

State of Maharashtra and anr. Vs. Maharashtra Land Development Corporation and anr.

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Court : Mumbai

Decided On : Jul-31-2003

Reported in : 2004(1)BomCR24

Judge : C.K. Thakker, C.J. and ;S. Radhakrishnan, J.

Acts : Maharashtra Private Forests Act, 1975 - Sections 2 and 6; Bombay Salsette Estate Act, 1951 - Sections 4; [Forest Act, 1927](#) - Sections 35(1); [Constitution of India](#) - Articles 226 and 227

Appeal No. : Writ Petition Nos. 1052 of 1998 and 1383 of 2002

Appellant : State of Maharashtra and anr.

Respondent : Maharashtra Land Development Corporation and anr.

Advocate for Def. : Miland Sathe and ;Sheela John, Advs., i/b., M.P. Savila and Co. in W.P. No. 1052/1998 for respondent No. 1

Advocate for Pet/Ap. : C.J. Sawant, Spl. C. and ;R.M. Sawant, G.P. and ;K.R. Belosey, A.G.P., ;Pradeep Sancheti, Adv., i/b., Meena A. Fulbandhe, Adv. in W.P. Nos. 1052/1998 and 1383/2002

Judgement :

1. Writ Petition No. 1052 of 1998 is filed by the State of Maharashtra against respondent No. 1 for an appropriate writ, direction or order quashing and setting aside the order passed by the Maharashtra Revenue Tribunal in Appeal Forest-3 of 1997 wherein it was held that the land in question is neither 'forest' nor 'private forest' within the meaning of the Maharashtra Private Forests (Aquisition) Act, 1975 (hereinafter referred to as 'the said Act'). A prayer is also made to set aside the order passed by Sub-Divisional Officer, Bombay Suburban District dated 23rd April, 1985 under section 6 of the said Act. A declaration is sought to the effect that the land bearing Survey No. 345-A situated at village Dahisar is 'forest' and 'private forest' under the Act and as such the land stands acquired and vested in the State of Maharashtra.

2. It is the case of the petitioner-State that the land in question was part of original Survey No. 345. Survey No. 345 was admeasuring about 650 acres. At all relevant times, it was shown as 'forest land' in the Revenue records. In or about 1947 out of 650 acres, about 365 acres was acquired for the purpose of 'National Park' at Borivli. Original Survey No. 345 was divided into three survey numbers, being Survey Nos. 345-A, 345-B and 345-C. The land which was acquired was Survey No. 345-B. From the remaining land, land admeasuring about 75 acres was given Survey No. 345-C and the land in question admeasuring about 209 acres was given Survey No. 345-A.

3. According to the petitioner, village Dahisar was Ex-Khot village. The whole land of Survey No. 345 of village Dahisar was originally owned by ex-khot of the area by name Haji Ali Kasam Agboatwala, who expired in the year 1945. Administration Suit No. 3415 of 1957 was filed in the High Court of Judicature at Bombay and the Court Receiver, High Court of Bombay was appointed for 'administration and management of the estate belonging to Agboatwala. In 1962, in pursuance of an order passed by the High Court, the suit land sold which was purchased by one M/s. Veekaylal Investment Company ('Company' for short) from the Court Receiver. According to the case of the State, even at that juncture the suit land was 'forest land'. In 1963-64, proceedings were initiated under the Bombay

Salsette Estate Abolition Act, 1951, and vide an order dated 24th December, 1964, the entire land bearing Survey No. 345-A was held 'forest' and vested in the State under section 4 of the said Act.

4. On 27th August, 1975, a notice was issued by the State Government to the Company under sub-section (3) of section 35 of the Indian [Forest Act, 1927](#) calling upon the Company, the owner of the land, to show cause as to why notification under sub-section (1) of section 35 of the Act should not be issued for regulating and/or prohibiting the non-forest activities on the land. The said notice was issued in respect of total area of land bearing Survey No. 345-A admeasuring 209 acres.

5. On 30th August, 1975, the Maharashtra Private Forests (Acquisition) Act, 1975 came into force under which land bearing Survey No. 345-A stood acquired and vested in the State Government on the appointed day i.e. August 30, 1975. Accordingly, on October 8, 1975, the Sub-Divisional Officer, Bombay Sub-urban District, in exercise of power under section 5 of the said Act, issued notice to the company to hand over possession of the entire land of Survey No. 345-A admeasuring 209 acres. The company filed a reply to the said notice contending that the land bearing Survey No. 345-A was not 'forest' much less a 'private forest'. The company also called upon the Collector to hear and decide the question as to whether or not the land was 'forest' or 'private forest' and whether it vested in the State Government under the Act. An inquiry was conducted under section 6 of the Act by the Sub-Divisional Officer, Bombay Suburban District, wherein notices were issued to the company, being the owner of the land as well as to the Court Receiver. The Sub-Divisional Officer, personally inspected the site along with Divisional Forest Officer on October 17, 1975. The company made a written representation on 28th October, 1975. Detailed written arguments were also filed by the company. By an order dated 12th November, 1975, the Sub-Divisional Officer held the land to be 'private forest' and stood acquired and vested in the State of Maharashtra. The company was, therefore, called upon to hand over possession of the land within 10 days to the Collector of Bombay.

6. The company challenged the said order passed by the Sub-Divisional Officer by filing an appeal before the Maharashtra Revenue Tribunal and the Maharashtra

Revenue Tribunal vide its order dated 20th March, 1976 dismissed the appeal, upholding and confirming the order passed by Sub-Divisional Officer and observing that the land in question was 'forest' within the meaning of section 2(c-i) of the Act of 1975. It was also held to be 'private forest' falling under section 2(f) of the Act and as such stood acquired and vested in the State of Maharashtra. The said order was never challenged in further proceedings by the company and became final, conclusive and binding on the parties.

7. It may be stated that when the question of handing over actual and physical possession of land bearing Survey No. 345-A came up, it was revealed that out of 209 acres of land of Survey No. 345-A, land admeasuring about 53 acres was in possession of the Maharashtra Land Development Corporation ('Corporation' for short-respondent No. 1 herein), and 50 acres was in possession of K.N. Shaikh (petitioner of Writ Petition No. 1383 of 2002). The Company, in the circumstances, handed over to the petitioner possession of land admeasuring about 106 acres of land out of 209 acres of Survey No. 345-A. A possession receipt dated 31st August, 1984 is also annexed to the petition showing therein that paper possession of land admeasuring 106 acres of Survey No. 345-A (Part) was handed over to Mr. S.B. Jadhav as per the order passed by Sub-Divisional Officer dated 21st July, 1984.

8. Respondent No. 1 Corporation objected to handing over possession of the land which was with it. It filed Miscellaneous Petition No. 512 of 1976 in this Court challenging the notice issued by Sub-Divisional Officer. It also challenged an order dated November 12, 1975 passed by Sub-Divisional Officer, holding the land to be 'forest' as also judgment and order dated March 20, 1976 passed by Revenue Tribunal confirming the order passed by Sub-Divisional Officer. The orders were not challenged by the aggrieved party and they had become final. The first respondent challenged the above decisions, inter alia contending that they were in violation of principles of natural justice. The said Miscellaneous Petition No. 512 of 1976, however, came to be settled on the basis of consent terms arrived at between the parties on 19th April, 1984. The consent terms, inter alia, provided that fresh inquiry will be conducted under section 6 of the Act regarding vesting of the property admeasuring 53 acres in possession of respondent No. 1 company. It

was also provided that in case the authority will come to the conclusion that the land in possession of respondent No. 1 is a 'forest' and 'private forest' and stood acquired and vested in the Government of Maharashtra, the Corporation would hand over possession of the land to the Sub-Divisional Officer.

9. In pursuance of the consent terms arrived at between the parties, the Sub-Divisional Officer conducted fresh inquiry under section 6 of the Act, after issuing necessary notice to respondent No. 1-company. After hearing the first respondent, the Sub-Divisional Officer, by an order dated 23rd April, 1985, held that land admeasuring 53 acres out of Survey No. 345-A in possession of respondent No. 1 Corporation was neither a forest nor 'private forest' and as such did not stand acquired and vested in the Government of Maharashtra in accordance with the provisions of the Act.

10. The petitioner challenged the said order passed by the Sub-Divisional Officer by filing an appeal before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal, vide its judgment and order dated 29th September, 1986, allowed the appeal, set aside the order passed by the Sub-Divisional Officer and declared that the land admeasuring 53 acres in possession of respondent No. 1 as 'forest' and 'private forest' as defined in the Act. The Tribunal also held that in accordance with the provisions of the Act, the land stood acquired and vested in the State of Maharashtra.

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

12. The first respondent Corporation challenged the order passed by the Maharashtra Revenue Tribunal and confirmed by a Division Bench of this Court by carrying the matter to the Supreme Court. The Supreme Court, by an order dated 27th August, 1992, allowed the appeal, set aside the order passed by this Court as

well as by Maharashtra Revenue Tribunal and remanded the matter to the Tribunal, directing it to dispose of the appeal afresh by affording to both the parties an opportunity of adducing additional evidence.

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

14. The Department of Forest, being aggrieved by the above decision of Maharashtra Revenue Tribunal, filed Writ Petition No. 2023 of 1994 in this Court and this Court vide its judgment and order dated 11/15/16/17th April, 1996 allowed the petition and quashed and set aside the order passed by Maharashtra Revenue Tribunal concluding that the entire land bearing Survey No. 345-A, admeasuring 209 acres was 'forest' and 'private forest' which stood vested in the Government of Maharashtra under the provisions of the Act of 1975.

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

16. The Maharashtra Revenue Tribunal, in pursuance of the direction issued by the Apex Court, again considered the question in the light of the rival contentions and the evidence before it and by an order dated 21st February, 1998, once again held that the land in question cannot be treated as 'forest' or 'private forest' under the Act of 1975, and hence no action could be taken under the said Act. The appeal filed by the appellant (petitioner herein) came to be dismissed. It is that order passed by the Maharashtra Revenue Tribunal on 21st February, 1998 which is challenged by the petitioner in Writ Petition No. 1052 of 1998.

17. Rule was issued by a Division Bench (Coram M.B. Shah, C.J. (as His Lordship then was) and Y.S. Jahagirdar, J.) on 24th August, 1998. Interim relief was not granted because licence for quarrying operation was not renewed. The Court, however, observed that if the licence would be renewed, appropriate order would be passed.

18. An affidavit in reply was filed by one of the partners of respondent No. 1 on 24th June, 1998 even before Rule was issued by opposing admission of the petition and by requesting the Court to dismiss the petition summarily by raising several contentions. It was submitted that concurrent findings of fact had been recorded by the authorities below and the High Court should not interfere with them. It was also submitted that the land admeasuring 53 acres belonged to respondent No. 1. It was neither 'forest' nor 'private forest' and did not vest in the State Government. It was urged that it is the policy of the State that there should be an end to every litigation and it would be in the interest of justice to dismiss the petition summarily as the litigation had been continued for more than two decades and the matter had reached the Apex Court twice. According to the deponent, on the basis of the evidence adduced by the parties, a conclusion had been arrived at by the Maharashtra Revenue Tribunal and a finding was recorded that the disputed land was not forest/private forest. Such order does not require interference by this Court in exercise of supervisory power under Article 227 of the Constitution. It was also submitted that though the Hon'ble Apex Court had granted liberty to the State to place additional evidence/material/further material on record, nothing was done by the State Government. Additional evidence was produced by the first respondent and on consideration of such material, the Maharashtra Revenue Tribunal held that the land belonged to respondent No. 1. The said order required no re-consideration.

