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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.427 OF 2011

Lok Housing & Construction Ltd.

Through its Resolution Professional

Hemant J. Mehta & Anr. .. Petitioners

V/S

State of Maharashtra & Ors. .. Respondents

Mr.Zubin Behramkamdin, Senior Advocate a/w Ms.Rishika Virwadia, Pranav A. and Sakshi Kashyap i/b Fox Mandal & Associates, LLP for the Petitioner.

Ms.Jyoti Chavan, Addl. GP for the State.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 25th JUNE 2026

ORAL JUDGMENT (PER BHARATI DANGRE, J) :

1 Petitioner No.1, Lok Housing and Construction Ltd. incorporated under the provisions of the Companies Act, 1956, and Petitioner No.2, being the Vice President of Petitioner No.1, Company, invoked the writ jurisdiction of this Court in the year 2011, praying for quashing and setting aside of the Notifications dated 05/07/2008, 18/02/2009 and 31/03/2010, thereby, notifying the land belonging to the Petitioners viz. 5.796 Hectares of CTS No.1 of Village Turbhe; 14.57 Hectares of CTS

No.2 and 20.11 Hectares of CTS No.5 of Village Mandale, as 'Forest'.

According to the Petitioners, the said Notifications are liable to be quashed and set aside as they are issued in utter violation of Section 29 of the Indian Forests Act, 1927, which permit the State Government to declare the provisions of the Chapter IV of the Indian Forests Act, to be applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights or to the whole or any part of the forests produce of which the Government is entitled.

2 In light of the aforesaid provision, it is the contention of the Petitioners that they had purchased the free-hold lands situated at Turbhe and Mandale from one Mr.Thanawala, which were to be put to use as salt pans by the erstwhile owners.

Since the Petitioners were desirous of developing these plots, which had presence of sparse Mangroves, which had developed on account of the salinity in the soil, when the Petitioners were in the process of securing necessary development permissions and even filed Application under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, and the Competent Authority passed the order and granted permission under Section 10(3) of the ULC Act on 23/12/2004 and even an order under Section 10(5) of the ULC Act, but the order was stayed by the Revenue Minister and the Petitioners continued to remain in possession of the said lands.

3 Our attention is invited to the Notification dated 17/02/2009 which has included the lands on CTS No.2, 4 and 5 from Village Mandale and land from CTS No.1 from Village Turbhe belonging to the Petitioners and this Notification has notified the privately owned lands under Mangroves to be 'Forest' by the Divisional Commissioner, Konkan Division on being authorized by the Government of Maharashtra. It is the specific contention raised in the Petition that the steps taken by the State in declaring the privately owned land as 'protected forest' by invoking the provisions of sub-section (1) of Section 29 is an unwarranted exercise and despite the Petitioners repeatedly entering into correspondence being aggrieved by the said Notifications and requesting for deletion of the forest entry from the property card, since the Petitioners did not succeed in its endeavour it had approached this Court.

4 Since the pleadings in the Petition are concluded, we issue 'Rule' by making it returnable forthwith.

We have heard the learned senior counsel Mr.Behramkamdin for the Petitioners and the AGP Ms.Jyoti Chavan, representing the Respondent/Authorities.

5 At the outset, Ms.Chavan has requested us to defer the hearing of the Writ Petition in the wake of the pendency of Civil Suits in form of Suit No. 3225/1997, 3226/1997 and 3227/1997, in which the State of Maharashtra had staked its ownership and sought a declaration of title of the subject land.

This plea is strongly opposed by the learned senior counsel

for the Petitioners, by submitting before us the copy of the Plaint in Suit No.3225/1997 and from the same, it could be discerned that the Suit is filed by Union of India through the Deputy Salt Commissioner against Defendant Nos.1 and 2 being the erstwhile owners and the Petitioner being impleaded as Defendant No.3, with the impleadment of the State of Maharashtra, Department of Revenue as Defendant No.4.

The Plaint has sought a declaration from the Court that the Plaintiffs are the owners of the suit land and that the Defendants have no right, title or interest in the same. There is also a challenge raised to the order passed by the City Survey Inquiry Officer, Collector Bombay Suburban as well as order passed on 12/06/1996 by the Revenue Minister of the State of Maharashtra and they are prayed to be declared as null and void. An injunction is also sought against the Defendants from entering upon the suit land or from carrying out any construction activity or dealing with, disposing of or transfer their rights in the suit land in favour of third party.

6 Though the copies of the Plaint in the other Suits are not before us, we assume that there are two other Suits in respect of other two CTS numbers at Mandale and Turbhe.

In the wake of this revelation before us that the Suits are never instituted by the State of Maharashtra, we refuse to consider the request of postponing hearing of the Petition.

7 In the backdrop of the pleadings in the Petition, an Affidavit is filed before us by the Divisional Commissioner, Konkan Division

Shri Santokh Singh Sandhu, who co-incidentally is also the Authority who has issued the impugned Notifications.

In the said Affidavit, the Deponent has set out the background and admitted as to how the Petitioners became the owners of the said land and the Affidavit make a reference to CTS No. 1 from Village Turbhe and CTS No.2(pt.) and 5 from Village Mandale.

