IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3205 OF 2018

1. The State of Maharashtra
By and through the Chief
Conservator of Forests &
Director, Sanjay Gandhi
National Park, Borivali East,
Mumbai 400 066 .... **Petitioner**

Versus

1. D. Dayabhai and Co. Pvt. Ltd.
Devkaran Mansion 79A
Princess Street, Mumbai 400 002

2. Shri Narayan Ganu Tangadi
(deceased) by heirs and legal
Representatives

2.1. Smt. Bhimabai Bhalchandra Tangadi

2.2. Smt. Vijaydeep B. Tangadi, deceased
By his heirs and legal representatives

2.3. Bhupendra B. Tangadi

2.4. Nalini B. Tangadi

2.5. Naina V. Tangadi

2.6. Avinash V. Tangadi

2.7. Dnyansehwar V. Tangadi

2.8. Rakesh V. Tangadi

2.9. Siddharth N. Tangadi

2.10. Bhagwanti G. Patil

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2.11. Sita Yadav Gharat

2.12. Gulab Ramesh Tare
All residing near Marathi School
Chitalsar Manpada Ghodbunder Road
Thane West

3. Neelaben Pravinchandra Parekh

4. Tiku P. Parekh

5. Rajeev P. Parekh
all residing at Tiku Ji Ni Wadi
Manpada Thane

6. Meghjibhai Somjibhai Patel
Residing at Shankar Vijay Saw Mill
Agra Road Arjunphata Bhiwandi
Thane

7. Kalyanjibhai Natha Patel,
Residing at 703, Sayali MHADA
Housing Society,
Behind Vasant Vihar,
Pokharan Road No.2, Thane

8. Thane Municipal Corporation
Through Commissioner
Mahapalika Bhavan, Thane (W)
Panchpakhadi .... **Respondents**

WITH
INTERIM APPLICATION NO.2785 OF 2020
IN
WRIT PETITION NO.3205 OF 2018

1. Conservation Action Trust
5, Sahakar Bhavan, 1st Floor,
LBS Road, Narayan Nagar,

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Ghatkopar (W),
Mumbai – 400 086
Through its Executive Trustee
Mr. Debi Goenka

2. Mr. Debi Goenka
Indian National, aged about 63 years
Executive Trustee, Conservation
Action Trust, Having office at :
5, Sahakar Bhavan, 1st Floor,
LBS Road, Narayan Nagar,
Ghatkopar (W), Mumbai – 400 086 ….**Applicants**

IN THE MATTER BETWEEN :

1. The State of Maharashtra
By and through the Chief
Conservator of Forests &
Director, Sanjay Gandhi
National Park, Borivali East,
Mumbai 400 066 …. **Petitioner**

Versus

1. D. Dayabhai and Co. Pvt. Ltd.
Devkaran Mansion 79A
Princess Street, Mumbai 400 002

2. Heirs of Shri Naryan Ganu Tangadi
(deceased) and legal Representatives

2.1. Smt. Bhimabai Bhalchandra Tangadi

2.2. Heirs of Smt. Vijaydeep B. Tangadi,
(deceased) and legal representatives

2.3. Bhupendra B. Tangadi

2.4. Nalini B. Tangadi

2.5. Naina V. Tangadi

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2.6. Avinash V. Tangadi

2.7. Dnyansehwar V. Tangadi

2.8. Rakesh V. Tangadi

2.9. Siddharth N. Tangadi

2.10. Bhagwanti G. Patil

2.11. Sita Yadav Gharat

2.12. Gulab Ramesh Tare
All residing near Marathi School
Chitalsar Manpada Ghodbunder Road
Thane West

3. Neelaben Pravinchandra Parekh

4. Tiku P. Parekh

5. Rajeev P. Parekh
all residing at Tiku Ji Ni Wadi
Manpada Thane

6. Meghjibhai Somjibhai Patel
Residing at Shankar Vijay Saw Mill
Agra Road Arjunphata Bhiwandi
Thane

7. Kalyanjibhai Natha Patel,
Residing at 703, Sayali MHADA
Housing Society,
Behind Vasant Vihar,
Pokharan Road No.2, Thane .... **Respondents**

WITH
WRIT PETITION NO.10024 OF 2023

1. D Dahyabhai & Co. Pvt. Ltd.
a company incorporated under the
provisions of the Companies Act,
1956 and having its registered office