19. In the counter, it was also stated that on the basis of the consent terms dated 19th April, 1984 in Miscellaneous Petition No. 512 of 1976, the question was required to be decided under section 6 of 1975 Act. It was also stated that the land of respondent No. 1 was not adjacent to National Park and on that ground it could not be treated 'forest' nor it was part of National Park. It was, therefore, submitted that no case had been made out by the petitioner to issue Rule on the petition.

20. After the petition was admitted and Rule was issued, further affidavit was filed by the same partner recently on 4th July, 2003 when this petition along with other petitions were placed for final hearing. In the said reply, objections which were raised earlier were reiterated. It was also contended that the order passed by the Maharashtra Revenue Tribunal was in consonance with the provisions of the Act. It was, therefore, submitted that the petition deserved to be dismissed.

21. Writ Petition No. 1383 of 2002 is filed by the petitioner for an appropriate writ, direction or order quashing and setting aside the order dated 14th March, 2002 (Exhibit-A) passed by the Maharashtra Revenue Tribunal in Appeal No. Revision Forest 3 of 1996 and by restoring status quo ante as prevalent on 1st October, 1996 so that the petitioner may carry out quarrying activities. A further prayer is made restraining respondent Nos. 1 and 2, their servants, agents and/or nominees in any manner changing or altering the land, plant, machinery and properties forcibly in which the petitioner was in possession on 1st October, 1996.

22. The case of the petitioner is that one Haji Mohammed Haji Kasam Agboatwala was the owner of land bearing Survey No. 345 situate at Dahisar (Thane District). It admeasured about 650 acres and 02 gunthas. Haji Mohammed Haji Kasam Agboatwala died on 7th November, 1946, leaving behind him his widow, four sons and four daughters. The State Government issued a notification for acquisition of the whole land of Survey No. 345. It, however, acquired only a part of it admeasuring 365 acres under the provisions of Land Acquisition Act, 1854 for setting up National Park, Borivli, leaving out other areas. Survey No. 345 was subdivided into three parts, Namely, (i) Survey No. 345-A, admeasuring 209 area and 25 gunthas (released from acquisition as not suitable), (ii) Survey No. 345-B, admeasuring 365 acres (acquired for private National Park), and (iii) Survey No. 345-C, admeasuring 75 acres and 17 gunthas.

23. According to the petitioner, the widow of Haji Ali Mohammed instituted an Administration Suit No. 3415 of 1947 on the Original Side of the High Court of Bombay for administration of estate of her deceased husband including Survey No. 345-A. On 11th June, 1950, the High Court ordered appointment of a Court Receiver. In 1962, the Court Receiver, auctioned the land which was purchased

by one Khiamal Lalchand who promoted a company by name M/s. Veekaylal Investment Company Pvt. Ltd. ('Company' for short). The Company in turn agreed to sell the land to M/s. Vijay & Haresh Corporation. By an agreement dated 9th September, 1971, Vijay & Haresh Corporation granted lease in favour of the petitioner in respect of entire Survey No. 345-A for carrying of stone and quarrying operation and for bringing it to the ground level. By a letter dated 9th October, 1971, the petitioner was permitted to do any kind of digging work on the land and for blasting of stone and racks and to put up huts for the labourers. By another letter dated 10th November, 1971, the petitioner was allowed to bring in and install machineries for the purposes of quarrying stone from the land and for transportation thereof. The petitioner continued to do quarrying operations.

24. In 1973, there were disputes between the company and M/s. Vijay and Haresh Corporation for which Suit No. 5726 of 1973 was filed in the Bombay City Civil Court. The petitioner was joined as a defendant in the said suit. A notice of motion was taken out by the company against M/s. Vijay and Haresh Corporation as also the petitioner from removing and/or crushing of stones from Survey No. 345-A or from trespassing and/or using the link road between Survey No. 345 and National Park. A compromise was arrived at in the said litigation and the petitioner was allowed to retain the land of Survey No. 345-A which had been earmarked by the petitioner for quarrying and levelling purposes covered by wire fencing. A fresh agreement was executed for the purpose. According to the petitioner, the said land is neither forest nor private forest nor part of National Park and hence no proceedings can be initiated by the respondent-authorities in respect of the said land.

25. The petitioner also referred to in the petition the earlier proceedings initiated in respect of the land in question, the orders passed by the Sub-Divisional Officer, by the Maharashtra Revenue Tribunal, by this Court as well as by the Supreme Court.

26. As already earlier, a Division Bench of this Court disposed of Writ Petition No. 3681 of 1984 (petitioner herein) and in Writ Petition No. 2023 of 1994 (respondent No. 1 in Writ Petition No. 1052 of 1998) on 11, 15, 16 and 17th April, 1996. The

Division Bench of this Court allowed the writ petition filed by the State of Maharashtra and dismissed the petition filed by K.N. Shaikh. Both the matters were taken to the Supreme Court by the aggrieved parties, namely, Maharashtra Land Development Corporation and the present petitioner. So far as the appeal filed by the Maharashtra Land Development Corporation is concerned, the appeal was allowed. The order passed by the Division Bench of this Court was set aside and the Maharashtra Revenue Tribunal was directed to hear the matter afresh in accordance with law.

27. The special leave petition filed by the present petitioner was dismissed leaving it open to the petitioner to adopt other remedy as is deemed appropriate. In SLP (C) No. 14917 of 1996 the Apex Court observed:

'The Special Leave Petition is dismissed, leaving it open to the petitioners to adopt such other remedy as is deemed appropriate.

It is submitted that the possession of the petitioners should be protected. We make it clear that we are passing no such order.

Counsel now submits that we should delete these last sentences. We have included these last sentences because Counsel repeatedly insisted that his client's possession should be protected, though we indicated our unwillingness to so order. We decline to delete these last sentences.'

28. It appears that taking clue of the above observations of the Apex Court, the petitioner again approached the Maharashtra Revenue Tribunal by filing Appeal Revision Forest 3 of 1996 under section 6 of the Maharashtra Private Forests (Acquisition) Act, 1975, with an application for condonation of delay. The Tribunal also granted interim stay against operation of the impugned order passed by the Sub-Divisional Officer. The State of Maharashtra filed a contempt petition being Contempt Petition No. 275 of 1997 against the petitioner and Maharashtra Revenue Tribunal alleging that in spite of the dismissal of special leave petition, the petitioner had filed an appeal before the Maharashtra Revenue Tribunal thereby violating and disobeying the order of the Apex Court. Similarly, Maharashtra Revenue Tribunal had also committed contempt in entertaining the

appeal inspite of dismissal of S.L.P. The contempt petition was, however, dismissed as withdrawn by the Hon'ble Supreme Court on 19th August, 1997.

29. The appeal was thereafter heard by the Maharashtra Revenue Tribunal and by order impugned in the present petition dated 14th March, 2002, the Tribunal dismissed the appeal. The said order is challenged in the present petition.

30. On 26th November, 2002, writ petition was admitted and ordered to be put up for final hearing with Writ Petition No. 1052 of 1998. A further order was passed to list both the petitions for interim reliefs after one week. On 31st March, 2003, both the matters were placed before the Division Bench and following order was passed.

'Today these matters were listed before us for orders regarding interim relief. Learned Counsel appearing for the parties pointed out an order made on 5-5-2000 by a Division Bench consisting of my Lord the Chief Justice B.P. Singh (as he then was) and Justice N.J. Pandya. Looking to the controversy involved, their Lordships observed in para 5 as under:

'This Bench has issued direction from time to time and have heard the petition for several days. We, therefore, direct that all applications in writ petitions and fresh writ petitions filed relating to the same matter should be placed before this Bench only for other directions.'2. Later on this matter came up before another Division Bench of this Court when it was observed that Hon'ble Mrs. Justice Ranjana Desai will not be able to take up this matter. Hence an order was passed directing that it be placed before the Bench presided over by me (Palshikar, J.) and this is how the matter is listed today. Having perused the order of 5-5-2000 we deem it only proper to direct the placement of these matters before my Lord the Chief Justice on Thursday 3-4-2003 for appropriate orders regarding hearing of these matters.

31. It may be stated that a petition, being Writ Petition No. 305 of 1995, was instituted by Bombay Environmental Action Group and another against the State of Maharashtra and its officers as also against the Union of India and others, praying therein to direct the authorities to remove encroachers and unauthorised occupants from National Park by demolishing all such illegal structures from

National Park. A complaint was also made against the authorities for granting/renewing quarry licences.

32. After considering rival contentions of the parties, this Court, by a judgment dated 15th September, 2003, allowed the petition and issued several directions to the respondent-authorities.

33. We have heard Mr. C.J. Sawant, learned Special Counsel, instructed by Mr. R.M. Sawant, learned Government Pleader for the petitioner and Mr. Milind Sathe, learned Counsel, instructed by M/s. Savla & Company for the first respondent (Writ Petition No. 1052 of 1998) and Mr. Pradeep Sancheti, learned Counsel, instructed by Mrs. Meena A. Fulbandhe for the petitioner and Mr. C.J. Sawant, learned Special Counsel, instructed by Mr. R.M. Sawant, learned Government Pleader, for respondents (Writ Petition No. 1383 of 2002).

34. Mr. Sawant contended that the Maharashtra Revenue Tribunal committed an error of law as well as of jurisdiction in holding that the land claimed by respondent No. 1-Corporation in Writ Petition No. 1052 of 1998 was not forest or private forest and did not vest in the State Government free from all encumbrances. He also contended that Survey No. 345-A in its entirety is part of Sanjay Gandhi National Park Division ('SGNP Division' for short). Interim orders were passed by this Court from time to time and in particular orders dated 7th May, 1997 and 17th July, 1999, apply to the said land. In view thereof, the Maharashtra Revenue Tribunal ought to have held that the land on which respondent No. 1 claimed ownership was 'forest'? 'private forest' and vested in the State Government. It was further submitted that inspite of the direction issued by the Hon'ble Supreme Court, the Tribunal failed to take into account relevant material. By ignoring such considerations, it proceeded to decide the question which has caused serious prejudice to the petitioner-State. The so-called findings, therefore, are based on 'no evidence' and liable to be quashed and set aside. It was urged that this Court vide its judgment and order dated 17th April, 1996 considered several circumstances on the basis of which it was held that the land was forest land. The Supreme Court set aside the order passed by this Court as, according to the Apex Court, those circumstances and materials were not considered by the Maharashtra

Revenue Tribunal and came to be considered for the first time by the High Court which was not proper. The order of the High Court was, therefore, vulnerable and was set aside and a direction was issued to the Tribunal to consider the material which was before the High Court and to pass an appropriate order in accordance with law. Unfortunately, however, submitted the Counsel, the said exercise has not undertaken by the Maharashtra Revenue Tribunal which has resulted in miscarriage of justice and the order is vulnerable. It was also submitted that irrelevant and extraneous factors have been kept in mind by the Tribunal for coming to the conclusion that the land was not forest/private forest. Without taking into account and considering in their proper perspective the relevant provisions of the Indian [Forest Act, 1927](#), Maharashtra Private Forest (Acquisition) Act, 1975 as well as other Acts and various decisions of the Supreme Court, including T.V. Godavarman Thirumulkpad v. Union of India, : AIR 1997 SC1228 , the Tribunal has passed the impugned order. It was, therefore, submitted that the petition deserves to be allowed and the order passed by Maharashtra Revenue Tribunal dated 21st February, 1998 deserves to be quashed and set aside by declaring the land to be forest/private forest vested in the State Government free from all encumbrances.

