

## Supreme Court Verdict On Private Forest Lands

### Introduction

The Supreme Court's three judge bench comprising of Justices R.M. Lodha, Madan B. Lokur and Kurian Joseph has recently delivered a landmark judgment in private forest land matters by allowing the appeals filed by Godrej & Boyce Manufacturing Co. Ltd. ("Godrej"), Oberoi Constructions and a host of other developers as well as resident bodies and in turn setting aside the Bombay High Court ruling.

Undisputedly, the clear winners are flat buyers of fully constructed buildings on so-called "private forest lands" and the developers of housing projects to whom stop work notices were issued by MCGM restricting further construction.

The media hype surrounding this ruling suggests that the Supreme Court has given directions to the Government of Maharashtra ("State") to remove the "private forests" tag attached to huge land parcels across the State. We, however, believe that this is an over enthusiastic interpretation of the ruling.

### Brief background

In the year 1956 - 57, the State issued about 170 notices to various land owners including Godrej under Section 35(3)<sup>[1]</sup> of the Indian Forest Act, 1927 ("Central Act"), however, it seems that the due process of law as provided in the Central Act was not followed by the State.

In the meantime, the Maharashtra Private Forests (Acquisition) Act, 1975 ("Private Forest Act") was enacted by the State with effect from 30 August 1975 and as such all "private forest lands"<sup>[2]</sup> in the State automatically stood acquired and vested in the State from that day. In view of the inclusive definition of "private forest lands", all lands in respect of which notices were issued under Section 35(3) of the Central Act automatically stood vested in

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the State. The notices were not acted upon and/ or no attempts were made by the State to take possession of such lands and in most cases the owners had sold and/or developed such lands and created further third party rights.

Triggered by the directions of the Bombay High Court in a Public Interest Litigation filed by Bombay Environmental Action Group (BEAG)<sup>[3]</sup>, ex parte mutation entries were passed in revenue records stating that the lands owned by Godrej and others were affected by the provisions of the Private Forest Act. Consequently, the Municipal Corporation of Greater Mumbai (MCGM) in 2006 issued stop work notices to Godrej and others on the ground that such lands were "affected" by the reservation of a private forest and therefore no construction could be carried out therein without the permission of Central Government.

## Bombay High Court Ruling

Being aggrieved, several parties including Godrej filed Writ Petitions before the Bombay High Court interalia seeking declaration that the lands owned by them were not private forest lands and that the stop work notices be declared as illegal, ab initio null and void. The Bombay High Court dismissed the Writ Petitions. It was held that once the State had issued the notice under Section 35(3) of the Central Act, then its intention to regulate and prohibit certain activities in a forest land is clear and that lack of action cannot mean that the notices have been abandoned by the State.

This judgment paved way for the State to take possession of such lands and demolish any construction thereon.

## Supreme Court Verdict

Godrej and 19 others challenged the aforesaid Order in the Supreme Court. The batch of 20 appeals were heard and disposed off together as they involved the same questions of law but contained minute factual differences.

The primary question framed was whether the lands in question were at all "forest lands" within the meaning of Section 2 (c-i) of the Private Forest Act<sup>[4]</sup>. It was apparent that the lands owned by Godrej were not forest lands and the other disputed lands were built upon. It was held that none of the lands, which are subject matter of the Appeals, are "forests" within the primary meaning of that word or within extended meaning as defined in the Private Forest Act. While deciding this issue, the Supreme Court placed reliance on the Waghmare case<sup>[5]</sup> wherein it was inter alia held that a land owner who had been issued a notice under Section 35(3) (but was not heard) has a right as per the provisions of the Central Act to contend that his/ her land is not a "forest land" within the meaning of Section 2(c-i) of the Private Forest Act.

Connected with the first issue, the second issue framed was whether the word "issued" in Section 2(f)(iii) of the Private Forest Act read with Section 35 of the Central Act must be given literal interpretation or broad meaning. The Supreme Court decided to give a broad interpretation to the word "issued" and observed that Section 35(3) of the Central Act is not intended to end the process with a mere issuance of a notice but it also requires service of a notice on the owners of the forest and that due process of law is followed.