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at 121, Mittal Tower, 'C' Wing,
12th Floor, Nariman Point,
Mumbai – 400 021

2. Nitesh Prataprai Kothari,
Adult, Indian inhabitant,
shareholder/director of
Petitioner No.1, having address
at 121/C, Mittal Tower,
Nariman Point, Mumbai – 400 021 …. **Petitioners**

Versus

1. The State of Maharashtra
(acting through its Urban Development
Department), having its office at
Mantralaya, Madam Cama Road,
Mumbai – 400 032

2. Thane Municipal Corporation,
having its address at Mahanagarpalika
Bhavan, Sarsenani General Arun Kumar
Vaidya Marg, Chandanwadi Pachapakhadi,
Thane – 400 602

3. Commissioner, Thane Municipal
Corporation, having address at,
Mahanagarpalika Bhavan,
Sarsenani General Arun Kumar Vaidya
Marg, Chandanwadi, Pachapakhadi,
Thane – 400 602

4. Additional Commissioner (2),
Thane Municipal Corporation, having address at
Mahanagarpalika Bhavan, Sarsenani General Arun
Kumar Vaidya Marg, Chandanwadi
Pachapakhadi, Thane – 400 602

5. Deputy Commissioner (Estates),
Thane Municipal Corporation,
having address at Mahanagarpalika

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Bhavan, Sarsenani General Arun
Kumar Vaidya Marg, Chandanwadi
Pachapakhadi, Thane – 400 602

6. City Engineer, Thane Municipal
Corporation, having address at
Mahanagarpalika Bhavan, Sarsenani
General Arun Kumar Vaidya Marg,
Chandanwadi Pachapakhadi,
Thane – 400 602

7. Deputy City Engineer, Thane
Municipal Corporation, having
address at Mahanagarpalika Bhavan,
Sarsenani General Arun Kumar
Vaidya Marg, Chandanwadi,
Pachapakhadi, Thane – 400 602

8. Assistant Director Town Planning,
Thane Municipal Corporation,
having address at Mahanagarpalika
Bhavan, Sarsenani General Arun
Kumar Vaidya Marg, Chandanwadi
Pachapakhadi, Thane – 400 602

9. Executive Engineer, Town
Development Department, Thane
Municipal Corporation, having
address at Mahanagarpalika Bhavan,
Sarsenani General Arun Kumar
Vaidya Marg, Chandanwadi
Pachapakhadi, Thane – 400 602 …. **Respondents**

WITH
INTERIM APPLICATION NO.7016 OF 2024
IN
WRIT PETITION NO.10024 OF 2023

1. Oriental Florie Culture LLP
A Limited Liability Partnership
Duly registered under the provisions

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of The Limited Liability Partnership
Act, 2008
Through its partner
Mr. Kapil Mahendra Sharma
Age : 65, Occu : Business/Agriculturist
Office at : Highland Garden, G/1,
Ground Floor, Balkum, Dhokali Road,
Dhokali, Thane West 400 608 …. **Applicants**

IN THE MATTER BETWEEN :

1. D. Dayabhai & Co. Pvt. Ltd.
a company incorporated under the
provisions of the Companies Act,
1956 and having its registered office
at 121, Mittal Tower, 'C' Wing,
12th Floor, Nariman Point,
Mumbai – 400 021

2. Nitesh Prataprai Kothari,
Age : Adult, Indian inhabitant,
shareholder/director of
Petitioner No.1, having address
at 121/C, Mittal Tower, Nariman Point,
Mumbai – 400 021

…. **Petitioners**

Versus

1. The State of Maharashtra
(acting through its Urban Development
Department), having its office at
Mantralaya, Madam Cama Road,
Mumbai – 400 032

2. Thane Municipal Corporation,
having its address at Mahanagarpalika
Bhavan, Sarsenani General Arun Kumar
Vaidya Marg, Chandanwadi Pachapakhadi,
Thane – 400 602

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3. Commissioner, Thane Municipal Corporation, having address at, Mahanagarpalika Bhavan, Sarsenani General Arun Kumar Vaidya Marg, Chandanwadi, Pachapakhadi, Thane – 400 602

4. Additional Commissioner (2), Thane Municipal Corporation, having address at Mahanagarpalika Bhavan, Sarsenani General Arun Kumar Vaidya Marg, Chandanwadi Pachapakhadi, Thane – 400 602

5. Deputy Commissioner (Estates), Thane Municipal Corporation, having address at Mahanagarpalika Bhavan, Sarsenani General Arun Kumar Vaidya Marg, Chandanwadi Pachapakhadi, Thane – 400 602.

