

KamaruddIn N. Shaikh Vs. the State of Maharashtra and ors.

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Court : Mumbai

Decided On : Apr-11-1996

Reported in : 1996(4)BomCR209; (1996)98BOMLR159

Judge : M.B. Shah, C.J. and ;A.V. Savant, J.

Acts : Indian Forests Act, 1927 - Sections 35(3); Maharashtra Private Forests (Acquisition) Act, 1975 - Sections 2 and 5; Evidence Act, 1872, Sections 3, 58 and 61; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 3681 of 1983 and 2023 of 1994

Appellant : KamaruddIn N. Shaikh

Respondent : The State of Maharashtra and ors.

Advocate for Def. : M.N. Zambre, A.G.P. and ;R.V. Govilkar, G.P. and ;K.R. Belosy, A.G.P. in W.P. No. 3681 of 1983, ;R.P. Bhatt and ;V.A. Gangal, Advs. and ;Milind Sathe, Adv. i/b. and ;M.P. Savla and Co., for Respondent

Advocate for Pet/Ap. : Rohit Kapadia and ;D.B. Bhosale, ;A.G. Damle and ;A.C. Shah, Advs. in W.P. No. 3681 of 1983, ;M.N. Zambre, A.G.P. and ;R.V. Govilkar, G.P. and ;K.R. Belosy, A.G.P. in W.P. No. 2023 of 1994

Disposition : Petition allowed

Judgement :

M.B. Shah, C.J.

1. Writ Petition No. 3681 of 1983 filed by Kamruddin N. Shaikh and Writ Petition No. 4726 of 1986 filed by the Maharashtra Land Development Corporation were dismissed by this Court by judgment and order dated 13th/17th March, 1992. This Court arrived at the conclusion that Survey No. 345-A situated at Dahisar, Thane District which subsequently became Sub-District of Bandra, Bombay Suburban District, admeasuring 209 acres was a Forest Land. With regard to this land bearing Survey No. 345-A and other properties, it is an admitted fact that Bai Fatimabai widow of Haji Alimohammed Haji Cassum had filed Suit No. 3415 of 1947 before this Court for administration of the estate of her deceased husband and for other reliefs. The Court had appointed Receiver in respect of the suit properties. The Court Receiver had invited offers for sale of the properties and the highest offer of Rs. 13,50,000/- made by one Khimal Lalchand was accepted on 27th March, 1962. The Receiver was directed to execute a conveyance in favour of the said Lalchand. The said Lalchand thereafter promoted a Company called Veekaylal Investment Company Pvt. Ltd., to take over possession of the land at Dahisar. The Court Receiver handed over possession of the said land to the said Company in November, 1962.

2. It is the say of petitioner Kamruddin Shaikh that purchaser M/s. Veekaylal Investment Co. Pvt. Ltd., entered into an Agreement for Sale dated 10th August, 1970 with M/s. Vijay & Associates, a partnership firm, for a portion of the land out of Survey No. 345-A and that the petitioner was put in possession of the said land on the basis of an Agreement dated 9th September, 1971 with M/s. Vijay & Associates. Pursuant to the said Agreement, the petitioner has acquired a legal right to remove clay, mud, stone, murram and of quarrying the hillock on the said land. It is also stated that in 1972, some disputes arose between M/s. Veekaylal Investment Co. and M/s. Vijay & Associates, and Short Cause No. 6726 of 1973 was filed in the Bombay City Civil Court at Bombay in which the petitioner was party defendant. That suit was settled outside the Court and a fresh Agreement was signed between the parties on 29th August, 1974 according to which the petitioner remained in possession of 50 acres out of Survey No. 345-A. The petitioner is carrying on quarrying operation in the said land.

3. It is also pointed out that in the inquiry held under section 6, the petitioner, by letter dated 3rd October, 1975, informed the Competent Authority that he was in possession of the land admeasuring 50 acres and that his property interests should be protected. However, without giving any hearing, final order was passed by the Sub-Divisional Officer, Bombay Suburban District, Bombay, holding that the land in question was private forest. He has also pointed out that against that order M/s. Veekaylal Investment Co. Pvt. Ltd., filed an appeal bearing No. Rev. Forest 1 of 1975 before the Maharashtra Revenue Tribunal. That appeal was dismissed by the Tribunal. The petitioner says that thereafter, he received letter dated 2nd January, 1976 from the Divisional Forest Officer, Borivali, directing to stop quarrying operations and to pay royalty to Forest Department. On the advice of his Advocate, the petitioner filed S.C. Suit No. 1918 of 1976 on 17th March, 1976 in the Bombay City Civil Court at Bombay for a declaration that the order issued by the Tahsildar was without jurisdiction and void. The petitioner also prayed for permanent injunction restraining the Tahsildar from taking possession of the land admeasuring 50 acres out of Survey No. 345-A. Interim injunction was granted in favour of the petitioner in the said suit. It means that the petitioner Kamruddin claims interest in land admeasuring 50 acres only.

4. Further, it is also pointed out that by a conveyance deed dated 29th March, 1975 the Court Receiver conveyed about 53 acres of land in favour of the Maharashtra Land Development Corporation (respondent No. 1 in Writ Petition No. 2023 of 1994) and Veekaylal Investment Company (respondent No. 4) was Confirming Party.