While answering this question the Supreme Court discussed Chintamani's case<sup>[6]</sup> at length and observed that the Supreme Court in that case had narrowly construed the provision of Section 2(f)(iii) of the Private Forest Act as not requiring service of notice nor an inquiry nor a notification under Section 35(1). On a conjoint reading of Section 35(3), (4) and (5) of the Central Act, the Supreme Court observed that Chintamani's case had missed the finer details as the Court had proceeded on the basis of Section 35 of the Central Act as it existed, without being aware of the amendments made by the State. The Supreme Court has stated that Chintamani's case was incorrectly decided and therefore overruled it to that extent.

Though the notices were issued around 1956 - 57, no decision was taken in respect thereof till the promulgation of the Private Forest Act in the year 1975. As the State had taken more than reasonable time to decide on show cause notices, such show cause notices were equated to 'dead letters' and 'as seeds planted by the State which yielded nothing. It was also held by the Supreme Court that Section 2(f)(iii) of the Private Forest Act was intended to apply to 'live' and not stale notices issued under Section 35 of the Central Act (i.e. notices issued over a long period of time).

A tertiary question that arose was whether the State could be allowed to demolish the construction put up on the so called "private forest lands". The Supreme Court observed that the broad principle laid down in its earlier judgments undoubtedly is that unauthorized construction unless compoundable in law must be razed, however, this principle cannot be applied per se with a broad brush to all cases ignoring the independent facts. Slamming the State for its poor governance and bad administration, the Supreme Court held that:

1. The failure on the part of the State to take any decision or action on the show cause notices issued under Section 35 of the Central Act for several decades was only indicative of its desire to not act on it. This opinion was fortified by certain acts and omissions on part of the State, such as granting permission to construct large number of buildings (both residential and commercial) on such lands, providing public amenities such as roads, sewerages etc., granting exemptions under the Urban Land (Ceiling and Regulation) Act, 1976 and finally, failing to take possession of such lands for decades.
2. The silence of the State led people to believe that there was no patent illegality in the constructions on such lands nor was there any legal risk in investing in such lands. It is the complete inaction of the State 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. Thus, to raise the issue at such a belated stage would be unfair to the residents / flat purchasers of buildings that have been constructed on such lands. Hence, this issue was answered in negative.

Accordingly, the batch of 20 appeals was allowed and the impugned judgment and order of the Bombay High Court was set aside and the notices impugned in the Writ Petitions filed in the Bombay High Court were quashed.

## Conclusion

This ruling thus lays down the ratio that all those lands (not primarily in the nature of forest i.e. lands covered with trees, shrubs, bushes or vegetation) in respect of which the State had merely issued notices under Section 35(3) of Central Act way back in 1956-57 and had not served the same and/or had not followed the due process of law as laid down by the Central Act, do not automatically vest in the State and are not deemed to be declared as "private forests" within Section 2(f)(iii) of the Private Forest Act.

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As the judgment passed by Supreme Court is based only on the facts and circumstances pleaded in those 20 appeals, lands in respect of which notices were served or proceedings are pending or lands declared, adjudicated or admitted as "private forests" will not be covered by this judgment and the application of the ratio laid in this judgment may vary depending on the facts and circumstances of

each matter. The State may continue to proceed against the recent noticees under the Private Forest Act as also issue fresh notices as per the provisions of the Private Forest Act.

**- By Heena Chheda (Partner) & Abhiraj Gandhi (Associate)**

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[1] Section 35 of the Central Act empowers State Governments to issue notification to prohibit and/or regulate activities (such as cutting and removal of trees, pasturing of cattle etc.) in respect of forest and waste lands not being the property of the State Government.

[2] The definition of the "private forest lands" under Section 2(f)(iii) of the Private Forest Act includes lands in respect of which a notice has been issued under Section 35 of the Central Act.

[3] In 2002, BEAG, a non-profit organization, filed a Public Interest Litigation (PIL) in the Bombay High Court relating to the fact that the land records in Maharashtra were incomplete and a large number of problems were encountered because of not updating the land records. In 2005, the Bombay High Court directed the State to update its land records.

[4] Section 2(c-i) of the Private Forest Act defines the term "forest lands".

[5] Janu Chandra Waghmare vs. State of Maharashtra AIR 1978 Bom 119

[6] ChintamaniGajananVelkar vs. State of Maharashtra (2000) 3 SCC 143

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