Forests Department advised the Conservator of Forests to go slow with the taking over of possession of private forests in Thane, Kulaba and Ratnagiri districts.

70. It is difficult at this distant point of time to conclude, one way or the other, whether there was or was not any collusion (as alleged) or whether it was simply a case of poor governance by the State. The fact remains that possession of the disputed land was not taken over or attempted to be taken over for decades and the issue was never raised when it should have been. To raise it now after a lapse of so many decades is unfair to Godrej, the other appellants, the institutions, the State and the residents of the tenements that have been constructed in the meanwhile.

71. 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.

72. In Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai[32] this Court dealt with the provisions of the Land Acquisition Act and held that the legislation

being an expropriatory legislation, it ought to be strictly construed since it deprives a person of his/her land. In this decision, reliance was placed on State of M.P. v. Vishnu Prasad Sharma[33] and Khub Chand v. State of Rajasthan.[34] The same rationale would apply to Section 2(f)(iii) of the Private Forests Act since it seeks to take away, after a few decades, private land on the ostensible ground that it is a private forest. Section 2(f)(iii) of the Private Forests Act must not only be reasonably construed but also strictly so as not to discomfit a citizen and expropriate his/her property.

73. The fact that the Private Forests Act repealed some sections of the Forest Act, particularly Sections 34A 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 land owner. 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. The second question:

74. The next question is whether at all the unstated decision of the State to take over the so-called forest land can be successfully implemented. What the decision implies is the demolition, amongst others, of a large number of residential buildings, industrial buildings, commercial buildings, Bhabha Atomic Energy Complex and the Employees State Insurance Scheme Hospital and compulsorily rendering homeless thousands of families, some of whom may have invested considerable savings in the disputed lands. What it also implies is demolition of the municipal and other public infrastructure works already undertaken and in use, clearing away the rubble and then planting trees and shrubs to 'restore' the 'forest' to an acceptable condition. According to learned counsel for the State, this is easily achievable. But it is easier said than done. According to the Bombay Environment Action Group a patent, incurable illegality has been committed and the natural consequences (demolition) must follow. Reliance was placed, inter alia, on K. Ramadas Shenoy v. Chief Officer[35], M.I. Builders v. Radhey Shyam Sahu[36], Pleasant Stay Hotel v. Palani Hills Conservation Council[37] and Pratibha Coop. Housing Society Ltd. v. State of Maharashtra[38] to suggest that no party should be allowed to take the benefit or advantage of their own wrong and a patent illegality cannot be cured.

75. The broad principle laid down by this Court is not in doubt. An unauthorized construction, unless compoundable in law, must be razed. In question are the circumstances leading to the application of the principle and the practical application of the principle. More often than not, the municipal authorities and builders conspiratorially join hands in violating the law but the victim is an innocent purchaser or investor who pays for the maladministration. In such a case, how is the victim to be compensated or is he or she expected to be the only loser? If the victim is to be compensated, who will do so? These issues have not been discussed in the decisions cited by the Bombay Environment Action Group.

76. In so far as the practical application of the principle is concerned, in Shenoy permission was granted to convert a Kalyana Mantap-cum-Lecture Hall into a cinema hall. A reading of the decision suggests that no construction was made and it is not clear whether any money was actually spent on the project. The question of compensation, therefore, did not arise.

77. M.I. Builders was an extreme case in which partial demolition was ordered since the agreement between the Lucknow Nagar Mahapalika and the builder was not only unreasonable for the Mahapalika, but atrocious. In paragraph 59 of the Report, this Court said,

> "The agreement defies logic. It is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement."
>
> It was further held in paragraph 71 of the Report that,
>
> "The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder."

78. Pleasant Stay Hotel was a case of deliberately flouting the law. The Hotel was granted sanction for the construction of two floors but despite the rejection of its revised plan, it went ahead and constructed seven floors. This Court noted that, therefore, five floors had been constructed illegally and unauthorisedly. Under these circumstances, and subject to certain clarifications, the demolition order passed by the High Court was upheld. Payment of compensation in a case of knowingly and deliberately flouting the law does not arise.

79. In Pratibha the eight unauthorized floors were constructed in clear and flagrant violation and disregard of the FSI. The demolition order had already attained finality in this Court and thereafter six of the unauthorized floors had been demolished and the seventh was partially demolished. This Court found no justification to - interfere with the demolitions. Again, the issue of compensation does not arise in such a situation.

80. The application of the principle laid down by this Court, therefore, depends on the independent facts found in a case. The remedy of demolition cannot be applied per se with a broad brush to all cases. The State also seems to have realized this and that is perhaps the reason why it moved the application that it did in Godavarman.