5. Against the judgment and order dated 13th/17th March, 1992 of this Court, the Maharashtra Land Development Corporation, petitioner in Writ Petition No. 4726 of 1976 preferred Civil Appeal No. 3490 of 1992 before the Supreme Court. In its judgment and order dated 27th August, 1992, the Supreme Court observed that the High Court did not accept the reasons that commended themselves to the Tribunal in reaching that conclusion but came to the conclusion on wholly different grounds. The question essentially was one of fact and the grievance of the appellant before the Supreme Court was that since the High Court took into consideration the material placed before it for the first time by the State, the

appellant did not have a reasonable opportunity of traversing the same. The respondent State also urged that they have fresh material to support the finding in its favour recorded by the High Court. In view of the stand taken by both the parties, the Supreme Court set aside the order passed by this Court dated 13th/17th March, 1992 in Writ Petition No. 4726 of 1986 as well as the order dated 29th September, 1986 passed by the Maharashtra Revenue Tribunal in Appeal No. 4 of 1985 and the Supreme Court remitted the matter to the Maharashtra Revenue Tribunal at Bombay for being heard and disposed of afresh after affording to both the parties opportunities of adducing such further documentary evidence as they may desire.

6. The Maharashtra Revenue Tribunal after remand allowed the appeal and arrived at the conclusion that the land in question was not a forest land. Against that order dated 4th December, 1992 passed by the Maharashtra Revenue Tribunal, Writ Petition No. 2023 of 1994 is filed by the State Government.

7. In the meantime, the petitioner of Writ Petition No. 3681 of 1983 filed Review Application against the order passed in Writ Petition No. 3681 of 1983. That order was set aside by this Court by order dated 16th October, 1995 and the Court directed that the said writ petition be heard afresh on merits along with Writ Petition No. 2023 of 1994 filed by the State of Maharashtra. The Court noted that in view of the decision rendered by the Maharashtra Revenue Tribunal on 4th December, 1992 holding that the entire Survey No. 345-A is not a forest or a private forest land and that it has not vested in the State Government, the Review Application was required to be allowed.

8. At this stage, we would mention the chequered history of this matter. In August 1975, the Officer authorised by the State Government served notice under sub-section (3) of section 35 of the Indian Forest Act, 1927 on Veekaylal Investment Co. Pvt. Ltd. Section 35 of the Indian Forest Act confers power upon the State Government to regulate the use and enjoyment of forests. In the notice, it was stated that in record of right, Survey No. 345 of Village Dahisar was standing in the name of former 'Khot Haji Ali Mohammed' and a pencil entry was made in the name of the company as the offer made by the company to the Court Receiver

was accepted and possession was handed over to the Company - Veekaylal Investment Co. Pvt. Ltd., who had purchased 209 acres of land from the Court Receiver. After the Maharashtra Private Forests (Acquisition) Act, 1975 came into operation, the Officer authorised by the State Government served notice under section 5 of the Act on Veekaylal Investment Co. Pvt. Ltd., on 8th October, 1975 to hand over possession of the entire area of 209 acres comprising of Survey No. 345-A. On receipt of that notice, the company filed a reply on 16th October, 1975 raising the dispute that the land was not a private forest.

9. Thereafter, after following the procedure under section 6 of the Act, the Sub-Divisional Officer, Bombay Suburban by an order dated 11th November, 1975 arrived at the conclusion that the aforesaid land was a private forest within the definition given in Clause (f) of section 2 of the Maharashtra Private Forests (Acquisition) Act, 1975 read with Clause 2 of the Maharashtra Private Forests (Acquisition) (Amendment) Ordinance, 1975 and that the land was jungle land as referred to in the mortgage deed executed in the year 1900.

10. Against that order, Veekaylal Investment Co. Pvt. Ltd., preferred an Appeal before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal, after discussing elaborately the contentions raised by the parties, dismissed the appeal by order dated 20th March, 1976. Against that judgment and order, Maharashtra Land Development Corporation preferred Miscellaneous Petition No. 512 of 1976 before this Court. In that petition, a consent order was passed on 19th April, 1984 by this Court. It was agreed that with regard to its land, the petitioner was permitted to raise the dispute under section 6 of the Maharashtra Forests (Acquisition) Act, before the Competent Authority and also the question of vesting in the State Government, the land purchased by the Maharashtra Land Development Corporation under the conveyance deed dated 29th March, 1975. After the remand, the Maharashtra Land Development Corporation filed a short affidavit on 16th October, 1981 before the Competent Authority stating that the land was not a forest land and that the State Government has not notified the said land in the Government Gazette as a forest land. Against that, the Divisional Manager, Sanjay Gandhi National Park, has filed an affidavit on behalf of the State Government stating that the land in question was a forest land and that it was

absolutely necessary in the public interest to preserve it as a forest land. On the record there is notice dated 27th August, 1975 issued under section 35(3) of the Indian Forest Act. Again, an enquiry was held and the Sub-Divisional Officer arrived at the conclusion that the land was not a private forest. That order was set aside by the Maharashtra Revenue Tribunal by its order dated 29th September, 1986.