6. City Engineer, Thane Municipal Corporation, having address at Mahanagarpalika Bhavan, Sarsenani General Arun Kumar Vaidya Marg, Chandanwadi Pachapakhadi, Thane – 400 602

7. Deputy City Engineer, Thane Municipal Corporation, having address at Mahanagarpalika Bhavan, Sarsenani General Arun Kumar Vaidya Marg, Chandanwadi, Pachapakhadi, Thane – 400 602

8. Assistant Director Town Planning, Thane Municipal Corporation, having address at Mahanagarpalika Bhavan, Sarsenani General Arun Kumar Vaidya Marg, Chandanwadi Pachapakhadi, Thane – 400 602

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9. Executive Engineer, Town
Development Department, Thane
Municipal Corporation, having
address at Mahanagarpalika Bhavan,
Sarsenani General Arun Kumar
Vaidya Marg, Chandanwadi
Pachapakhadi, Thane – 400 602 …. **Respondents**

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Anant G. Mallya and Mr. Sachin H. Kankal, AGP for the Petitioners in Writ Petition No.3205 of 2018 and for the Respondent-State in Writ Petition No.10024 of 2023.

Mr. Chirag Balsara a/w. Mr. Sanjay Borkar, Mr. Jaydeep Deo & Ms. Rashmi Chavan i/b. Ms. Minal Chandnani and Mr. Rajesh Ranglani for the Petitioners in Writ Petition No.10024 of 2023 and for Respondent No.1 in Writ Petition No.3205 of 2018.

Mr. Karl Tamboly a/w Mr. Vishesh Srivastav, Mr. Anubhav Singh, Mr. Pratik Thorat and Mr. Nikhil Waje i/b. I.C. Legal for Respondent No.2(1) & 2(3) to 2(12) in Writ Petition No.3205 of 2018.

Mr. R. S. Apte, Senior Advocate i/b. Mr. Mandar Limaye for the Respondent TMC/Respondent Nos.2 to 5 in Writ Petition No.10024 of 2023.

Mr. Ashutosh Gole a/w. Mr. Nikhil Waje for the Applicants in Interim Application No.7016 of 2024.

Mr. Kunal Dwarkadas a/w Mr. Aniket Kharote i/b Jayakars, for the Applicants in Interim Application No.2785 of 2020.

Mr. S.G. Karandikar, for Respondent Nos.3 to 5 in Writ Petition No.3205 of 2018.

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CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.

RESERVED ON : 17th DECEMBER, 2025

PRONOUNCED ON : 20th FEBRUARY, 2026

JUDGMENT (PER : RAVINDRA V. GHUGE, J.) :

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PREFACE

1. Rule in both the Writ Petitions. Rule made returnable forthwith and heard finally by the consent of the parties. This Court has not granted any interim relief in the First Writ Petition No. 3205 of 2018.

2. The First Petition (Writ Petition No.3205 of 2018) is filed by the Petitioner State, was listed before the Single Judge Bench, as per Chapter XVII, Rule 18 (1) of the Bombay High Court Appellate Side Rules, 1960. By an order dated 4th January, 2024, passed by the Hon'ble the Chief Justice, on request of the parties, Writ Petition No.3205 of 2018 has been clubbed with Writ Petition No.10024 of 2023 and placed before the Division Bench.

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3. The learned Senior Advocates and the Advocates for the respective sides, canvassed their oral submissions in marathon hearings for long hours, held on 21st November 2025, 28th November 2025, 4th December 2025, 9th December 2025, 10th December 2025, 15th December 2025, 16th December 2025 and 17th December, 2025. They also placed their extensive written notes of submissions on record along with case law. Finally, these matters were closed for Judgment on 17th December, 2025 just before the Christmas vacation.