81. Looking at the issue from point of view of the citizen and not only from the point of view of the State or a well meaning pressure group, it does appear that even though the basic principle is that the buyer should beware and therefore if the appellants and purchasers of tenements or commercial establishments from the appellants ought to bear the consequences of unauthorized construction, the well-settled principle of caveat emptor would be applicable in normal circumstances and not in extraordinary circumstances as these appeals present, when a citizen is effectively led up the garden path for several decades by the State itself. The present appeals do not relate to a stray or a few instances of unauthorized constructions and, therefore, fall in a class of their own. In a case such as the present, if a citizen cannot trust the State which has given statutory permissions and provided municipal facilities, whom should he or she trust?

82. Assuming the disputed land was a private forest, the State remained completely inactive when construction was going on over acres and acres of land and of a very large number of buildings thereon and for a few decades. The State permitted the construction through the development plans and by granting exemption under the Urban Land (Ceiling and Regulation) Act, 1976 and providing necessary infrastructure such as roads and sanitation on the disputed land and the surrounding area. When such a large scale activity involving the State is being carried on over vast stretches of land exceeding a hundred acres, it is natural for a reasonable citizen to assume that whatever actions are being taken are in accordance with law otherwise the State would certainly step in to prevent such a massive and prolonged breach of the law. The silence of the State in all the appeals before us led the appellants and a large number of citizens to believe that there was no patent illegality in the constructions on the disputed land nor was there any legal risk in

investing on the disputed land. Under these circumstances, for the State or the Bombay Environment Action Group to contend that only the citizen must bear the consequences of the unauthorized construction may not be appropriate. It is the complete inaction of the State, rather its active consent that has resulted in several citizens being placed in a precarious position where they are now told that their investment is actually in unauthorized constructions which are liable to be demolished any time even after several decades. There is no reason why these citizens should be the only victims of such a fate and the State be held not responsible for this state of affairs; nor is there any reason why under such circumstances this Court should not come to the aid of victims of the culpable failure of the State to implement and enforce the law for several decades.

83. In none of these cases is there an allegation that the State has acted arbitrarily or irrationally so as to voluntarily benefit any of the appellants. On the contrary, the facts show that the appellants followed the due legal process in making the constructions that they did and all that can be said of the State is that its Rip Van Winkleism enabled the appellants to obtain valid permissions from various authorities, from time to time, to make constructions over a long duration. The appellants and individual citizens cannot be faulted or punished for that.

84. These appeals raise larger issues of good administration and governance and the State has, regrettably, come out in poor light in this regard. It is not necessary for us to say anything more on the subject except to conclude that even if the State were to succeed on the legal issues before us, there is no way, on the facts and circumstances of these appeals, that it can reasonably put the clock back and ensure that none of the persons concerned in these appeals is prejudiced in any manner whatsoever.

Conclusion:

85. Accordingly, for the reasons given, all these appeals are allowed and the impugned judgment and order of the Bombay High Court is set aside in all of them and the notices impugned in the writ petitions in the High Court are quashed.

Orders in Interlocutory Applications

Civil Appeals arising out of SLP (C) Nos.25747/2010 and 25748/2010

86. Delay condoned.

SLP (C) No.34691/2011

87. Permission to file the special leave petition is declined. However, the petitioner is at liberty to take such appropriate action as is now permissible under the law.

Civil Appeals arising out of S.L.P. (C) Nos. 10677 of 2008, 10760 of 2008, 11509 of 2008 and 11640 of 2008

88. Applications for impleadment/intervention stand allowed.

Civil Appeals arising out of S.L.P. (C) Nos. 10760 of 2008 and 11509 of 2008

89. Applications for modification of the order dated 5th May, 2008 in these appeals and the applications for directions in all other appeals are disposed of in terms of the judgment pronounced.

[2] Section 4 - Waste lands, etc.. to vest in Government (a) All waste lands in any estate which under the terms of the kowl are not the property of the estate-holder, (b) all waste lands in any estate which under the terms of the kowl are the property of the estate-holder but have not been appropriated or brought under cultivation before the 14th August 1951, and (c) all other kinds of property referred to in Section 37 of the Code situate in an estate which is not the property of any individual or an aggregate of persons legally capable of holding property other than the estate-holder and except in so far as any rights of persons may be established in or over the same and except as may be otherwise provided by any law for the time being in force, together with all rights in or over the same or appertaining thereto, and are hereby declared to be the property of the State and it shall be lawful to dispose of and sell the same by the authority in the manner and for the purposes prescribed in Section 37 or 38 of the Code, as the case may be.

[4] Changes brought about by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950 have not been incorporated in the narration of facts.