11. Against the order of the Maharashtra Revenue Tribunal, the Maharashtra Land Development Corporation filed Writ Petition No. 4726 of 1986. That petition was heard along with Writ Petition No. 3681 of 1983 filed by Kamruddin N. Shaikh. This Court by its order and judgment dated 13th/17th March, 1993 dismissed both these petitions. Against the order passed in Writ Petition No. 4726 of 1986, as stated above, the petitioners preferred Special Leave Petition and the Supreme Court had remanded the matter to the Tribunal. Further, against the judgment and order passed by this Court in Writ Petition No. 3681 of 1983, the petitioner filed Review Application and that Review Application was allowed by order dated 16th October, 1995.

12. It is to be clearly stated that against the order dated 11th November, 1975 passed by the Sub-Divisional Officer, Veekaylal Investment Company preferred an Appeal, being Appeal No. Rev. Forest 1 of 1975, before the Maharashtra Revenue Tribunal. That Appeal was dismissed by the Tribunal by its order dated 20th March, 1976. The aforesaid order dated 20th March, 1976 of the Maharashtra Revenue Tribunal was challenged by the Maharashtra Land Development Corporation in Writ Petition No. 4726 of 1986. It is to be noted that Veekaylal Investment Company did not adopt any proceeding to challenge the concurrent findings recorded by the Sub-Divisional Officer and the Maharashtra Revenue Tribunal to the effect that the land in question was a private forest. It is also to be noted that though the Maharashtra Land Development Corporation was claiming interest in the land through Veekaylal Investment Company, it was claimed by the Corporation that the Corporation was not given notice and was not aware of the proceedings adopted by Veekaylal Investment Company. Hence, the real dispute before the Tribunal was only with regard to 53 acres of land purchased by the Maharashtra Land Development Corporation.

13. By the impugned order, the Tribunal arrived at a conclusion that land bearing Survey No. 345-A, admeasuring 209 acres was not a forest land on the appointed date i.e. 30th August, 1975 under the provisions of the Maharashtra Private Forest (Acquisition) Act, 1975. The Tribunal further held that the land was neither a forest within the meaning of the entire section 2(c-1) of the Act nor private forest under section 2(f) of the Act.

14. It has been contended by the learned Counsel for the petitioner-State of Maharashtra, that the impugned order, on the face of it, is illegal and against the evidence on record. He pointed out that the Tribunal has not considered the entire evidence on record in its proper perspective and has overlooked the important evidence.

15. Apart from the chequered history of this litigation, the main question in these petitions is whether the land bearing Survey No. 345-A, which is part of Survey No. 345 was a forest land on the appointed date as per the Maharashtra Private Forests (Acquisition) Act, 1975. The question is required to be considered from the documentary evidence which is on record and that there is no oral evidence.

16. Admittedly, land bearing Survey No. 345 admeasuring 650 acres was a forest land. Out of that land, an area admeasuring 365 acres was acquired for the National Park. As some portion of the land was acquired the land was sub-divided into three parts i.e. Survey No. 345-A admeasuring 209 acres 25 gunthas, Survey No. 345-B admeasuring 365 acres (National Park) and Survey No. 345-C admeasuring 75 acres 17 gunthas. However, the fact remains that Survey No. 345-A is part of Survey No. 345 which was a forest land.

17. It is also admitted that this Court has appointed Court Receiver in Suit No. 3415 of 1947. The said suit was filed by Bai Fatimabai, widow of Haji Ahmed Haji Cassum for administration of the estate and for other reliefs. Receiver executed a sale deed dated 29th March, 1975 in favour of the Maharashtra Land Development Corporation which was a partnership firm for the land bearing Survey No. 345-A and other properties. In that sale deed, the first confirming parties are the heirs of Khimal Lalchand and the second confirming party is Veekaylal Investment Co. Pvt. Ltd. That document, inter alia, recites as under :---

(i) One Haji Alimahomed Haji Cassum during his life was absolutely seized and possessed of or otherwise well and sufficiently entitled to certain pieces or parcels of agricultural lands together with structures standing thereon situate lying and being in the Village of Dahisar in Thane District but now in the Registration Sub-district of Bandra, Bombay Suburban District, Greater Bombay.

(ii) He has expired on 7th November, 1946, leaving behind his widow and four sons.

(iii) The widow has filed Suit No. 3415 of 1947 against Dawood Hajeo Alimahomed Haji Cassum and others for administration of the estate of the deceased Haji Alimahomed Haji Cassum and for other reliefs.

(iv) By the order dated 30th June, 1950, the Court Receiver was appointed. A preliminary administration decree dated 25th November, 1952 was passed and the Receiver was authorised to sell by public auction all properties comprising the estate of the deceased Haji Alimahomed Haji Cassum.