4. In the First Petition (Writ Petition No.3205 of 2018) filed by the Petitioner, State of Maharashtra, through the Chief Conservator of Forests & Director, Sanjay Gandhi National Park, (for the sake of brevity, herein after referred to as the State), the State has put forth the following Prayers :

> *(a) That the order dated 30 June 2017 passed by the Maharashtra Revenue Tribunal dismissing the Petitioner's Appeal No.165 of 2005 be set aside entirely and the order dated 27 Dec 2004 passed by the SDO Thane (Private Forests) in case No 53/99 in respect of part of Gat No.59A/1 Manpada, Thane District admeasuring about 59 A, be set aside and the entire 193 A of Gat No.59A/1 Manapada, Thane be declared as being finally acquired private forest having status of deemed reserved forest.*

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> *(b) Pending the hearing and final disposal of this Petition, the order dated 30 June 2017 passed by the Maharashtra Revenue Tribunal dismissing the Petitioner's Appeal No.165 of 2005 be set aside entirely and the order dated 27 Dec., 2004 passed by the SDO Thane (Private Forests) in case No 53/99 in respect of part of gat number 59A/1 Manpada, Thane District admeasuring about 59 Acres, be stayed.*

5. In the Second Petition filed by the Petitioners/Company (for the sake of brevity, herein after referred to as the Company/Land owner/Respondent no.1), the Company has put forth the following Prayers :

> *(b) This Hon'ble High Court be pleased issue a Writ of Mandamus or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, ordering and directing the Respondents to issue / allot the said TDR/DRC against park reservation No.4 (said reservation) area admeasuring 404721.02 sq. mtrs. which has been acquired vide registered Deed of Transfer dated 24th May, 2019 registered under Serial No. TNN5-8450-2019 to the Petitioner No.1 within a period of 2 weeks from the date of order or such other time as this Hon'ble High Court may deem fit and proper.*
>
> *(c) pending the hearing and final disposal of this Petition, this Hon'ble High Court be pleased to pass an order of temporary injunction restraining the Respondents from in any manner whatsoever dealing with the said Property (defined at paragraph 18 of the Petition) and utilizing the same for the purpose of the said*

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Reservation (defined at paragraph 18 of the Petition).

6. It is quite apparent that the decision in the first Petition would directly impact the decision in the second Petition. All the learned Counsel also submit that the verdict in the first Petition would decide the fate of the second, keeping in view that the second Petition is filed for seeking directions, based on the decision of the Maharashtra Revenue Tribunal, which is impugned in the First Petition. Hence, we are dealing with the first Petition, first.

7. The learned Advocates have tendered their extensive written notes of submissions. According to them, they have covered all the points and issues that need consideration by this Court, in the light of the law pronounced by the Hon'ble Supreme Court in the judgments cited. It is urged that all these submissions be considered for the proper adjudication of the dispute, especially the challenge posed by the State to the impugned judgment and order of the Maharashtra Revenue Tribunal (herein after referred to as the MRT).

8. We do not wish to enlarge the size of the Judgment by reproducing the entire written notes of submissions of the parties,

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which we have read, thread-bare. The notice at issue, dated 29.08.1975, is annexed to this Petition and marked **Article 'X'**. We have drawn a summary of their written notes (verbatim) and their entire compilation of written notes of submissions/arguments are annexed after the end of this judgment, as per a separate index.

WRIT PETITION NO. 3205 OF 2018

PARTIES IN THE WP

Parties	*Referred To As*
The State of Maharashtra	Petitioner/State
D. Dayabhai and Co. Pvt.Ltd	Respondent No. 1 (Original Land Owner of the Subject Land)
Narayan Ganu Tangadi	Respondent No. 2 (Claiming 17 acres of land)
Neelaben Pravinchandra Parekh	Respondent No. 3 (Claiming some portion of the 24 acres of land that Respondent No. 1 sought exclusion)
Tiku P Parekh	Respondent No. 4 (Claiming some portion of the 24 acres of land that Respondent No. 1 sought exclusion)
Rajeev P Parekh	Respondent No. 5 (Claiming some portion of the 24 acres of land that Respondent No. 1 sought exclusion)
Meghjibhai Sojibhai Patel	Respondent No. 6 (Claiming exclusion from 19 i.e., about 0.45 acres gunthas from the subject land)

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Kalyanjibhai Natha Patel	Respondent No. 7 (Claiming exclusion from 19 i.e., about 0.45 acres gunthas from the subject land)
Thane Municipal Corporation	Respondent No.8 (Acquired the said property from Respondent No.1/land owner vide a registered Deed of transfer dated 24.05.2019)

9. In this Petition, the State has prayed that the order dated 30th June, 2017 passed by the Maharashtra Revenue Tribunal (MRT) dismissing the Petitioner's Appeal No.165 of 2005, be set aside entirely. So also, the order dated 27th December, 2004 passed by the SDO Thane (Private Forests) in Case No.53/99, in respect of part of Gat No.59A/1 Manpada, Thane District admeasuring about 59 A, be set aside and the entire 193 A of Gat No.59A/1 Manapada, Thane, be declared as being an acquired private forest having the status of a deemed reserved forest.