[6] 34A. Interpretation.- For the purposes of this Chapter 'forest' includes any land containing trees and shrubs, pasture, lands and any other land whatsoever which

the Provincial Government may, by notification in the Official Gazette, declare to be a forest.

[8] Section 35 - Protection of forests for special purposes

(1) The Provincial Government may, by notification in the Official Gazette,-

(i) regulate or prohibit in any forest -

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or clearing of the vegetation;

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;

(e) the lopping and pollarding of trees;

(f) the cutting, sawing, conversion and removal of trees and timber; or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire;

when such regulation or prohibition appears necessary for any of the following purposes :-

(a) for the conservation of trees and forests;

(b) for the preservation and improvement of soil or the reclamation of saline or water-logged land, the prevention of land-slips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;

(c) for the improvement of grazing;

(d) for the maintenance of a water supply in springs, rivers and tanks;

(e) for the maintenance increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(f) for the maintenance of reservoirs or irrigation works and hydro- electric works;

(g) for protection against storms, winds, rolling stones, floods and drought;

(h) for the protection of roads, bridges, railways and other lines of communication; and

(i) for the preservation of the public health.

[10] Section 35 - Protection of forests for special purposes

(2) The State Government may, for any such purpose, construct at its own expense, in any forest, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

[12] Section 35 - Protection of forests for special purposes

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

[14]Section 35 - Protection of forests for special purposes

(4) A notice to show cause why a notification under subsection (1) should not be made, may require that for any period not exceeding six months, or till the date of the making of a notification, whichever is earlier, the owner or such forest and all persons who are entitled or permitted to do therein any or all of the things specified in clause (i) of sub-section (1), whether by reasons of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub-section (1), to the extent specified in the notice.

(5) A notice issued under sub-section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908, for the service of summons and shall also be published in the manner prescribed by rules.

(6) Any person contravening any requisition made under sub-section (4) in a notice to show cause why a notification under sub-section (1) should not be made shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both.

[16]36-A. Manner of serving notice and order under section 36.- The notice referred to in sub-section (1) of section 36 and the order, if any, made placing a forest under the control of a Forest Officer shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908, for the service of summons.

[18] Section 35 - Protection of forests for special purposes

(4) A notice to show cause why a notification under subsection (1) should not be made, may require that for any period not exceeding one year, or till the date of the making of a notification, whichever is earlier, the owner or such forest and all persons who are entitled or permitted to do therein any or all of the things specified in clause (i) of sub-section (1), whether by reasons of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in clause (i) of sub-section (1), to the extent specified in the notice.

[20]Section 35 - Protection of forests for special purposes (5-A) Where a notice issued under sub-section (3) has been served on the owner of a forest in accordance with subsection (5), any person acquiring thereafter the right of ownership of that

forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under this section.

(7) Any person contravening any of the provisions of a notification issued under sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

[22] Section 24 - Repeal of sections 34A to 37 of Forest Act (1) On and from the appointed day, sections 34A, 35, 36, 36A, 36B, 36C and 37 of the Forest Act shall stand repealed. (2) Notwithstanding anything contained in sub-section (1), on and from the date of commencement of the Maharashtra Private Forests (Acquisition) (Amendment) Act, 1978 (Mah. XIV of 1978), sections 34A, 35, 36, 36A, 36B, 36C and 37 of the Forest Act, shall, in respect of the lands restored under section 22A, be deemed to have been reenacted in the same form and be deemed always to have been in force and applicable in respect of such lands, as if they had not been repealed.

[24] AIR 1978 Bombay 119

[26] (2000) 3 SCC 143

[28] Paragraph 19 of Chintamani

[30] Paragraph 123

[32] Paragraph 126

[34] Paragraph 149

[36] (1976) 2 SCC 942

[38] (1998) 1 SCC 458

[40] 7th Edition 1.214

[42] (1883) 8 AC 798

[44] (1964) 6 SCR 784

[46] (2000) 5 SCC 346

[48] (2002) 5 SCC 397

[50] The correct factual position is that Section 2(f)(iii) of the Private Forests Act excluded “an area not exceeding two hectares”.

[52] 1993 Supp (3) SCC 530

[54] (1964) 7 SCR 539

[56] (1975) 4 SCC 844

[58] (2012) 5 SCC 1 paragraph 232

[60] (1984) 1 SCC 125

[62] (2009) 9 SCC 352

[64] (2005) 7 SCC 627

[66] (1966) 3 SCR 557

[68] (1967) 1 SCR 120

[70] (1974) 2 SCC 506

[72] (1996) 6 SCC 464

[74] (1995) 6 SCC 127

[76] (1991) 3 SCC 341