35. Mr. Milind Sathe, learned Counsel for respondent No. 1, on the other hand, supported the order passed by the Maharashtra Revenue Tribunal.

36. He raised a preliminary contention as to the maintainability of the writ petition. According to the learned Counsel, against an order passed by a 'Tribunal', a petition would lie under Article 227 of the Constitution. While exercising jurisdiction under the said provisions, the power of this Court is of superintendence and is limited to seeing that a Court subordinate to this Court or an inferior Tribunal does not exceed its jurisdiction/authority of law and usurp power not vested in it. The High Court cannot correct either errors of fact or even of law not touching the jurisdiction of the Court. The Counsel submitted that on the basis of evidence adduced by the parties, a finding of fact has been recorded by the Maharashtra Revenue Tribunal that the land occupied by the first respondent was neither 'forest' nor 'private forest', and hence did not vest in the State. It is a question of fact, pure and simple. Such a finding cannot be challenged under Article 227 of the

Constitution. It is also not open to challenge under Articles 226/227 of the Constitution. Reliance in this connection was placed on several decisions of the Supreme Court as well as of this Court.

37. On merits, the Counsel contended that no error of jurisdiction has been committed by the Tribunal. On the basis of the consent terms arrived at between the parties on 19th April, 1984 in Miscellaneous Petition No. 512 of 1976, the question was considered by the Sub-Divisional Officer and the order was passed by him. It cannot be contended that the Sub-Divisional Officer or Maharashtra Revenue Tribunal had no jurisdiction to go into the question and decide it. It was stated that in the earlier proceedings, respondent No. 1 was not a party, and hence those orders were not binding on the first respondent. The State authorities were also satisfied and convinced about the stand taken by the first respondent, and hence agreed to the consent terms in Miscellaneous Petition No. 512 of 1976. On the basis of the said consent terms, the question was considered by the authorities under the Act and finally by the order impugned in the present petition, the Tribunal held that the land is not forest/private forest.

38. The Counsel also stated that twice the matter had reached upto the highest Court of the country. At both the occasions, the Supreme Court allowed the appeal filed by the first respondent, remanded the matter to the Maharashtra Revenue Tribunal and granted liberty to the parties to adduce additional evidence. Additional evidence had not been led by the petitioner but further materials had been produced on record by the first respondent. If, on the basis of such materials, the Tribunal has decided the matter in favour of the first respondent, the petitioner has no right to make grievance against such order.

39. Adjudication as to the nature of land whether it is 'forest' or 'private forest' has to be done in accordance with the provisions of 1975 Act. Relying on a decision of the Full Bench of this Court in Janu Chandra Waghmare v. State of Maharashtra, : AIR1978 Bom119 (F.B.), the Counsel submitted that it is not doubt true that all private forests in the State shall stand acquired and vested free from all encumbrances in the State and shall be deemed to be property of the State Government. But the land must be 'forest' as contemplated by Clause (c-i) of

section 2 of the Act or 'private forest' as defined in Clause (f) of the Act. The criteria have been laid down in the Act for a declaration with regard to the type of land covered by the two expression. It is, therefore, open to an objection that the land is not 'forest' or 'private forest'. It was, therefore, permissible to respondent No. 1 to contend that the provisions of 1975 Act were not attracted and the Tribunal was within its power, authority or jurisdiction to decide the question which has been decided.

40. It was also submitted that the Tribunal did consider documentary evidence as well as affidavits, which had been brought on record and considered by this Court in its earlier judgment dated 11/15/16/ 17th April, 1996 which was set aside by the Supreme Court. The Counsel submitted that, according to the State, the entire Survey No. 345 admeasuring 650 acres was a forest land. A portion of which admeasuring 365 acres was acquired for National Park and marked as Survey No. 345-B. Balance portion of Survey No. 345-A admeasuring 209 acres and Survey No. 345-C admeasuring 75 acres, however, remained. So far as Survey No. 345-A is concerned, it was notified for Sanjay Gandhi National Park but was deleted from acquisition as it was not found suitable and was not possible to raise any forest on the said land. It is true that in conveyance, dated 29th March, 1975, executed by Court Receiver in favour of respondent No. 1, the land in the schedule was described as 'Piece or parcel of forest land with structures standing thereon.....'. According to the first respondent, however, description in the conveyance was borrowed from the original documents which 'traditionally' described land as forest land. The nature of the land, therefore, was required to be adjudicated in accordance with the provisions of 1975 Act, whether the land was forest/private forest on 30th August, 1975. On the basis of evidence on record, it was held that it was not forest/private forest and such a finding does not require interference. It was, therefore, submitted that the petition deserves to be dismissed.

41. It may be stated that after coming into force the Maharashtra Private Forests (Acquisition) Act, 1975, an inquiry was conducted in accordance with section 6 of the said Act in respect of land bearing Survey No. 345-A of Dahisar Village in Borivli Taluka. In the report dated 29th September, 1975, the Divisional Forest Officer, Borivli National Park informed that the company had refused to hand over

possession of land Survey No. 345-A admeasuring 209 acres and 25 gunthas to the Forest Department, though it constituted 'private forest' as defined in section 2(f) of the Act and stood acquired and vested in the State Government free from all encumbrances under section 2(f)(iii) read with section 3 of the Act. A notice was, therefore, issued under section 5 of the Act calling upon the parties in possession to hand over possession of various land within 24 hours failing which they will be evicted from the said private forest vesting on the Government. Such notice was issued to (i) Haji Ali Mohamed, ex-khot of Dahisar Village and the original owner of the land, (ii) Court Receiver of High Court, Bombay in Suit No. 3415 of 1947, and (iii) a M/s. Veekaylal Investment Company.

42. In reply to the said notice, one Anwar Hajee Ali Mohamed and others on behalf of Haji Ali Mohamed, ex-khot vide their letter dated 9th October, 1975 stated that the land had been sold to the company by the Court Receiver. The Court Receiver also informed in the reply that the land had been sold to the company and the question of handing over possession of the said private forest by him did not arise.

43. In reply dated 10th October, 1975, the company contended that the land did not constitute 'private forest' as defined in section 2(f) of the Act.

44. In view of the stand taken by the company, an inquiry was conducted by the Sub-Divisional Officer, Bombay Sub-urban District, Bombay and referring to various circumstances, he held by an order dated November 11, 1975 that the land bearing Survey No. 345-A of Dahisar Village constituted private forest under section 2(f) read with section 3 of the Act.

45. Sub-Divisional Officer referred to the technical opinion of Divisional Forest Officer dated 28th October, 1975 which stated that the lands were 'stony and hilly and not fit for forest department'. The Sub-Divisional Officer, however, observed that the company purchased the land from Court Receiver and before that it was described as forest (jungle). The Estate Manager of the company had deposed that he had seen the land under inquiry which was described jungle in various documents including registered deed of transfer of mortgage executed in the year 1900 wherein the land was shown as 'jungle land'. The Mutation Entry No. 2430 had brought the khot on record as owner of the land deleting the word 'forest' in

the Record of Rights which indicated that Forest Department was the owner. Deletion of the word 'forest' would not conclude that the lands were not forest land.

46. He also noted that the point raised on behalf of the company that proceedings under the Land Acquisition Act had been withdrawn would not help the case of the company. The land was considered unsuitable for the purpose for which it was proposed to be acquired, namely, constitution of National Park, Borivli. But it would not affect the nature and character of the land which was private forest and deemed to be vested in the Government.

47. Regarding structures on the land, the Sub-Divisional Officer observed that simply because there were structures and non-agricultural assessment was levied would not go to show that the land was not forest land. Once the land is forest land, all consequences ensue.

48. Being aggrieved by the order of the Sub-Divisional Officer, the company preferred an appeal before the Maharashtra Revenue Tribunal. The Tribunal also considered the contentions raised and submissions made on behalf of the company and held that the Sub-Divisional Officer had not committed any error which warranted interference in the order. Referring to various provisions of the Act, as also the evidence on record, the Tribunal held that the term 'forest' had been widely defined in the Act and there was no hesitation in accepting the contention of the State that land bearing Survey No. 345-A of Dahisar Village was covered within the expression 'forest'. Accordingly, the appeal was dismissed.

49. As stated earlier, the order passed by Sub-Divisional Officer and confirmed by the Maharashtra Revenue Tribunal was not challenged. It had become final. In pursuance of the said order, even possession was handed over on 21st July, 1984, which is clear from paper possession receipt dated 31st August, 1984 signed by the Officers mentioned therein.

50. In 1976, Miscellaneous Petition No. 512 of 1976 was filed by the first respondent herein i.e. Maharashtra Land Development Corporation against the State of Maharashtra, Tahsildar of Borivli as also Union of India. On 19th April, 1984, consent terms had been arrived at and the petition was disposed of. The

relevant part of the said consent terms reads as under:

'Upon the petitioners raising a dispute under section 6 of the Maharashtra Private Forest (Acquisition) Act, 1975, before the Competent Authority, about the question of vesting in the State of Maharashtra of the land purchased by Maharashtra Land Development Corporation under conveyance dated 29th March, 1975 being part of Survey No. 345-A admeasuring about 53 acres or thereabout and demarcated in the plan annexed to deed of conveyance, the same shall be heard and decide de novo by the Competent Authority.'

51. In the light of the above consent terms, again an inquiry was held under section 6 of the Act. The Sub-Divisional Officer de novo considered the question and held that the land was not 'private forest' as defined in section 2(f)(iii) of the Act and it did not vest in the State Government. He, inter alia, took into consideration the facts that the Corporation purchased the land by registered sale deed between the Corporation and Court Receiver of the High Court; the Corporation was not served with any notice under section 6 of the Act and the notice issued to the company was not binding upon the Corporation. Notice under section 35(3) of the Indian Forest Act was never served on the Corporation, though it was served on the company; the land could not be said to be forest as defined in section 2 of the Act. It was also not private forest. The notice was thus ultra vires and unlawful.

52. The State carried the matter before the Maharashtra Revenue Tribunal by filing an appeal. The Tribunal allowed the appeal and reversed the order passed by the Sub-Divisional Officer declaring the disputed land as private forest and vesting in the Government. The Tribunal did not uphold the contention of the Corporation that it was necessary that the land should be notified under section 34-A of the Indian Forest Act before any action is taken under section 35 of the Act. According to the Tribunal, there is no specific provision in the Act that before declaring any land as 'forest' or 'private forest', a notification as provided under section 34-A of the Indian Forest Act must have been issued. 'Private forest' having been defined separately by Maharashtra Act, the contention on behalf of the Corporation that issuance of notification under section 34-A of the Indian

Forest Act was a condition precedent could not be upheld. Once that is the legal position, the contention of the State that land bearing Survey No. 345-A was private forest covered by Maharashtra Act must be upheld.