10. Before we turn to the Oral and written submissions of the learned Senior Advocates, Mr. Dwarkadas and Mr. Apte, and the learned Advocates, Mr. Balsara and. Mr Tamboly and all the other parties, it would be appropriate to consider the pleadings and averments of the parties.

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PLEADINGS AND AVERMENTS OF THE STATE

(Summarised from the WP records)

11. The State has pleaded in Writ Petition No.3205 of 2018, as under :

(a) Land Acquisition was sought in Gut No.59/A/1 situated at Manpada, Chitalsar, Thane, for an area of 203 acres, 8 gunthas and 8 annas owned by M/s. D. Dahyabhai and Company Private Limited, Respondent No.1 (The land owner).

(b) It was found that although 217 acres, 8 gunthas and 8 annas from Survey No.59/A/1 in village Manpada was originally intended to be acquired about 14 acres has been sold to various entities, viz. Tata Power Company, Tolani Bros, Fuel Injection Company etc., much prior to 30th August, 1975, which was the appointed day under the Maharashtra Private Forests (Acquisition) Act, 1975 (hereinafter referred to as MEFA'). Notice under S.35(3) of the earlier Forest Act, 1927, had not been issued.

(c) Calculations of the area of land available with the land owner, was only 197 acres, 07 gunthas and 4 annas, which was available for acquisition. The land owner had conceded that 168 acres, 15 gunthas and 04 annas was forest land and actual possession was handed over to the Maharashtra Forest Department.

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(d) Notice under Section 35(3) of the 1927 Act, was issued on 29th August, 1975 and the land owner received the notice on 4th September, 1975. The land owner did not raise any dispute about the forest character of the land in its letter dated 4th September, 1975.

(e) The land owner issued letters dated 5th July, 1979 and 28th August, 1979, requesting the State Government to exempt 24 acres and 32 gunthas from Gut No.59/A/1 of its holding from acquisition and offered an alternate land of 25 acres and 32 gunthas from Gut No.59/2 and 59/16, Manpada.

(f) The land owner canvassed that he had spent substantial amount in developing 24 acres and 32 gunthas for converting the same for horticulture use and have constructed two Wells and three farm houses, which is denied by the State.

(g) The land owner proposed, that 24 acres and 32 gunthas be excluded from acquisition. It would surrender alternate area of 24 acres and 32 gunthas from its other property in Survey Nos.59/2, 59/3 and 59/16 that were contiguous to the large portion of land under acquisition.

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(h) On 3rd August, 980, the Deputy Collector (SDO), after conducting an inquiry, passed an order accepting the proposal of the land owner.

(i) On 15th October, 1982, the Appeal preferred by the State Government was allowed by the Maharashtra Revenue Tribunal (MRT) and the order of the Sub-Divisional Officer was quashed and set aside. The inquiry was remanded to the Sub-Divisional Officer.

(j) On 13th December, 2004, Respondent No.2, Narayan Ganu Tangdi (now deceased and represented by LRs.) moved an Intervention Application before the Sub-Divisional Officer claiming to be interested in area admeasuring 7 hectares and 38 R out of the total area of about 193 acres in Survey No.59/1, which was also under acquisition. Respondent No.2 claimed to be the agricultural tenant of the land owner.

(k) The State opposed the application filed by Respondent No.2 in its reply dated 18th December, 2004, contending that the inquiry was remanded only for consideration of the issue of about 24 acres in respect of which, the land owner had offered alternate land.

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(l) The Sub-Divisional Officer closed the inquiry for passing final order after the hearing on 20th December, 2004. However, the said officer was subsequently transferred from his post.

(m) By letter dated 5th March, 2005, the succeeding presiding officer addressed a letter to the Deputy Conservator of Forests, Sanjay Gandhi National Park, requiring the attendance of the representatives of the Forest Department at the hearing to be held on 17th March, 2005. The body of the letter clearly mentioned Case No.53/99.