In the sale deed, the description of all the properties transferred is mentioned in the First and Second Schedule. In the First Schedule, it has been specifically mentioned that Survey No. 345-A admeasuring 209 acres 25 gunthas was forest. In the Second Schedule also, it is described as piece or parcel of forest land. It is described as under :

'all that piece or parcel of forest land with structure standing thereon situate lying and being at Village Dahisar, Taluka Borivli, Registration Sub-district Bandra and District Bombay Suburban in Greater Bombay containing by admeasurements 2,61,814 square yards equivalent to 2,18,889 square metres or thereabouts and forming part of Survey No., 345-A of Village Dahisar, C.T.S. No. 3039 (Part) and bounded as follows :

that is to say on or towards the East by the National Park; on or towards the West partly by Plot bearing Survey No. 146 owned by Misquitta; partly by plot bearing Survey No. 101 (14 part) and partly by plot bearing Survey No. 147 and known as Raka Bauge; on or towards the North by M/s. Veekaylal Investment Co. Pvt. Ltd.

.....'

It is to be noted that in the said document, the Receiver as well as the second confirming party Veekaylal Investment Co. Pvt. Ltd., have specifically mentioned that Survey No. 345-A was piece and parcel of forest land with structures standing thereon.

18. This document was executed on 29th March, 1975. Therefore, the description of the land as a forest land is, prima facie, binding to the Veekaylal Investment Co. Pvt. Ltd., The Maharashtra Land Development Corporation and their assigns.

19. It has been contended that as the land was described as forest land, it would not mean that it was a forest within the meaning of the Act. In our view, even if this is considered not to be an admission by the purchasers or the assignees, yet it would mean that they considered this to be a forest land when they have purchased it and it is described so in 1975 when the document was executed. If it was not a forest land, the Maharashtra Land Development Corporation who was a purchaser would have specifically mentioned that the land was not a forest land and it should not be described as a forest land. This document was executed on 29th March, 1975 in favour of the Maharashtra Land Development Corporation and confirmed by Veekaylal Investment Co. Pvt. Ltd.

20. Apart from the above description, other revenue records also establish that Survey No. 345 which is divided into three parts i.e. Survey No. 345-A, 345-B and 345-C was a forest land. Mutation Entry effected on 3-5-1957 and certified on 17-5-1957 (Annexure '01' before the Tribunal), clearly mentions that on the basis of the Government Notifications dated 11th January, 1947 and 20th April, 1948, land bearing Survey No. 345 was divided into three parts viz., Survey No. 345-A admeasuring 209 acres 25 gunthas (forest), 345-B admeasuring 365 acres (National Park) and Survey No. 345-C admeasuring 75 acres 17 gunthas (forest).

21. Now, at this stage, it will be necessary to refer to and the definition of the word 'forest' given in section 2(c-i) and 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975 which reads as under:-

'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 or 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 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.'

The words 'private forest' is defined in section 2(f) which reads as under:-

'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 34-A of the Forest Act;

(ii) any forest in respect of which any notification issued under sub-section (i) 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.'

From the aforesaid definition of the word 'forest', it is apparent that it is a wide inclusive definition. Accordingly, forest means 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 product, or grazing facilities. It also includes 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. Further, it includes land which is part of a forest or was part of a forest. Admittedly, adjoining to this land part of Survey No. 345 is the Sanjay Gandhi National Park which is a forest land. Apart from this aspect, Survey No. 345 was divided into three parts only after acquisition of land for the Sanjay Gandhi National Park. This also clearly establishes that the land in question is lying within or being a forest and is, therefore, forest land.

22. With regard to the interpretation of the word 'forest', learned Counsel for the Maharashtra Land Development Corporation relied upon the case of Janu Chandra Wagmare and others v. The State of Maharashtra and others, reported in : AIR1978 Bom119 . In that case, the Court was merely concerned with the validity of the Act. While considering the validity, the Court held that the types of land that are sought to be included within the definition of 'forest' under sub-clauses (i) to (iv) of section 3 of the inclusive part of the definition therefore cannot be said to be remotely connected with the natural forest but are such as possess reasonable nexus, close connection with and attributes of a natural forest and, therefore, the artificiality, if any, cannot be said to introduce such matters over which the State

Legislature has no competence. With regard to sub-clause (v), the Court held that the fallen or felled forest produce without any changes being brought about by any process of sophistication and lying in its primary or natural state in the forest would form part of forest and as such the aforesaid artificiality cannot be said to introduce something over which the State Legislature has no competence; sub-clause (v), as stated above, deals with forest produce. 'Forest produce' is not defined in the Act but has been defined under the Indian Forest Act, 1927. Section 2(4) reads as under : '2(4) 'forest-produce' includes ---

(a) the following whether found in, or brought from, a forest or not, that is to say:-

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds (kuth) (apta and tembhurni leaves) rosha grass (including oil derived therefrom) rauwolfia serpentina) and myrabolams, and

(b) the following when found in, or brought from, a forest that is to say :---

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinabove mentioned of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax and all other parts of produce of animals, and

(iv) peat, surface, soil, rock and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries).'

While discussing this aspect, the Full Bench held as under :---

'In our view, the scheme of section 3 read with the two definitions and the word 'therein' occurring in sub-clause (v) which is full of significance clearly bring out the legislative intent to include within expression 'forest produce' such produce which satisfied three conditions viz., (i) it must be the produce of the private forest concerned, (ii) it must be lying in the forest in normal course on the appointed day and (iii) irrespective of whether it is attached or embedded or severed from its

place of birth or origin, it must be found in its primary or predominantly primary state or condition without any process of sophistication having been undertaken in regard to it.'