The Affidavit proceed to state that they were the lands under Mangrove declared as 'Protected forest' from the record and were considered to be Government lands. The Petitioners thereafter, made various Applications including the Application dated 10/07/2008 to the Government, claiming that the said lands were private lands owned by the Petitioners, as a result, the report was called from the Superintendent of Land Records and the report was received on 18/11/2008 revealing the following factors :-

“(a) As per the original enquiry, the Enquiry Officer had declared Govt. of Maharashtra as Holder in respect of the C.T.S. No.1 of Turbhe, C.T.S. No.5 of Mandale and declared Agriculture Tenure in respect of C.T.S. No.2 of Mandale.

(b) Thereafter Collector, Mumbai Suburban District had conducted enquiry under Sec-20(2) of M.L.R.C. 1966 and vide order dated 22/6/1995 declared Shri Suresh & Harendra J. Thanawala as the holders of the abovementioned properties. By mutation dated 3/7/1995, the names of the petitioners were incorporated on property card.

(c) Then the petitioners purchased the property vide registered conveyance No.P/BDR-3/240/94, dated 5/4/95. As per the application of the petitioner and after recording the statement of the petitioner name of the petitioner was entered on property card as holder vide mutation dated 12/10/95. The status of the lands recorded in the name of petitioners on 12-10-95 is as given below :

Table No.II

Village	CTS No.	S.N.	Area as per Conveyance	Area as per PRC
Turbhe	1	139	7,65,700.00	1,49,666.1
Mandale	2	89		3,31,728.8
Mandale	5	88,92 pt.		2,20,024.5
Total			7,65,700.00	7,01,419.4

(d) Subsequent to the year 1995, the Additional Collector and Competent Authority, Urban Land Ceiling (ULC) passed an order dated 6/12/2004, u/s 10(3) of Urban Land Ceiling Act (ULCA) and declared land admeasuring 60135.0 sq.mt. out of C.T.S. No.1 of Turbhe as surplus. Similarly by the said order, an area admeasuring 128,334 was also declared surplus out of total area under CTS No.2 of Mandale. This surplus area of Turbhe and Mandale was declared as Govt. land and accordingly vide mutation entry dated 1/9/05 the name of Govt. of Maharashtra was entered to the extent of 60135.0 sq. mt. (6.014) out of total area 1,49,666.1 sq. mt. (14,966 H) of the CTS No.1, and to the extent of 1,28,334 sq. mt. out of area admeasuring 3,31,728.8 sq. mtrs. of the CTS No.2 of Turbhe and Mandale respectively. The area under CTS No.5 of Mandale remained unchanged. The position as stood in the City Survey Records on 1-9-2005 is given as follows :

Table No.III

Village	CTS No.	S.N.	Area as per PRC Sq. Mt.	Area declared as Surplus Land under ULC Sq. mt.
Turbhe	1	139	1,49,666.1	60135.) (6.014H)
Mandale	2	89	3,31,728.8	1,28,334.0(12.83)
Mandale	5	88,92 pt.	2,20,024.5	Nil

The Affidavit further proceed to state that in the Review Application dated 18/3/2006 filed by the Petitioners the Hon'ble Chief Minister passed the following order :-

“The dispute regarding ownership is pending before the High Court in Suit NO.3225, 3226 and 3227/1997. So till the final decision of the Bombay High Court the actions taken under Section 10(3) by order dated 06/12/2004 and Section 10(5) of by order dated 31/08/2005 are stayed”.

Therefore, the Affidavit categorically contain a following statement :-

“It is clearly evident from the aforesaid facts that the ownership of the petitioners itself is under dispute.

I also say and submit that irrespective of the ownership, the fact remains that the suit lands are under mangroves and deserve to be declared as ‘protected forest’ or ‘forest’ as the case may be in accordance with the directions of Hon’ble High Court.”

8 With this specific stand being adopted before us, when we have perused Section 29 of the Indian Forests Act, 1927, the very stipulation of declaring the land to be ‘protected forest’ being that it should be the property of the Government or the property over which the Government has ‘proprietary rights’, is not at all satisfied.

The impugned Notification(s), have declared the privately owned lands under Mangroves as ‘forest’, but the invocation of the provisions under Section 29, contemplate declaration of forest land and waste land which is the property of the Government or over which the Government has proprietary rights to be the ‘protected forest’.

Further, sub-section (3) of Section 29 also contemplate that no such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest land or waste land comprised therein has been enquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks it sufficient.

The proviso also make it amply clear that before a declaration is issued declaring the land to be protected forest, it should be preceded by an inquiry which should be conducted in

such a manner so as not to abridge or affect any existing rights of individuals or communities.

9 In light of the aforesaid clear provision, we find that when the Commissioner, Konkan Division himself in the Affidavit has admitted that the lands are mutated in the names of the Petitioners and now the Union of India claims that they are salt pan lands, by filing the Suits, to which the State of Maharashtra is impleaded as Defendant and even the injunction is also sought against the Defendant, we are of the clear view that the declaration by the State of Maharashtra about protected forest in respect of the privately owned land of the Petitioners cannot sustain and hence we quash and set aside the impugned Notifications.

The Petition is made absolute in the aforesaid terms

[MANJUSHA DESHPANDE, J.]

[BHARATI DANGRE, J.]