(n) On 27th March, 2005, an order was submitted to the office of Deputy Conservator of Forests (DCF), Sanjay Gandhi National Park (SGNP), which indicated that Case No.53/99 under Section 6 of the Act of 1975, had been decided by the Sub-Divisional Officer by an order dated 24th December, 2004, by which, 24 acres from Survey No.59/1 had been held to be not a Forest. The Application of Respondent No.2 was allowed and he was held to be in possession of 7 hectares and 38 R of land, not being Forest within the said Survey No.59/1.

(o) An area of 17 acres and 19 gunthas relating to village settlement (Konkanipada) was also excluded from the Forest

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Area, though this area was never at issue, as is contended by the State Government.

(p) An Appeal was filed on 15th April, 2005, bearing Forest Appeal No.165 of 2005. There was a delay of 45 days for preferring the Appeal. In a hearing in January 2013, the MRT was apprised by one of the Respondents that the Appeal was not filed within limitation.

(q) The MRT, after taking note of circumstances in which the appeal was filed on 15th April, 2005, dismissed the same on the basis of the Judgment of the High Court, holding that the Tribunal did not have the authority to condone the delay.

(r) The said order of dismissal was set aside by the High Court and the matter was remanded to the Tribunal for considering the issue of condonation of delay. The said delay was condoned by the MRT.

(s) In the interregnum, the other Respondents impleaded themselves as parties to the appeal claiming to have an interest with the First Respondent in the land under acquisition.

(t) The Appeal No.165 of 2005 was heard by the MRT and dismissed by an order dated 30th June, 2017. By the same order, the Appeal filed by the land owner (Respondent No.1) was allowed.

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In effect, the MRT released 193 acres of Forest Land from acquisition.

(u) The Petitioner/State, filed Writ Petition No.3203 of 2018 on 22nd January, 2018, on the following grounds :

> (i) The land owner had sought an inquiry under Section 6 of the MPFA in respect of only 24 acres and 32 gunthas in Gut No.59/A/1, Manpada. The landlord had never claimed any inquiry for the entire land of 193 acres with the contention that it was not a forest or a private forest. It was never open to the Sub-Divisional Officer to expand the scope of the inquiry under Section 6 of the MPFA by including 193 acres.
>
> (ii) The impugned order of the MRT amounts to illegally expanding the scope of inquiry.
>
> (iii) The impugned order misinterpreted the MRT order of 15th October, 1982 by expanding the scope of inquiry to 193 acres instead of 24 acres and 32 gunthas.
> (iv) Both the Subordinate Fora, viz. The Sub-Divisional Officer and the MRT, have exceeded their jurisdiction.
> (v) The reasoning of the MRT in the impugned order on why the land in question was not private forest, is highly convoluted, patently illegal, grossly contrary to law and totally unsustainable.
>
> (vi) The impugned order is wholly erroneous, which states that the per-condition for any land to be private forest is a notice under Section 35(3) of the 1927 Act, and its service upon the land owner.
>
> (vii) The impugned order is in complete ignorance of the definition of forest under Section 2(c)(i) to

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(vi) which is the basic concept of forest and is included in the definition of private forest in Section 2(f) of the MPFA.

(viii) The impugned order ignores the fact that Section 2(f) of the MPFA is inclusive of forest which is not the property of Government and includes categories of land mentioned in (i) to (vi) of Section 2(f), hence 2(f)(iii) is neither the exclusive provision nor the sole criterion for determining if land was or was not forest or private forest.

(ix) The MRT has ignored the Full Bench decision of this Court in Janu Chandra Waghmare V/s. State of Maharashtra, AIR 1978 Bom 119.

(x) The MRT has exceeded its jurisdiction in extrapolating a ratio in Godrej and Boyce Mfg. Company Limited V/s. State of Maharashtra, 2014 (3) SCC 430 and failed to follow the law laid down in Godrej and Boyce Mfg. Company Limited (Supra).

(xi) In Godrej and Boyce Mfg. Company Limited (Supra), the Hon'ble Supreme Court overruled Chintamani G. Velkar V/s State of Maharashtra, (2000) 3 SCC 143, on a limited point that though actual service of notice issued under Section 35(3) of the 1927 Act, was required, it did not prescribe that the notice should be served before 30.08.1975.