This judgment, upholding the validity of sub-clause (v) of section 3 of the Act, has no bearing on the question involved in this petition.

23. It is contended that quarrying of stones from the area itself would indicate that the land is not a forest land. This submission cannot be accepted because section 35(i) of the Indian Forest Act empowers the State Government by notification in the Official Gazette, inter alia, to regulate or prohibit 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. Therefore, if quarrying operation is carried out in a forest, it would mean that the land is not a forest land.

24. Reliance was placed upon mutation entry bearing No. 2430 which was effected on 6-1-1965 for Survey No. 345-A and 345-C. By that entry, in the 'kabjedar's' column, it was mentioned as 'Khot Alimohammed' and that the description of the land as 'forest land' was deleted on the basis of R.T.S. proceedings. Subsequently, Entry No. 2483 dated 1st June, 1965 is also mutated. That entry is based upon the order dated 24th December, 1964 passed under section 37 of the Land Revenue Code read with section 4 of the Salsette Estates (Land Revenue Exemption Abolition) Act, 1951. That order is produced on record. In that matter, the Mamlatdar has raised an issue whether the suit lands bearing Survey No. 345-A and 345-C were waste land or were under cultivation. The Mamlatdar in the said proceedings discussed evidence led by the applicant-estate holder who was deriving income from the said land and held that it was a 'waste land'. For this purpose, the Mamlatdar held that the estate-holder had derived income from the produce of the forest i.e. fuel, grass, tad patri etc. has been proved beyond doubt. It was, therefore, held that the land under enquiry belonged to the estate-holder prior to 1951 and that it was not waste land as its produce was appropriated by the estate-holder before the appointed date viz., 14th August, 1951. This also establishes that even in 1965 kabjedar considered this land as a forest land and witnesses were examined to prove the fact that from the forest

land income was derived by collecting forest produce such as fuel, grass, tad patri, etc., and that the estate-holder has spent some amount for cutting of the grass.

25. Against the order passed under section 37(2) of the Land Revenue Code read with section 4 of the S.E. (L.R.E.A.) Act, 1951, the State of Maharashtra preferred Revision Application before the Commissioner. The Commissioner by his order dated 14th October, 1970 rejected the said Revision Application. That order is also produced on record. The Conservator of Thane also by his letter dated 26th February, 1970 addressed to the Government requesting that the question of title over Survey No. 345 was not settled and the title of Veekaylal Investment Co. Pvt. Ltd., (respondent No. 1) was doubtful. Thereafter, record and proceedings were called for. In that case, the petitioners-Veekaylal Investment Co. Pvt. Ltd., was represented by Advocate Mr. Gupte. He contended that the Review was not maintainable. That contention was rejected and the Commissioner took into consideration the fact that Survey No. 345 was purchased by petitioners-Veekaylal Investment Co. Pvt. Ltd., from the Court Receiver in an auction which was effected on 27th March, 1962. The sale was confirmed by the High Court on 30th March, 1962. In that order, after examining the record, the Commissioner has observed that there was no dispute that new Survey No. 345 corresponding to Survey No. 278 of Dahisar and the Survey extract of the order of 1968 shows that that Survey Number was assigned as free gaathan. In that case also, Mr. Gupte relied upon the letter dated 12-11-1963 from the Divisional Forest Officer, Thane that the lands bearing Survey No. 345-A and 345-C are private forest lands. That contention was accepted by the Commissioner and it was held that it was not a Government forest land. Therefore, the Special Mamlatdar's order holding the land to be appropriated under section 4 of the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 was justified on that count. But these orders and the entry relied upon are mainly with regard to ownership of the land i.e. whether it is a Government forest land or whether it was a private forest land. In all these enquiries, it was not disputed by the petitioners that the land was a forest land. Their contention was that it was a private ownership forest land.

26. The next document is the 7/12 extract which is produced on record. It mentions that it was Survey No. 345-A (total area 650 acres 2 gunthas of Survey

No. 345), pot kharaba 325 acres and the kabjedar's name is shown as Haji Alli Mohamed. In the lower part of the record, for the years 1953-54, 1954-55 and 1955-56, it is mentioned as cattle grazing forest. Thereafter, from 1956-57 onwards upto 1968-69, it has been mentioned as forest. Then for the year 1970-71, it has been mentioned as forest. Thereafter, from 1971 onwards, it has been mentioned as ownership land with huts and grass. For the year 1973-74, it is mentioned as huts, quarry and grass.