53. The Tribunal also dealt with the expert opinion referred to by the Sub-Divisional Officer wherein it was recorded that there were hutments and quarry operations in past in the suit land. The Tribunal, however, observed that the ground suffered with the same infirmity. Once the Act came into force on August 30, 1975 and in accordance with the definition, the land was private forest, it had to be declared as such. The Tribunal also noted that it could not be said that the land was incapable of or unfit for forest.

54. The Corporation alongwith Kamruddin N. Shaikh (Writ Petition No. 1383 of 2002) carried the matter further by filing writ petition in this Court. Both the writ petitions were heard together and the Division Bench dismissed both the petitions confirming the order passed by the Maharashtra Revenue Tribunal. Discussing the relevant provisions of the Act and other materials which were placed before it and the legislative intent, a Division Bench of this Court held that the land was 'private forest'.

55. In further appeal by the Corporation against the decision of this Court, the Supreme Court set aside the order passed by this Court, inter alia, observing thus:

'The Division Bench of the High Court by the judgment under appeal has affirmed the order dated 29th September, 1986 of the Maharashtra Revenue Tribunal holding that the land in question was forest land. However, the High Court did not accept the reasons commenced themselves to the Tribunal, in reaching that conclusion but came to the same conclusion on wholly different grounds. Indeed, the High Court did not approve the grounds on which the Tribunal reached that conclusion.'

The Apex Court proceeded to state that the question was essentially one of fact and since the High Court took into consideration material placed before it for the first time by the respondent-State, the appellant had no reasonable opportunity of traversing such material. It, therefore, set aside the order passed by this Court and

remanded the matter to the Maharashtra Revenue Tribunal directing it to decide the matter afresh in accordance with law.

56. Again, the Maharashtra Revenue Tribunal considered the question and by an order dated 4th December, 1992 came to the conclusion that the land bearing Survey No. 345-A could neither be said to be forest nor private forest. Referring to sections 34-A and 35 of the Indian Forest Act and relying on Janu Chandra Waghmare, the Tribunal held that the contention of the Government Pleader that the disputed land was covered by the definition 'private forest' under section 2(f)(iii) was not well founded. It also held that the Corporation was holding the property as a rightful owner. Since no notice was issued to the Corporation under section 35(3) of the Indian Forests Act, it could not be deprived of ownership right over the land. It further observed that the land could not be said to be 'forest' as defined in section 2(c-i) of the 1975 Act. Referring to various documents, the Tribunal concluded that it was established that Survey No. 345-A was not 'a natural forest' on the appointed day and did not answer the requirements laid down in the first part of section 2(c-i) of the Act.

57. It may be stated here that the petitioner of Writ Petition No. 1383 of 2002 filed a Review Petition No. 2464 of 1992 in Writ Petition No. 3681 of 1983. Considering the order passed by the Supreme Court in the companion matter, the Division Bench of this Court allowed the review petition, set aside the order passed in Writ Petition No. 3681 of 1983 and directed that the said petition should be heard alongwith Writ Petition No. 2023 of 1994.

58. The Division Bench heard both the petitions. Writ Petition No. 3681 of 1983 filed by Kamruddin Shaikh and Writ Petition No. 2023 of 1994 filed by the State of Maharashtra. The petition filed by the State was allowed by the High Court. Setting aside the order passed by the Maharashtra Revenue Tribunal, the Division Bench held that the Tribunal had committed an error in holding that the land was neither forest nor private forest. It observed that Survey No. 345-A was a 'forest land' on the appointed day under the 1975 Act. It also observed that the entire land bearing Survey No. 345 admeasuring 650 acres was forest land. Out of that, an area admeasuring 365 acres was acquired for National Park which was given Survey

No. 345-B and the remaining portion was sub-divided into two parts, Survey No. 345-A admeasuring 209 acres and 25 gunthas being one of them. The fact, however, remains that Survey No. 345-A was part of Survey No. 345 which was forest. The Division Bench also observed that Court Receiver was appointed in Administration Suit No. 3415 of 1947 filed by Bai Fatimabai wd/o Haji Ahmed Haji Kasam for administration of the estate and for other reliefs. The Receiver executed a sale deed on 29th March, 1975 in favour of the Corporation which was a partnership firm for land bearing Survey No. 345-A and other properties. In the First Schedule it had been specifically mentioned that Survey No. 345-A admeasuring 209 acres and 25 gunthas was forest. In the second schedule also, it was described as piece or parcel of forest land.

59. The Court took into account the contentions raised on behalf of the Corporation that merely by description of the land as 'forest land', it would not mean that it was 'forest' within the meaning of the Act. The Court, however, negated the contention observing that since the land was forest, it was described as such. The Court also considered that Revenue Records of Survey No. 345 clearly established the land to be forest land. It was thereafter sub-divided into three parts being Survey Nos. 345-A, 345-B and 345-C. Mutation entry was effected on 3rd May, 1957 and certified on 17th May, 1957 which clearly mentioned 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. Survey No. 345-A admeasuring 209 acres and 25 gunthas (forest), Survey No. 345-B admeasuring 35 acres (National Park) and Survey No. 345-C admeasuring 75 acres and 17 gunthas (Forest). Then referring to the definition 'forest' in section 2(c-i) of 1975 Act, the Court observed that the said definition was of very wide amplitude. Admittedly, adjoining to the land of Survey No. 345-A, there was land which was part of Sanjay Gandhi National Park which was a forest land. That would also clearly show that the land was forest. The Court observed that the judgment in Janu Chandra Waghmare would not help the Corporation. Dealing with the contention that quarry operations were permitted, the Court observed that if such a permission was granted, it would not change the nature of land being forest land. The Court also referred to Mutation Entry No. 2430 effected on 6th January, 1965 in respect of Survey Nos. 345-A and 345-C. In Kabjedar

column, name of khot Ali Mohamed was mentioned and the description of the land was shown as 'forest land'. It was, however, deleted on the basis of RTS proceedings. Subsequently Entry No. 3483 was mutated on 1st June, 1965. It was based on order dated 24th December, 1965 passed under section 37 of the Land Revenue Code read with section 4 of Salsette Estate Abolition Act, 1951. The Mamlatdar in those proceedings held that land as waste land. He also noted that the estate holder derived income from forest produce; such as, fuel, grass, tad patri etc. It was thus forest land. The High Court, therefore, held that the view taken by the Tribunal was not in consonance with law and accordingly it was set aside.

60. So far as the petition filed by K.N. Shaikh was concerned (Writ Petition No. 3681 of 1983), the High Court dismissed it.

61. The Corporation approached the Supreme Court against the decision of this Court. The Apex Court set aside the order passed by this Court on the ground that if the High Court was of the view that the Maharashtra Revenue Tribunal had ignored material evidence on record, it ought not to have proceeded to consider the evidence itself and reached a conclusion of facts contrary to that of the Tribunal. Appropriate course for the High Court, according to the Supreme Court, was to set aside the order passed by the Tribunal and remit the matter to the Tribunal to consider it afresh. Since it was not done, the order of the High Court suffered from legal infirmity. The Supreme Court, therefore, set aside the order passed by the High Court as well as of the Tribunal and remanded the matter for fresh disposal to Maharashtra Revenue Tribunal in accordance with law.

62. Again, the matter was considered by the Revenue Tribunal and by an order dated 21st February, 1998, it again held that Survey No. 345-A cannot be said to be 'forest' or 'private forest'. It is this order which is challenged in the present petition by the State of Maharashtra.

63. It was argued before the Revenue Tribunal by the Government Pleader that Survey No. 345 was forest. Survey No. 345-A was part of original Survey No. 345. Since 345 was forest, obviously Survey No. 345-A, part and parcel of Survey No. 345 is also forest. In mortgage deed executed in the year 1990, the land was

admittedly described as 'forest' (jungle). Out of Survey Nos. 345, 365 acres was acquired by the Government for National Park. The remaining part, however, would not change the character if not acquired for National Park. In Revenue Records, right upto 1955-56, the entire land of 650 acres was recorded as grazing forest (xqjppj.k QkWjs LV). Thereafter from 1956-57 to 1970-71. Survey No. 345-A admeasuring 209 acres and 25 gunthas was recorded as forest. From 1971-72 onwards, it was recorded as 'huts and grass' (>ksiM;k o xor) and huts, quarry and grass (>ksiM;k] Dokjh o xor). Thus, according to the Government Pleader, land was forest and continued to be as such all throughout. Some portions came to be occupied by huts and quarries but the land never lost its inherent character of a grazing land or a forest land. When the Maharashtra Act, 1975 came into force on 30th August, 1975, the land was forest and vested as such in the State Government free from all encumbrances. The decision of the authorities under the Act that the land was never 'forest' could not be upheld. Moreover, the wide definition of 'forest' in section 2(c-i) coupled with the Preamble of the Act established that the land was covered under the provisions of the Act. The Government Pleader also referred to the documents executed by Court Receiver in favour of Corporation wherein the company as the second confirming party in which the land was shown to be forest. He also argued that notification under section 34-A of the Indian Forest Act was not necessary. Once the provisions of Maharashtra Act were held applicable, the only conclusion was that it was forest land. The fact that the Corporation started quarrying operations after 1976 would not make forest land non-forest. Similarly, dropping of proceedings under the Wild Life (Protection) Act, 1972 or under Land Acquisition Act were irrelevant and of no consequence. Those facts may, at the most, go to show that the acquisition of land for a particular purpose was not necessary as it was not suitable for the purpose but it would never mean that it was excluded from the operation of the Forest Act. Similarly, from the construction of huts and/or other structures, it cannot be concluded that the land was not forest land.

64. The learned Advocate on behalf of the Corporation, on the other hand, supported the order passed by the authorities holding that the land was not forest land. It was argued that after the matter was remanded by the Supreme Court, it was held by the Tribunal that the land was not forest land and there was no reason

to interfere with the said finding. The High Court ought not to have set aside the finding of fact and as High Court interfered with such finding, the Supreme Court rightly reversed the order of the High Court. No further action was, therefore, required to be taken except by reiterating what was held by the Tribunal earlier. It was also submitted that for any land to be forest, notification under section 34-A of the Indian Forest Act is a pre-requisite. It was urged that once some parts of the land were deleted from Survey No. 345, a positive action was essential under the relevant statute and unless such an action is taken, it cannot be held that the land was forest or private forest. Moreover, the land was not suitable for forest produce and to that effect an entry was also made.

65. The Tribunal, after considering the rival contentions of the parties, observed that no documentary evidence or fresh material was brought on record by the State. The respondent Corporation, however, adduced documentary evidence. The Tribunal also noted that when the matter was carried to the Supreme Court, a submission was made on behalf of the State that it wanted to adduce fresh material and in spite of such submission neither material was produced nor additional evidence was brought on record. The Tribunal then considered the provisions of section 35 of the Indian Forest Act and held that such notice was served as required by law. It, however, proceeded to observe that merely on that basis, the land cannot be held to be 'private forest' under section 2(f) of the Act. Referring to Janu Chandra Waghmare, the Tribunal held that necessary ingredients were not present to hold land to be forest or private forest.