27. Despite these documentary evidence on record, the Revenue Tribunal has arrived at the conclusion that the land was not a forest land by holding that :

i) the notice dated 27th August, 1975 issued under section 35(3) of the Indian Forest Act is invalid because :---

(a) Annexures 'E' and 'F' indicate that quarrying operations were carried on, on the land on the date when the Act came in force;

(b) no notice was given to the Maharashtra Land Development Corporation even though the document in favour of the Corporation was executed on 29th March, 1975 and was lodged for registration on 30th March, 1975 but was registered on 2nd February, 1983;

(c) the notice is invalid also on the ground that no Notification in the Official Gazette declaring the land as forest was issued;

ii) even though the land is described by almost all deponents in the inquiry before the Sub-Division Officer as 'jungle' land, yet it cannot be said to be forest land because that description was given on the basis of mortgage deed executed in the year 1900;

iii) Annexure 'H', which is a copy of an order dated 5th September, 1973 passed by the Special Land Acquisition Officer, shows that the Government has passed an order derequisitioning the land bearing Survey No. 345-A as it was not found suitable for development of forest.

iv) By order dated 12th February, 1992 (Annexure 'I'), the Sub-Divisional Officer has observed that portion of land admeasuring 60 acres out of Survey No. 345-A was used for quarrying purposes and is rendered unfit for any ecological, faunal and floral development as it is rocky land;

v) the location plan of National Park (Annexure 'K') shows that the entire land of Survey No. 345 is divided into three parts, namely, Survey No. 345-A, Survey No. 345-B and Survey No. 345-C, and that the entire land of Survey No. 345-C is in development zone and though it is quite adjacent to the National Park, it has been left out as there are quarries and huts and the Government is not seeking to include the said land into National Park so as to term it as a forest or a private forest; therefore with regard to Survey No. 345-A where there are quarries and huts, the attitude of the Government is against principles of natural justice;

vi) in his report dated 26th October, 1975 (Annexure 'L') the Divisional Forest Officer, Borivli National Park, has opined that it would not be possible to raise any forest plantation on the portion of the land in dispute;

vii) the study report (Annexure 'M') prepared by Kirloskar Consultants Ltd., Pune, which has been submitted to the Bombay Metropolitan Region Development Authority clearly mentions Survey No. 345-A and Survey No. 345-C as best areas for the purpose of quarrying; and that ---

viii) the entries in the record of rights do not indicate the user of the land as forest as they only indicate the ownership of the Forest Department and that the revenue record has only presumptive value.

The relevant discussion is as under :---

28. In paragraph 24 of the judgment dated 4th December, 1992, the Tribunal has relied upon the order dated 15th September, 1973 passed by the Special Land Acquisition Officer under section 48(2) of the Land Acquisition Act. The Tribunal observed that the land bearing Survey No. 345-A was not found suitable and convenient for the purpose of National Park for which it was notified for acquisition and, therefore, it was denotified from the acquisition; this denotification is not

conclusive that the land was not a forest but it is a circumstance in favour of the presumption that the land was not found suitable for development of the forest though a large portion of the land was acquired for the said purpose. In our view, the aforesaid inference drawn by the Tribunal is on the face of it, unreasonable and unjustified. The Tribunal has ignored the important aspect that the land bearing Survey No. 345 was one parcel of land. The Tribunal also ignored the fact that while denotifying the land, the Collector has not arrived at the conclusion that the land was not found suitable for the purpose of forest but he has only arrived at the conclusion that it was not required for the purpose of the National Park. It seems that the Tribunal has not referred to the order dated 15th September, 1973 passed by the State Government under section 48(2) of the Land Acquisition Act. In that proceeding, learned Advocate Mr. Purohit appeared before the said authority on behalf of Veekaylal Investment Company Pvt. Ltd. As stated therein, it was contended that there was no proper and valid notification issued by the Government purporting to withdraw the land from acquisition and, therefore the order passed by the Commissioner purporting to withdraw the land from acquisition was bad in law and/or mala fide and that the reasons given in the order for not awarding any compensation or damages are not sufficient, just, valid and proper. However, the only reason which is given in the said order is that the land admeasuring 3311 acres including the land bearing Survey No. 345-A was not found convenient and suitable for the purpose for which it was notified and hence under section 48(1) of the Land Acquisition Act, Government has dropped the land acquisition proceedings for Survey No. 345-A. Considering the other arguments, the Special Land Acquisition Officer has not awarded compensation under section 48(2) of the Land Acquisition Act as the claimants have not suffered any damage or loss. Hence the Tribunal was, on the face of it, wrong in drawing the inference that this circumstance is in favour of the presumption that the land bearing Survey No. 345-A admeasuring 209 acres was not found suitable for the development of forest.

29. In paragraph 22 of the judgment, the Tribunal has dealt with Annexures 'E' and 'F'. Annexure 'E' is the show cause notice dated 24th August, 1976 wherein it is mentioned that an area of 1575 square metres from Survey No. 345-A is unauthorisedly used for non-agricultural (commercial) purpose in contravention of

the provisions of section 44 of the Maharashtra Land Revenue Code, 1966 and, therefore, Haji Alli Mohamed through Court Receiver, High Court is liable to pay N.A. assessment and fine for the unauthorised use of the aforesaid land. To that notice, Maharashtra Stone Industries Ltd., have replied by a letter dated 12th September, 1976 (Annexure 'F') wherein it is stated that they have started the work of stone quarrying and crushing from 12th September, 1976 and not from 1st April, 1973 and the area used for quarrying the stone in the year 1974 was not exceeding 100 square metres while in the year 1975, they were using 400 square metres and in 1976, they were using 600 square metres. From these two documents, the Tribunal has drawn an inference that quarrying operations were carried on on the land on the appointed date when the Act came into force. In our view, from these two documents an inference cannot be drawn that the land is not forest because quarrying operations were carried out on few square metres of the land. It seems that the Tribunal has forgotten the fact that Survey No. 345-A was a large piece of land admeasuring 209 Acres. In any case, before quarrying operations were carried out on some portion of the land it does not mean that the land ceases to be a forest land.

30. The Tribunal, in paragraph 23 of the judgment further observed that all throughout, the land was considered as a 'jungle' land but this does not lead to the inference that on 30th August, 1975, the said land was forest.

31. The Tribunal has further relied upon the order passed by the Sub-Divisional Officer, Bombay Suburban District on 12th February, 1992 in the proceedings under sections 19, 21, 23 and 24 of the Wild Life (Protection) Act, 1972. Those proceedings were initiated in 1992. In that case, K.D. and Company has claimed deletion of his land from Survey No. 345-A from the operation of the provisions of section 21 of the Wild Life (Protection) Act. In the said proceedings, the Sub-Divisional Officer observed that from August, 1975, the claimant was carrying on quarrying operations from an area admeasuring 60 acres and that the enquiry was basically under the Wild Life (Protection) Act, 1972, the status of the land for which it is required was more important i.e. the utility of the land on the count of ecological, faunal and floral growth in the area. He, therefore, held that the said land was not to be included in the proposed National Park. The Revenue Tribunal

held that this evidence threw sufficient light on the fact that Survey No. 345-A has been held by various authorities as unfit to be in the Sanjay Gandhi National Park. In our view, the aforesaid order has nothing to do with the aspect whether the land in question is a forest land or not and the reliance placed by the Tribunal on the said order is totally misconceived.

32. Thereafter, the Tribunal further held that even the location plan of the National Park (Annexure 'A') indicates that the entire land bearing Survey No. 345 was divided into three parts viz., 345-A, 345-B and 345-C. The entire land of Survey No. 345-C is in development zone and though it is quite adjacent to the National Park, it has been left out as there are quarries and huts and the Government is not seeking to include the said Survey No. 345-C into the National Park. The Tribunal hence held that Survey No. 345-C is not going to be termed as forest or a private forest. With regard to Survey No. 345-A, the Tribunal observed that there are so many quarries and huts and the attitude of the authority is against the natural justice. We fail to understand the aforesaid observation or the logic recorded by the Tribunal.

33. The Tribunal further relied upon the letter dated 26th October, 1975 (Annexure 'L') written by the Divisional Forest Officer, Borivli National Park to the Sub-Divisional Officer wherein he has opined that in the lower part of the area in question which is situated close to the highway and habitation which is mostly rocky and is pockmarked with excavations and quarries and is also honeycombed with encroachments, it will not be possible to successfully raise any forest plantation. With regard to the upper half portion of the area along the periphery of the National Park, he has further opined that it is free from such encumbrances and as such, there should not be any difficulty in raising forest plantation in that part of the area. He has also opined that there would not be any difficulty in taking over immediate possession of the area which is free from encroachments which was approximately 100 acres in extent. With regard to the rest of the area, it was opined that it vested in the Government by virtue of issuing of notice under section 35(3) of the Private Forests (Acquisition) Act, 1975. In our view, if the Tribunal has read the said letter carefully, it would have been clear that this was merely an opinion given by the Divisional Forest Officer, Borivli National Park, when a point

was raised by the Advocate of M/s. Veekaylal Investment Company Pvt. Ltd., during the inquiry whether the land in question is suitable for the purpose of forest plantation. There also he has specifically mentioned that the upper half portion of the land is free from encumbrances and as such there would not be any difficulty in raising forest plantation in that part of the area. With regard to the lower part of the area in question admeasuring approximately 100 acres, which was situated close to highway and habitation, it is mostly rocky and is Pot Kharaba with excavations and quarrying. He has also stated that as regards the rest of the area, it stands vested in the Government. As discussed above, merely because there is encroachment or quarrying operations going on on some part of the land it would not cease to be a forest land.

34. The Tribunal also relied upon Annexure 'M' which is a study report prepared by Kirloskar Consultants Ltd., Poona which was submitted to the Bombay Metropolitan Region Development Authority, Bombay. The said report was submitted in the year 1991. It appears that on the record of the Tribunal, some portion of the report was produced wherein it is observed as under :

'A large number of quarries are located in hill range of Dahisar. The rock is not only good from engineering point of view, but is also available in large quantities. The existing quarries can be extended further and new quarries can be opened.

In Dahisar area, the main rock type is compact basalt and compact porphyritic basalt with small to medium size plagioclases phenocrysts. Rock is sound dense fine grained and at places almost glossy. It is excellent rock in any type of construction.'

Thus, the Tribunal observed that this report has an important bearing on the matter under consideration. It appears that this report has over-shadowed the approach of the Tribunal in appreciating the evidence on record. The Tribunal forgot the fact that the said report was to identify and select suitable sites for future quarrying and to formulate a proper methodology and work in a scientific manner for exploitation of quarrying material as also to formulate suitable schemes for rehabilitation of quarries after extraction of such materials. From this report, in our view, it would be difficult to draw an inference that the land could not be

considered, to be a forest land.