66. Regarding mortgage deed executed in 1900 in respect of Survey No. 345 in which the land was described as 'forest land', the Tribunal observed that it was subsequently sub-divided into three parts. Survey No. 345-A admeasuring 209 acres and 25 gunthas was withdrawn from acquisition proceedings in 1973. In the light of the said fact, the submission of the Corporation that in all past, lands of several parts of Bombay came to be mechanically recorded as 'jungle' had force and could not be ignored. The Tribunal also noted that Survey No. 345-C was never claimed by the State and taken over as forest or private forest, though it was also part of Survey No. 345. The Tribunal referred to a communication dated 12th January, 1972 addressed by Sub-Divisional Forest Officer, Borivli to the

Conservator of Forest, Thane, based on joint inspection of the area in 1970 and 1972 wherein it was noted that the said survey number was required to be deleted from acquisition. It also referred to another similar communication by Divisional Forest Officer, Borivli to Sub-Divisional Officer, Bombay dated 26th October, 1975 wherein it was observed that the land in question was not suitable for the purpose of raising trees or forest plantation, and hence it would not be worthwhile to acquire the land.

67. The Tribunal repelled the contention of the Government Pleader that no importance or significance could be attached to above two letters. According to the Tribunal, the letters which officially convey the technical opinion of the officers of the Forest Department with regard to the nature and character of the land as existed was relevant and material. Conjoint reading of the two letters proved that it was not possible to raise successfully any forest plantation in the suit land. The letters were, therefore, 'crucial and convincing so far as nature of the land was concerned'. The Tribunal, therefore, concluded that the land never possessed 'reasonable nexus or close connection with and attributes of natural forest', and accordingly it dismissed the appeal.

68. Mr. C.J. Sawant, learned Special Counsel, on behalf of the petitioner contended that the order passed by the Maharashtra Revenue Tribunal is not in consonance with law and deserves to be quashed and set aside. It was submitted that admittedly land bearing Survey No. 345 was forest. It was divided into three sub-survey numbers being Survey Nos. 345-A, 345-B, and 345-C. The original character, however, was never lost and hence it cannot be held that Survey No. 345-A was not forest. It was also urged that before more than 100 years in the mortgage deed of 1900, the land was described as forest. According to the Counsel, 'forest division' is administrative unit of the Forest Department under the control of Deputy Conservator of Forest who is head of the Division. Under the Forest Manual, the division was headed by Divisional Forest Officer. The said nomenclature was subsequently changed to Deputy Conservator of Forest. The concept of 'forest division' dates back to about 100 years, since the management of forest started through regulatory modes. The contention of the respondent that 'forest division' has no legal basis, therefore, cannot be accepted as well founded.

It was also contended that inspite of the directions by the Hon'ble Apex Court to the Maharashtra Revenue Tribunal to take into account material which was already on record and which had been considered by the High Court, the Tribunal failed to take into consideration such material and the order passed by the Tribunal is liable to be quashed and set aside. Such materials are, inter alia, in the forms of mortgage deed of 1900, sale deed executed by the Court Receiver pursuant to preliminary decree in administration suit for the entire of Survey No. 345, admeasuring 209 acres and 25 gunthas described in the schedule as 'a piece of parcel of forest land', a document executed in favour of the Corporation by the Receiver to which the company was confirming party showing the land to be forest land. In revenue records, entire Survey No. 345 admeasuring 650 acres was shown to be forest land, out of which 365 acres was acquired for National Park in 1948. In an inquiry under section 37(2) of the Bombay Land Revenue Code, the company admitted the land to be forest land. Revenue records right from 1953-54 till the Maharashtra Private Forest Acquisition Act, 1975 came into force mentioned the land as 'forest'. According to the learned Counsel, had all these facts been appreciated in their proper perspective, the Tribunal ought not to have come to the conclusion to which it has arrived. The order passed by the Tribunal, therefore, deserves to be quashed and set aside by allowing the petition and by declaring the land as 'private forest' under the provisions of the Act.

69. Mr. Milind Sathe, learned Counsel for respondent No. 1, on the other hand, supported the order passed by the Tribunal. As already adverted to, a preliminary objection was raised by the Counsel contending that a petition is filed against an order passed by the Maharashtra Revenue Tribunal and thus the petition is under Article 227 of the Constitution. Since a finding of fact has been recorded by the Tribunal, this Court will proceed on the basis of the finding of fact recorded without interfering with it. It was submitted that an error of fact or even error of law cannot be corrected by this Court in exercise of supervisory jurisdiction unless such an error of law is apparent on the face of record and the High Court is satisfied that by such apparent error, the Tribunal has either failed to exercise jurisdiction vested in it or has exceeded the jurisdiction or has committed jurisdictional error. Whether or not, the land is 'forest' or 'private forest' is essentially a question of fact. On the basis of evidence on record, oral as well as documentary, the Tribunal held that

the land is neither 'forest' nor 'private forest'. Such a finding, even if erroneous, does not deserve interference by the High Court under Article 227 of the Constitution.

70. On merits, the Counsel contended that keeping in view the relevant provisions of the Act and a decision of the Full Bench of this Court in Janu Chandra Waghmare, the Tribunal held that the disputed land was not forest or private forest and the said order cannot be said to be illegal or unlawful. According to the learned Counsel, it was incumbent on the Government to convince the Court that the land was 'forest' or 'private forest'. Since they were unable to do so, they cannot find fault with the Tribunal and make complaint against the decision arrived at by the Tribunal. It was submitted that the Tribunal also considered additional factors such as the land was not suitable for forest plantation or forest produce; there were huts and dwellers, quarrying operations were permitted, etc. Those factors would also clearly go to show that the contention raised by the Government authorities was not well founded and the land never acquired status of forest or private forest. It was, therefore, submitted that the petition deserves to be dismissed.

71. We have dealt with the relevant provisions of the Constitution as amended by the Constitution (42nd Amendment) Act, 1976, the Indian [Forest Act, 1927](#), the Forest (Conservation) Act, 1980, the Wild Life (Protection) Act, 1972 and the Maharashtra Private Forests (Acquisition) Act, 1975 in Writ Petition No. 305 of 1995 and cognate matters decided on 15th September, 2003. It is, therefore, not necessary to deal with those provisions in detail in this judgment.

72. We may, however consider the relevant provisions of the Maharashtra Private Forests (Acquisition) Act, 1975. The Preamble of the Act reads thus:

'An Act to acquire private forests in the State and to provide for certain other matters.

WHEREAS the forest land in the State is inadequate:

And WHEREAS the private forest in the State is generally in highly degraded and over-exploited state and is adversely affecting agriculture and agricultural population;

AND WHEREAS it is, therefore, expedient to acquire private forests in the State of Maharashtra generally for conserving their material resources and protecting them from destruction or over-exploitation by their owners and for promoting systematic and scientific development and management of such forests for the purpose of attaining and maintaining ecological balance in the public interest, for improving the socio-economic conditions of the rural population, and particularly of the adivasis and other backward communities who generally live in forest areas, for developing as pasture the forest suitable for the purpose, for assigning a part of the private forest to the rural community, for controlling the soil erosion both in the forest areas and in the lower level agricultural lands, for conserving soil moisture, for improvement of the water regime and raising the water table, for retarding the situation of dams and tanks, for distribution of forest produce for the common good and preventing the concentration of forest wealth to the common detriment, for distribution of the mature exploitable forest produce as best to subserve the common good, for promoting employment opportunities based on forest, for meeting the requirements of forest produce including fire-wood with a view to inter alia to decrease the dependence on cow-dung, and in particular, for afforestation of private forest wherever feasible on scientific lines, and thereby create conditions for the preservation of soil conservation of water, prevention of erosion of soil and for improvement of land and underground water resources to the best interests of agricultural and agriculturists in such private forest and other land in the State and for undertaking schemes for such purposes.

AND WHEREAS it is also expedient to provide that in the case of owners of private forests (other than those whose lands were used for extracting minor minerals such as quarries) whose total holdings of lands became less than twelve hectares on the appointed day on account of acquisition of their forest lands under this Act, or whose total holdings of lands was already less than twelve hectares on the day immediately preceding the appointed day, the whole or the appropriate portion of their forest lands so acquired shall be restored to, and revested in, them,

so that their total holdings of lands may be twelve hectares or else, as the case may be, and they may be able to continue to earn their livelihood from such lands; and to provide for certain other purposes hereinafter appearing.'

The State Act defines 'forest' in section 2(c-i) thus:

'Forest' means a tract of land covered with trees (whether standing, felled, found or otherwise), shrubs, bushes, or woody vegetation, whether of natural growth or planted by human agency and existing or being maintained with or without human effort, or such tract of land on which such growth is likely to have an effect on the supply of timber, fuel, forest produce, or grazing facilities, or on climate, stream flow, protection of land from erosion, or other such matters and includes-

(i) land covered with stumps of trees of forest:

(ii) land which is part of a forest or lies within it or was part of a forest or was lying within a forest on the 30th day of August, 1975:

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

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

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

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

'Private forest' means any forest which is not the property of Government and includes;

(i) any land declared before the appointed day to be a forest under section 34-A of the Forest Act;

(ii) any forest in respect of which any notification issued under sub-section (1) of section 35 of the Forest Act, is in force immediately before the appointed day;

(iii) any land in respect of which a notice has been issued under sub-section (3) of section 35 of the Forest Act, but excluding an area not exceeding two hectares in extent as the Collector may specify in this behalf;

(iv) land in respect of which a notification has been issued under section 38 of the Forest Act;

(v) in a case where the State Government and any other person are jointly interested in the forest, the interest of such person in such forest;

(vi) sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of the forest and lands appurtenant thereto.

Section 3 enacts that all private forests will vest in the State Government. Section 4 enumerates steps to be taken by the Government on acquisition of private forests. Section 5 enables the State Government to take over possession of private forests. Sections 6 to 19 deal with settlement of disputes, determination of amount to be paid to the owners of private forests, deduction of amount of encumbrances and extinguishment of rights of other persons, appeals, revisions etc. Section 21 empowers the State Government to declare certain lands as private forests. It also provides that on publication of the notification by the State Government regarding declaration of any land as private forests, certain consequences would ensue.

73. We have also observed as to how provisions relating to environmental laws should be interpreted by courts. We have referred to various decisions of the Hon'ble Supreme Court in that regards. Keeping in view the relevant statutory provisions and the leading decisions on the point, to us it clearly appears that the Maharashtra Revenue Tribunal has committed an error of law apparent on the face of record and thereby exceeded its jurisdiction in holding and coming to the conclusion that land bearing Survey No. 345-A cannot be said to be forest nor private forest. For several reasons, we are of the view that no reasonable man in the light of the relevant facts and materials, could have come to the conclusion which the Tribunal has reached and the order suffers with legal infirmity.

74. Before we deal with reasons and conclusions of the Maharashtra Revenue Tribunal in the impugned judgment, we may refer to some of the interim orders passed by this Court as well as by the Hon'ble Supreme Court. Several orders came to be passed by this Court from 1995 in the main matters i.e. Writ Petition No. 305 of 1995 filed by Bombay Environmental Action Group and another 7th May, 1997 was a material date on which an important interim order was passed by the Division Bench of this Court on the basis of 'Minutes of Order'. Some of the directions with which we are concerned in the present petitions related to commercial and other similar activities. They are as under:

(h) The BMC is directed not to issue any permissions under the BMC Act in the National Park Division area for any commercial or industrial activity. Similarly the BMC is directed not to register any person under the Shops & Establishment Act within the boundaries of the National Park Division. Exception is to be made only in the case of public authorities.

(i) The BMC is directed to cancel all sanctions and registrations and permissions granted within the National Park Division after giving 15 days notice of the same. The BMC is directed to give such notices forthwith. All structures having commercial establishments, schools etc. within the National Park Division are to be demolished within one year from today and all building materials are to be confiscated so that the same is not used to re-erect the structures.

(r) The Food & Civil Supplies Department is directed not to issue further sanctions to any more ration shops in the National Park Division area. All ration shops presently functioning must be demolished within one year from today, provided the State Government relocates the persons covered by Clause (o) above.

(y) It is brought to our attention that inspite of our orders in the past quarrying operations still continue within the National Park Division. The State Government is directed to stop all quarrying operations within the National Park forthwith and to cancel all permissions and sanctions that have been granted for the same.

A Committee was also constituted for implementation of the above directions.

75. By an order dated 28th April, 1999, the Division Bench directed shifting of Mafco's Bacon factory. Two petitions being Writ Petition Nos. 881 of 1999 and 882 of 1999 were summarily dismissed by this Court on 1st October, 1999. The said order was challenged by the aggrieved petitioners by filing special leave petitions in the Supreme Court. On 8th May, 2000, the Supreme Court passed the following order:

'It is contended by the learned Senior Counsel for the petitioners that the land of the petitioners is part of Survey No. 345-A corresponding to CTS No. 3030 (Part) and CTS No. 2929 (Part) situated at Village Dahisar, Dhar Khadi, Mumbai and submits that this land has not been acquired by the Government and secondly in any case it does not fall within the boundaries of the Sanjay Gandhi National Park. During the pendency of the writ petition in the Bombay High Court, no affidavit was filed by the respondents. In order to ascertain as to what is the correct position, we issue notice. Mr. Deshpande and Ms. Indu Malhotra accept notice for State of Maharashtra and Bombay Environmental Action Group respectively. Replies be filed by 9th May, 2000 and rejoinder on 10th May, 2000. List on 11th May, 2000.'

On 11th May, 2000, again, the following order was passed.

'Adjourned till after summer vacation. In the meantime, we direct the petitioners to file before the Grievance Committee constituted by the High Court a representation within 10 days with copies to the respondents putting forth their claim of retention of land. The respondents will file their replies within 10 days thereafter and the Grievance Committee will determine as to whether the land in question claimed by the petitioners belong to the petitioners or the respondents; and secondly whether the said land forms part of the Sanjay Gandhi National Park or any reserved forest or division. The Committee should submit its report to this Court within four weeks of the receipt of the representation and the replies. In the meantime, the structures of the petitioners shall not be demolished. If the petitioners do not make the representation within 10 days, this order will stand automatically vacated as far as they are concerned.'

Finally, on 3rd November, 2000, the special leave petitions were dismissed.

76. A petition being Writ Petitions (Lodging) No. 2268 of 2000 came up for hearing before a Division Bench on 18th November, 2000. An order was passed to place the said Writ Petition along with Writ Petition No. 1119 of 2000 and connected matters. On 22nd November, 2000, the Division Bench passed the following order.

'We have before us the report of the Monitoring Committee, dated 19th November, 2000. Few things have been pointed out in the said report and some of them are as follows .

(i) That Writ Petition No. 2054 of 2000 was wrongly included in the order dated 12th October, 2000 even though no stay was granted in this writ petition prior to 12th October, 2000.

(ii) That a Writ Petition bearing (Lodging) No. 2258 of 2000 was filed before this Court in respect of Survey No. 345-A and this Court has granted stay on 18th November, 2000. This is despite the fact that the Supreme Court had dismissed the special leave petition in this regard, specially pertaining to Survey No. 345-A, after the Committee has submitted its report to the Supreme Court for examination.

(iii) The State Government has declared a resurvey of the area in question which would complete by upset the matters since by order dated 16th July 1999, this Court has directed that in case of any dispute regarding the boundary of the Sanjay Gandhi National Park, the map prepared and survey carried out by the Forest Department, pursuant to the order dated 7th May, 1997 of this Court, shall be final.

(iv) It has been pointed out that despite the order of this Court, the authority had permitted persons to hold rallies and dharnas.

2. In so far as (i) above is concerned, we shall pass appropriate orders when the petition concerned is before us.

3. So far as (ii) is concerned, the Government Pleader submits that he has given notice to the other side for appearance before us at 1.30 p.m. We will pass appropriate orders when the matter is before us.

4. In so far as (iii) above is concerned, the Government Pleader assures this Court that the re-survey which is being carried out will not, in any manner, affect the boundary of the Sanjay Gandhi National Park which is already on record, and, therefore, the re-survey will not have any effect on the order of this Court, dated 7th May, 1997. In view of the statement made by the Government Pleader, we pass no order on this issue.

5. On (iv), we are not passing any order for the present. We shall consider this matter at the appropriate stage.

6. Put up on 29th November, 2000 for directions.

77. On 21st February, 2002, in Writ Petition No. 305 of 1995, we passed the following order.

'Our attention has been invited to the report dated 7th February, 2002 of the Committee appointed by the High Court for the purpose of Afforestation and Preservation of the Sanjay Gandhi National Park, headed by Hon'ble Mr. Justice S.C. Pratap (Retired).

2. In para 15 of the report it was observed that even though the Forest Department had written to the Mumbai Municipal Corporation to stop the work of drilling, the Corporation was 'still carrying on drilling activity (page 10 of the report).

3. In our opinion, therefore, at this stage, interim direction is required to be issued to the Mumbai Municipal Corporation, not to proceed further with the drilling activity in the forest area till further orders.

4. Liberty to apply.'

78. As stated earlier, in the mortgage deed of 1900 i.e. before more than 100 years from today, the land was described as forest. In our considered opinion, therefore, this circumstance goes a long way in considering the nature and character of the land.

79. It is also an admitted fact that Survey No. 345-A is part and parcel of entire Survey No. 345. Admittedly, the entire Survey No. 345 admeasuring 650 acres

was forest. Out of 650 acres, more than 50 per cent i.e. 365 acres was acquired for National Park in the year 1948. It is, however, clear that Survey No. 345-A did not lose its character as forest and remained as such. In the inquiry conducted under sub-section (2) of section 37 of the Bombay Land Revenue Code, it was admitted by the company through whom the respondent is deriving the title that the land in question was forest land. If it is so, obviously it would remain forest unless an intervening action has been taken by the authorities which has changed its original character. It was not even the case of the respondent that any such action was taken or order was passed. The Tribunal, therefore, in our opinion, could not have held that the land was not forest land. Revenue Records of about 30 years also proved that the land was forest land and retained its character as forest. It was, therefore, not open to the respondent to contend that the land was not forest nor it was open to the Tribunal to record a finding contrary to the revenue record in absence of any material on record.

80. In our considered opinion, the submission on behalf of the petitioners has force that the direction issued by the Hon'ble Apex Court have not been carried out and observed by the Tribunal in their proper spirit. Though the Tribunal was aware of the directions of the Apex Court and it observed that it must bear in mind the evidence which has been pinpointed by the Hon'ble High Court in considering this matter' such material has not been considered in its proper perspective. It also clearly appears to us that the approach of the Tribunal is not in consonance with law. The order passed by the Tribunal in earlier matter was set aside by this Court and the writ petition was allowed. The order passed by this Court was again set aside by the Apex Court and the matter was remanded to the Tribunal with a direction to consider the matter 'afresh'. In spite of the clear direction of the Supreme Court to that effect, the Tribunal, in the impugned judgment, observed that in spite of opportunity extended by the Supreme Court the State did not produce any material or additional evidence on record. It was the Corporation which had adduced lot of documentary evidence.

81. The Tribunal then stated:

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

With respect, the above approach of the Maharashtra Revenue Tribunal is not in consonance with law and cannot be approved. It is not open to the Tribunal to proceed on the basis that since 'there is no fresh material to disturb the finding' of the MRT as given in its judgment dated 4th December, 1992, the said finding called for no interference. Once a petition was filed against the said judgment in the High Court and the High Court set aside that judgment and the Supreme Court allowed the appeal directing the Tribunal to consider and decide the matter afresh, in the eye of law, it cannot be said that there were 'findings' by the Tribunal in its earlier judgment and in absence of 'fresh evidence', those findings need not be disturbed. To us, therefore, it is clear that this is a jurisdictional error committed by the Maharashtra Revenue Tribunal and the order is indeed vulnerable.

82. It is also clear that in the conveyance deed dated 29th March, 1975, executed by the Court Receiver in favour of the respondent Corporation, the lands in the schedule was described as 'Piece or parcel of forest land with structures standing thereon'.

83. Mr. Sathe, learned Counsel, no doubt, contended that the description in their conveyance was borrowed from the original document in which the property was traditionally described as forest land'. In fact and in reality, however, it was not forest land.

84. We are unable to uphold the contention. As already observed earlier, the entire land of Survey No. 345 was forest. It was shown as jungle. In revenue record also, the said fact was reflected and the description found place in the Conveyance Deed of 29th March, 1975. It, therefore, cannot be said that the description was traditional as contended by the learned Counsel.

85. The Counsel also contended that in the mutation entry, the land in possession of respondent-Corporation was initially shown as 'forest land' but thereafter the said entry was deleted and from 1970-71 onwards, the entry 'quarry and grass' was made in 7/12 extracts. To us, however, the above circumstances also would not carry the matter further in the light of the decision of the Supreme Court in T.N. Godavarman Thirumulkpad.

86. The endeavour of the learned Counsel for the respondent is that the land does not fall within the definition of 'forest' or 'private forest'. It is also not natural forest. It is also not 'forest' in its dictionary meaning nor the land is 'lying within or linked to forest nor it is a part of National Park nor it is suitable for forest produce and hence cannot be treated as forest'.

87. In our view, however, considering the provisions of the relevant statutes and the decisions which we have already referred earlier, and for protecting and safeguarding SGNP Division, orders were passed from time to time prohibiting and preventing quarry operations and commercial activities and in the said perspective, the question has to be decided.

88. We are also of the view that some of the facts and circumstances considered and taken into account by the Tribunal cannot be said to be germane or relevant. For instance, the Tribunal in the impugned order conceded that the land was described as forest (jungle) in all records. It, however, proceeded to state that the contention of Mr. Sathe, learned Counsel for the Corporation that 'in old days of the past, vast expanses of lands in several parts of Bombay came to be recorded as jungles cannot be ignored'. There is nothing on record to substantiate or countenance such a conclusion as has been done by the Tribunal. If the case of the respondent herein was that the expression 'jungle' was loosely used or that in spite of the fact that a particular land was not forest or jungle, it was described as such, it was on him to adduce evidence to that effect on the basis of which a finding can be reached by the Tribunal. In absence of any material whatsoever, to record that such an expression was loosely used and the land recorded to be jungle cannot be said to be jungle is in our opinion, not legal, valid and in consonance with law.