35. From the aforesaid evidence, the Tribunal observed in paragraph 30-A that the land bearing Survey No. 345-A is a rocky land where so many quarries are in operation in which hundreds of labourers are working, number of huts have been raised in the said land and it is not fit at all and also it is not possible to convert it into a forest land. The Tribunal further observed that for this, it was established that Survey Number 345-A was not a natural forest on the appointed date and it does not answer the requirements laid down within the First Part of the main deeming clause of section 2(c-1) of the Act.

36. Considering the abovesaid reasons, in our view, the entire approach of the Tribunal in arriving at the conclusion that Survey No. 345-A was not a forest land is patently erroneous. The conclusions are arrived at by ignoring the material evidence on record. The Tribunal has overlooked the fact (i) that all throughout, Survey No. 345 admeasuring 650 acres of land was considered to be a forest land, (ii) that out of the said Survey No. 345, 365 acres of land was acquired for the National Park, (iii) that the remaining land would also be forest land. In record of right also, the land was described as forest gurcharan land (meaning cattle grazing forest). Merely because stone quarrying operation is carried out, it would not mean that the land ceased to be a forest land.

37. Now at this stage we would note that before the Tribunal no additional evidence was led by the parties. The Maharashtra Land Development Corporation produced certain documents on record to which we have already made reference. However, the State of Maharashtra has not led any further evidence. It is to be noted that as per the roznama of the Revenue Tribunal dated 13th October, 1992, it appears that on 13th October, 1992, the Tribunal has passed the following order :---

'As per the directions given on the last date, respondent No. 1 has produced documentary evidence on 7-10-1992. No evidence has been produced on behalf of the appellant and other respondents. The Appellant (Assistant Conservator of Forests) submitted an application seeking 10 days time for producing necessary evidence but the time-limit has been fixed by the Honourable Supreme Court and

this Court has no authority to extend the said time-limit. Hence, no fresh evidence can be received from any party thereafter. The case will be heard on the present material on record.'

The Tribunal thereafter heard the aforesaid Revision Application.

38. It seems that without proving the documents which were produced on record before the Tribunal, the Tribunal has considered them but it hardly would make any difference in arriving at the aforesaid conclusion that the land was a private forest. Now we would deal with the additional contentions raised in Writ Petition No. 3681 of 1983.

39. It is contended that the petitioner was not given an opportunity to be heard by the Sub-Divisional Officer and, therefore, the order passed by the authority below be set aside. He also contended that the Authority erred in holding that no separate notice was required to be served on the petitioner.

40. It is to be noted that Exhibit 'A' to the petition itself indicates that the petitioner had filed an Application on 30th October, 1975 stating that he was in possession of an area of over 50 acres out of Survey No. 345-A since August, 1971 and was carrying out quarrying operations under various agreements with M/s. Veekaylal Investment Co. Pvt. Ltd., as owners of the area. It is also stated that the said land cannot be called a private forest. Exhibit 'B' to the petition is a letter dated 1st February, 1975 wherein the petitioner has stated that he was a party having interest of a permanent nature and, therefore, correspondence on the subject matter should be sent to him invariably. It was also stated that the petitioner had incurred huge expenditure of several lacs of Rupees to develop the land in his possession and acquisition of this land would bring to an end the activities giving employment to hundreds of labourers and would also ruin him completely. That representation was rejected by observing that it hardly requires any consideration because of the finding given in the previous paragraphs of the order. The petitioner was in know of the proceedings which were pending before the Sub-Divisional Officer. He was also in know of the order passed by the authority and yet he has not preferred any appeal under the Act before the Tribunal.

41. Considering the aforesaid fact, it cannot be said that the petitioner was not heard by the Sub-Divisional Officer. As stated above, at no point of time, parties have asked for leading any oral evidence. The petitioner's representations were considered by the authority.

In any event, at the relevant time the property was standing in the name of the Court Receiver and also, as his assignee by pencil entry, in the name of Veekaylal Investment Company. The company and the other so-called interested parties had made submissions in writing and those submissions were not accepted.

On merits, as discussed above, we have arrived at the conclusion that Survey No. 345-A was a forest land.

Against the order passed by the Sub-Divisional Officer, the petitioner in Writ Petition No. 3681 of 1983 filed a suit which was subsequently withdrawn. He has not preferred any Appeal against the order passed by the competent authority. Thereafter he filed the present petition. Therefore, it would be difficult to uphold the contention of the learned Counsel appearing for the petitioner that as no opportunity was given to the petitioner the petition should be allowed on that ground at this belated stage.

42. In this view of the matter, Writ Petition No. 2023 of 1994 filed by the State of Maharashtra is allowed. The impugned order dated 4th December, 1992 (Exhibit 'G' to the petition) passed by the Maharashtra Revenue Tribunal is quashed and set aside. It is held that land bearing Survey No. 345-A situated at Dahisar is a private forest which vests in the State Government under the Maharashtra Private Forests (Acquisition) Act, 1975. Rule is made absolute accordingly with no order as to costs.

43. In view of the aforesaid discussion, Writ Petition No. 3681 of 1983 filed by Kamruddin N. Shaikh is required to be dismissed and the same is hereby dismissed. Rule is discharged with no order as to costs.

44. Interim relief granted by this Court to continue till 31st July, 1996.