89. Similar is the factum regarding withdrawal from acquisition of land bearing Survey No. 345-A in the land acquisition proceedings. Admittedly, the entire Survey No. 345 was forest. Survey No. 345-A i.e. part of Survey No. 345 admeasuring 209 acres and 25 gunthas was withdrawn from acquisition by an order passed by Special Land Acquisition Officer, National Park, Borivli on 15th September, 1973. The said action was taken as the land was not found convenient and suitable for the purpose for acquisition. In our view, however, this has nothing to do with the nature and character of land. A piece of land may not be 'forest' or 'private forest' and yet it may be required under the Land Acquisition Act for a public purpose. On the other hand, a piece of land may be 'forest' or 'private forest' and yet it may not be convenient or suitable for acquisition for a public purpose and hence, may not be acquired. Acquisition of land has something to do with public purpose and acquisition of land under the relevant statute. It has nothing to do with the nature of character of land. Hence, to say that the land was not found to be convenient, appropriate or suitable for acquisition for public purposes and, hence, 'withdrawal notification' was issued does not make 'forest' or 'private forest' land to be 'non-forest' land.

90. Likewise, reliance on two letters/communications dated 12th January, 1972 by the Sub-Divisional Forest Officer, National Park, Borivli to the Conservator of Forest, Thane Circle and a letter dated 26th October, 1975 by the Sub-Divisional Forest Officer, National Park, Borivli to Sub-Divisional Officer, Bombay that the land was not suitable for the purpose of raising trees or forest plantation, etc. and it should be deleted from acquisition has no relevance to the character of the land.

91. The Tribunal, considering the two letters, in paragraph 22 observed:

'Although the learned Government Pleader Shri Pandit contended that no importance or significance could be attached to the abovementioned two letters, the fact cannot be ignored or belittled that the said two letters officially conveyed the technical opinions of the two concerned officers of the forest department with regard to the nature and status of the suit land as it existed in the year 1972 and 1975. Both these officers are responsible officers of forest department. Both of them had finalised their opinions after verifying the sites personally. Both of them

had sent their reports, not in a generalised manner but with specific reference to the lands in question during the course of official enquiries. Read conjointly the said two letters lead to the obvious conclusion that during the period of 12-1-1972 (the date of the letter sent by the Sub-Divisional Forest Officer to the conservator of Forest) to 26-10-1975 (the date of the letter sent by the Divisional Forest Officer to the S.D.O., Bombay Suburban District), the land in the lower part of the area under consideration situated close to the Highway and habitations was most rocky, devoid of tree growth, pockmarked with excavations, and quarries, honey-combed with encroachments and it was not possible to raise successfully any forest plantation in it. The said two official documents bear the dates covering the period in the nearest proximity with the 'appointed day' (i.e. 30-8-1975) on which the Act of 75 came into force and provide the best possible proof throwing adequate light on the nature and characteristics of the suit land as they then obtained at the relevant period. The said letters are, therefore, required to be treated as 'crucial and convincing' so far as the nature of the suit land is concerned. The said letters together with several other official communications such as relating to grant of quarry permits, licences, non-agricultural users of the land etc. filed before us copiously on behalf of the respondent No. 1 go all long way to unfold and lay bare the nature and character of the suit land at the relevant time. They abundantly reveal that the suit land does not possess reasonable nexus or close connection with and attributes of a natural forest. It is pertinent to note that although the appellants Counsel wanted that no value should be attached to the aforesaid material, no evidence could be filed before us on behalf of the appellant to controvert or contradict the said material. In this view of the matter and taking into consideration the totality of facts and circumstances which have been brought to our attention, we are constrained to find that the suit land cannot be held to be a forest at the relevant time.'

From the above observations, it is clear that what weighed with the Tribunal was that the land in the lower part of the area under consideration situated close to the Highway and habitation. It was rocky and devoid of tree growth, pockmarked with excavation and quarries, honey combed with encroachments and was not possible to raise successfully the forest plantation therein. According to the Tribunal, it was the best possible proof throwing adequate light on the nature and characteristics of

the suit land at the relevant period. In the words of the Tribunal, those two letters should, therefore, be treated as 'crucial and convincing as to the nature of the land'. The Tribunal, therefore, concluded that the suit land did not possess 'reasonable nexus or close connection with and attributes of a natural forest'.

92. In our considered opinion, the above finding has been recorded by the Tribunal without there being any material on record.

93. It is pertinent at this stage to reiterate that admittedly the respondent herein intends to carry out quarrying operations and permission was granted for the said purpose. Apart from anything else, therefore, we have to consider in the light of the statutory provisions as also the decisions of the Supreme Court whether such a course can be permitted to be allowed. As already noted, in T.R. Godavarman, the Supreme Court had an occasion to consider 'forest' and 'forest land' in Forest (Conservation) Act, 1980. The Court observed that the word 'forest' must be understood according to its dictionary meaning which would cover all statutorily recognised forests which are designated as forests reserved, protected or otherwise. Similarly, 'forest land' would naturally include 'forest' as understood in the dictionary sense and also any area recorded as 'forest' in the Government record irrespective of the ownership.

94. Considering relevant decisions on the point, certain directions were issued and in Part-I (General). Directions 1, 3 and 5 which are relevant read as follows:

'1. In view of the meaning of the word 'forest' in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any 'forest'. In accordance with section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or plywood mills and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.

3. The felling of trees in all forests is to remain suspended except in accordance with the working plans of the State Governments as approved by the Central Government. In the absence of any working plan in any particular State, such as Arunachal Pradesh, where the permit system exists, the felling under the permits can be done only by the Forest Department of the State Government or the State Forest Corporation.

5. Each State Government should constitute within one month an Expert Committee to:

(i) identify areas which are 'forests', irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons.'

95. In *Tarun Bharat Sangh, Alwar v. Union of India and others* : AIR 1992 SC514 , a social action group concerned and working for protection of environment and preservation of wild life preferred public interest action for the enforcement of statutory notifications promulgated under the Wild Life (Protection) Act, 1972 for protection of Reserved Forests in Alwar District of the State of Rajasthan. Certain mining operations were carried on under the licences granted by the State Government impairing environment and wild life within the Sariska Tiger Park declared to be reserved forest, game reserve and sanctuary.

96. Issuing directions, the Court indicated that the State was required to ensure enforcement of environmental laws and prevent devastation of environment and wild life within the protected area. The Court observed:

'This litigation should not be treated as the usual adversarial litigation. Petitioners are acting in aid of a purpose high on the national agenda. Petitioner's concern for the environment, ecology and the wild life should be shared by the Government.

No oblique motives are even suggested to the petitioner's motivation in this litigation. It is of utmost importance that the law sought to be effectuated through these notifications should be enforced strictly. We were initially of the opinion that we should forthwith interdict any further mining operations in the protected area, but there are certain minor problems and controversies which might have to be resolved on the spot. It is possible that some of the mining operators carry on their operations in such close proximity of the protected area that it may be difficult, at first sight, to determine whether they fall within or without the prohibitory interlocutory orders. It might equally be possible, as predicted by Sri Jaitley, that a part of the mining area in a particular case might fall within the prohibited area and the rest outside it. These are matters to be sorted out on the spot with reference to the revenue records and the relevant notifications. It is difficult for this Court to decide these disputes on the basis of affidavits alone.'

97. In *M.C. Mehta v. Kamal Nath and others*, : (1997)1SCC388 , a news item appeared in Indian Express stating that a Private Company (Span Motels Pvt. Ltd.) in which the family of respondent No. 1 Kamal Nath (former Minister for Environment and Forests) had direct link, had built a club (Motel) at the bank of River Beas in Kullu Valley, by encroaching forest land which was later on regularised and leased out to the company when the first respondent was the Minister. It was alleged that the Motel used earth-movers and bulldozers to turn the course of river beas. The Supreme Court took notice of the news item because the facts disclosed therein. If true, were a serious act of environmental degradation on the part of the Motel.

98. Allowing the petition and issuing various directions, the Court observed that the notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The Court referred to an article titled. An ecological perspective on property: A call for judicial protection of the public's interest in environmentally critical resources, published in Harvard Environmental Law Review, Vol. 12, 1988 P. 311, by David B. Humer (University of Michigan) on the need to protect environment and ecology. Part of the said article read thus:

'Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with, human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

Human activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service.....growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that 'we choose death'.

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints and thus environmental stability is threatened.

Historically we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources—for example, wetlands and riparian forests—can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions.'

The Court noted that under the ancient Roman Empire, a legal theory known as 'Doctrine of the Public Trust' had developed. It founded on an idea that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for free and unimpeded use of the general public. Our contemporary concern about the environment bear a very close conceptual relationship to the said doctrine. Under the Roman Law, such resources were either owned by no one (*res nullius*) or by every one in common (*res communis*). Under the English common law, however, the sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources of this nature were deemed to be held in trust by the Crown for the benefit of the public at large.

99. In this connection, the Court referred to an erudite article 'Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention', by Joseph L. Sax, Professor of Law, University of Michigan, published in Michigan Law Review, Vol. 68 Part 1, page 473:

'The source of modern public trust law is found in a concept that received much attention in Roman and English Law—the nature of property rights in rivers, the sea,

and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties-such as the seashore, highways and running water---'perpetual use was dedicated to the public, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant Government.'

According to the Court, the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them the subject of private ownership. Those resources being a gift of nature must be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or for commercial purpose.

100. The Court referred to a decision of the United States Supreme Court in *Illinois Central Railroad Co. v. People of the State of Illinois* 1892(146) U.S. 387 : 36 L.Ed. 1018, in which a lease was granted in favour of A which was subsequently revoked. When A instituted a suit for rights under the lease, it was resisted by the State contending that the land in dispute was a title different in character from that which the State held in lands intended for sale.

101. Upholding the argument, the Court held that title which the United States held in public land which were open to pre-emption and sale was a title held in trust-for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The action, therefore, could not be held bad. According to Professor Sax, the Supreme Court in *Illinois Central Railroad Co.*

'articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a Court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties'.

102. The Court after considering several cases propounded:

'Our legal system-based on English common law-includes the public trust doctrine as art of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.'

103. Strong reliance placed by Mr. Sathe on the Full Bench decision in Janu Chandra Waghmare, in our opinion, will not help the respondent in the case on hand. There, the Court considered vires and constitutional validity of 1975 Act. Dealing with the relevant provisions of law and the principles of interpretation of legislative entries in Schedule VII to the [Constitution of India](#), the Full Bench held the Act intra vires and constitutional. Dealing with the ambit and scope of the Act, keeping in view Preamble thereof, in paragraph 25, the Full Bench observed:

'Dealing first with the definition of 'forest' in section 2 (c-i) it consists of the main clause indicating what the expression 'means' according to legislature and five other clauses indicating what the expression 'includes' according to legislature. The main (meaning) clause is again in two parts; the first part refers to what can be described as natural forest except to the extent that the parenthetical words 'whether standing, felled, found or otherwise' describe trees in an artificial manner, for, it is obvious that fallen or felled trees ordinarily cease to be trees with the loss of their connection with the land that nourishes them. It is true that the parenthetical words introduce some sort of a artificiality. Further in connection with the trees the expression 'standing, felled and found' are understandable but the expression 'or otherwise' appears to be a little inapt and it is difficult to understand what is sought to be conveyed thereby. However, it appears that the expression 'or

otherwise' seems to have been used out of abundant caution for describing some condition of trees which is not covered by the earlier expressions. It is true that fallen or felled trees ordinarily cease to be trees but as discussed earlier, these without anything more being done to them, do not cease to be part of the forest if they are lying there in their primary or natural state and therefore it cannot be said that the artificiality introduces something over which the State Legislature has no competence. The second part of the main ('meaning') clause refers to another tract of land on which the growth of trees, shrubs, bushes and woody vegetation is found but not as thick as is ordinarily found in the natural forest and even such tract of land is brought within the purview of the expression 'forest' because such growth is likely to have effect on certain aspects or matters as any natural forest would have and diverse aspects or matters have been enumerated on which such growth is likely to have effect, such as, (i) on the supply of timber, fuel, forest produce, or grazing facilities, (ii) on climate, stream flow, protection of land from erosion, and (iii) on such other matters. The effect of the growth on the aforesaid matters is made the determinative factor for bringing in such tract of land within the purview of 'forest'. Unfortunately this clause is not happily worded, but it does appear clear that the word 'such' in the expression 'such tract of land' refers to another tract of land and the word 'such' occurring in the expression 'such growth' refers to 'similar growth' of the type mentioned in the first part of the main clause but not as thick and the expression 'other such matters' occurring at the end of the clause will have to be read ejusdem generis with matters or aspects which precede that expression. In our view, this is the only reasonable manner in which the second part of the main clause can be interpreted. In other words, the second part of the main clause, seems to be intended to bring within the definition of 'forest' such other tracts of land on which growth of trees, shrubs, bushes etc. is less thicker than that of natural forest, conceived under the first part of the main clause, but where the growth is still capable of having the effect on the aspects or matters enumerated therein. It is clear that a reasonable nexus exists between the tract of land covered by this second part of the main clause with natural forest and the tract of land covered by this part of the main clause has ensured the existence of essential attributes of natural forest and therefore cannot be regarded as artificial. Turning to the inclusive part of the definition, sub-clauses (i) to (iv) refer to

lands of particular description viz. land covered with stumps of trees of a forest; land which is part of a forest or lies within it or was part of a forest or was lying within a forest on 30th August, 1975; 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; and forest land held or let for purpose of agriculture or for any purposes ancillary thereto; while sub-clause (v) includes within the definition of 'forest all the forest produce therein, whether standing, felled, found or otherwise'. Items of land included in the first four sub-clauses unquestionably have some nexus with the natural forest. Actually lands sought to be covered by sub-clauses (i), (ii) and (iv) present no difficulty whatsoever, for, these sub-clauses in terms refer to pieces of lands which were essentially forests or parts thereof but have undergone some changes and alterations indicated; for instance, in sub-clause (i) trees have been cut or dismembered and merely stumps have been left and in sub-clause (iv) land which is essentially forest is used for the purpose of agriculture and other ancillary purposes. The changed or altered user indicated cannot alter the basic character of land being a forest. Sub-clause (iii) gives an impression as if the State Government can declare any land, even non-cultivable land, as forest and that too without leaving any remedy to an aggrieved person to demonstrate to the contrary. It is true that there is no separate section in the Act authorising the State to make such a declaration of indicating any criteria for that purpose. Even so, it seems to us clear that sub-clause (iii) cannot be regarded as conferring unregulated authority on the State Government to make such declaration. In the first place, pasture land mentioned in sub-clause (iii) falls within the normal dictionary meaning of the expression 'forest' but that apart, the types of land mentioned in this sub-clause viz. pasture land, water-logged or cultivable or non-cultivable land must either 'lie within' or be 'linked to' a forest and it is only when this condition is satisfied that the State Government can make a declaration that such land is a forest. Therefore, it cannot be said that there exists no criteria for making a declaration with regard to type of land covered by this sub-clause; its (land's) lying within or being linked to forest affords the basis and obviously it is left to the State Government to decide to what extent or degree such pieces of land should be closely linked with 'forest'. Objections of persons interested in such land can be adjudicated under section 6. It is true that in the

enquiry and adjudication of disputes contemplated by section 6 the objections that are required to be considered by the Collector are whether any forest is a private forest or not and whether any private forest or portion thereof or dwelling houses constructed therein stands acquired or vested in the Government or not. But, in our view, the objection that the land is not a private forest would also include the objection that it is not forest at all. This position, it may be stated, was conceded by Counsel appearing for the State of Maharashtra. The types of land that are sought to be included within the definition of 'forest' under sub-clauses (i) to (iv) 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 in our view, the artificiality, if any, cannot be said to introduce such matters over which the State Legislature has no competence.'

The Full Bench proceeded to state:

'30. Turning to the definition of 'private forest' given in section 2(f), it will appear clear that even this definition consists of two parts; the first part indicating what the expression 'means' according to the legislature and the second part indicating what the expression includes according to the legislature. In the first part 'private forest' has been defined to mean any forest which is not the property of the Government while under the inclusive part six items or heads mentioned in sub-clauses (i) to (vi) have been included in the definition. The 'meaning' part presents no difficulty and the question is about the inclusive part of the definition. The true impact of this inclusive part of the definition cannot be realised without bearing in mind the provisions of Chapter V of the [Forest Act, 1927](#). It may be stated that the Indian [Forest Act, 1927](#) deals with different types of forest, such as, (i) Reserved forests, (ii) Village forests, (iii) Protected forests and (vi) Forests which are not the property of Government; Chapter V deals with the fourth category of forest and contains sections 34-A, 35 and 38. Under section 34-A it has been provided that for the purposes of that Chapter 'forest' includes any land containing trees and shrubs, pasture lands and any other land whatsoever which the State Government may, by notification declare to be a forest. Section 35(1) enables the State Government to issue a notification regulating or prohibiting certain acts, such as,

breaking up or clearing of the land for cultivation, pasturing of cattle, firing or clearing of the vegetation, girdling, tapping or burning of any tree or the stripping off the bark or leaves from any trees, cutting, sawing, conversion and removal of trees and timber; or quarrying of stone or the burning of lime or charcoal, etc. when such regulation or prohibition appears necessary for any forest not belonging to Government, for the purpose of conservation of trees and forests, preservation and improvement of soil, improvement of grazing, maintenance of a water supply in springs, rivers and tanks, maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel, maintenance of reservoirs or irrigation works, protection of roads, bridges, railways and other lines of communication and preservation of the public health, etc. Under sub-section (3) of section 35 it is provided that no notification under sub-clause (1) shall be issued until after a show cause notice to the owner of such forest has been issued and until his objections, if any are heard and considered by Government. Section 38 provides for protection of private forest at the request of the owners and states that upon a request in that behalf being made by the owners the State Government can apply the provisions of the Forest Act to such private forest by means of a notification. If sub-clauses (i) to (iv) of section 2(f) are read in the light of the aforesaid provisions of sections 34-A, 35 and 38 of the [Forest Act, 1927](#), it will appear clear that these sub-clauses bring within the definition of private forest four types of land in respect of which action has been taken by the State Government under sections 34-A, 35(1), 35(3) & 38 of the Forest Act. Sub-clause (i) brings within the definition of 'private forests' any land declared before the appointed day to be a forest under section 34-A of the Forest Act and sub-clause (ii) brings any forest in respect of which a notification under section 35(1) of the Forest Act has been issued immediately before the appointed day within the category of 'private forest'. Both the sections viz. 34-A and 35 of the Forest Act have been repealed with effect from 30th August, 1975 after the coming into force of the Acquisition Act and in view of such repeal no fresh declaration by issuing a notification under section 34-A or fresh issuance of a notification under section 35(1) is now possible. As regards action taken either under section 34-A or under section under section 35(1) prior to 30-8-1975 our attention was not drawn to any defective declaration or defective notification issued under either of these provisions.

Moreover, it would be reasonable to assume that such prior declaration under section 34-A was in respect of such land as possessed the essential attributes of a forest. Prior action under section 35(1) must have been merely regulatory or prohibitory of certain acts specified in the section and that too in respect of 'forest' inasmuch as the power to issue such regulations or prohibitions is confined to forests. No grievance can be made with regard to action taken by means of a notification under section 38 of the Forest Act in respect of land mentioned in sub-clause (iv), inasmuch as, such action is taken with a view to formation or conservation of forest over such land at the request of the owners of land. 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. In our view, the artificiality involved, if any, in the definition of private forest in section 2(f) is indeed of a very minor nature and does not introduce anything over which the State Legislature has no competence. The contention of Mr. Singhvi and Mr. Paranjpe that under the artificial definitions even lands which cannot by any stretch of imagination be regarded as forest in its normal or natural connotation have been brought within that concept as well as their apprehension that lands which may be barren tracts where quarrying operations may be carried on may be included in the artificial definitions under the power of declaration conferred on the State without any hearing are misconceived. In the first place, the artificial parts of the two definitions of 'forest' and 'private forest' do not do anything of the kind as

suggested and secondly under section 6 of the Act owners of such land which is sought to be declared as forest would have an opportunity of raising objections to the proposed declarations and of satisfying the Government that their lands are not and cannot be treated or declared as forests.'

104. In our considered opinion, the ratio laid down in Janu Chandra Waghmare has no application to the facts of the case. The said decision, therefore, does not take the case of the first respondent Corporation anywhere. On various grounds discussed by us in earlier part of the judgment, the Maharashtra Revenue Tribunal has committed an error of law apparent on the face of the record by holding that the land bearing Survey No. 345-A of village Dahisar was neither 'forest' nor 'private forest' and by taking such view, it exceeded jurisdiction and hence, the said decision deserves to be quashed by this Court by exercising powers under Articles 226 and 227 of the Constitution and accordingly, the said decision is quashed and set aside.

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

106. So far as Writ Petition No. 1383 of 2002 is concerned, the Maharashtra Revenue Tribunal considered the matter again after the review petition was allowed by this Court and dismissed the appeal filed by the petitioner appellant. We see no infirmity in the reasons recorded and conclusions reached by the Tribunal. In our opinion, the said decision requires no interference. The petition, therefore, deserves to be dismissed and is accordingly dismissed. In the facts and circumstances, however, there shall be no order as to costs.

Parties be given copies of this order duly authenticated by the Associate/Private Secretary.

107. The learned Counsel for the first respondent in Writ Petition No. 1052 of 1998 prays for stay of the order passed by us for a period of twelve weeks as the first respondent intends to approach the Supreme Court. In our opinion, the prayer is reasonable. Our order will not be implemented for a period of twelve weeks from today. It is, however, clarified that the first respondent will not alienate, encumber, sell, mortgage, create any third party rights or deal with the property, which is the subject-matter of the present petition.

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