(xii) The MRT misinterpreted Godrej and Boyce Mfg. Company Limited (Supra), to conclude that the notice should be actual served before 30th August, 1975.

(xiii) Notice issued should be in close proximity to the commencement of the act to be treated as 'live' notice to be acted upon.

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(xiv) The notice was issued in close proximity to 30th August, 1975 and was served on 4th September, 1975, therefore, was a 'live' or 'pipeline' notice.

(xv) The reliance by MRT on ***Dr. Arjun Sitaram Nitanwar V/s. Tahasildar Distrct Thane & Ors.***, ***2015 (6) Mh.LJ Page 634*** [Coram : Abhay S. Oka (as His Lordship then was) and A.S. Gadkari, JJ], was misplaced. This Court held that unless it is proved that notice under Section 35(3) is served on the owners, land which is subject matter of notice will not become private forest under Section 2(f)(iii) of the 1975 Act and will not vest in the State Government under Section 3(i) of the 1975 Act. So also, reliance placed on ***Ozone Land Agro Private Limited V/s. State of Maharashtra & Ors., (2016) 1 Mh.LJ Page 483***, is misplaced. In both these cases, the notices were stayed having been issued several years prior to 30th August, 1975 and in both these cases, the notices were never served on the land owners.

(xvi) The notice in this case was issued on 29th August, 1975 and was actually served on 4th July, 1975. Hence, the issue of non-service of notice would never arise.

(xvii) Section 7(c)(e) of the Maharashtra General Clauses Act, 1904 clearly states that the repeal, wholly or partially, of any enactment does not affect any proceeding or liability under the Repealed Act.

(xviii) The MRT has erroneously concluded that because the notice was served on 4th September, 1975, after repeal of the 1927 Act, and was not served before 30th August, 1975, it was not a notice issued at all.

(xix) The MRT strangely recorded that no notice was either issued or served on the land owner and

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was drawn in the name of the Dahyabhai and Co. when the name of the owner on 7/12 extract is of D. Dahyabhai and Company Private Limited.

(xx) D. Dahyabhai and Company Private Limited sought inquiry under Section 6 of the MPFA and never took a plea that they were misled by the notice or the land to be acquired was not theirs and some other land was the real focus of acquisition.

(xxi) The observation in Paragraph No.18 of the impugned order was most incongruous, inasmuch as, the forest department would never have issued any notification under Section 35(1) of the 1927 Act, as Section 35 had already been repealed by Section 24 of the 1975 Act.

(xxii) The MRT has failed to appreciate the difference between Chapter V of the 1927 Act, which was intended to regulate use of forest which was not the property of the Government, and the MPFA, 1975 which was to divest private persons of ownership over all private forest and vest such ownership, without encumbrance, in the Government.

(xxiii) The MRT has overlooked the entries in the 7/12 extracts for Gut No.59/A/1, Manpada, which clearly mentions that the land was under forest and grass land, both of which fall within the definition of forest. This case is covered by ***T.N. Godavarman Thirumalapad V/s. Union of India, 2018 SCC OnLine SC 3924***.

(v) Regarding findings on the case of Respondent No.2 (Narayan G. Tangadi), the State has contended as under :

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(i) The 7/12 extracts pertaining to Survey No.59/1 as in August 1975, do not show any part of the land in this survey number under cultivation, either by Narayan or by any other person. To the contrary, the relevant extract clearly shows that the land consisted of Palmyra Trees and Stone Quarry.

(ii) Even the owner of the land never contended that any part of the land was under cultivation by any other person as a tenant. Narayan admitted in the proceedings before the Tahasildar that he did not have any receipts in respect of his tenancy from D. Dahyabhai and Company Private Limited.

(iii) As per Section 22-A of the MPFA, 1975, the land used as a Stone Quarry is not liable to be restored.

(iv) The Application under BTAL Act, 1948 was made under Section 70-B. The Government/ Forest Department/Sanjay Gandhi National Park, was not made a party. The Application for declaration of tenancy was made in 1991, 16 years after the property had vested completely in the Government.

(v) There was no evidence that Narayan was paying rent to the land owner. There is no explanation why the Application was made clearly after 40 years, post the tillers day.

(vi) By order dated 18th January, 1991, in RTS Revision No.54/1988, the Sub-Divisional Officer, Thane had cancelled the Mutation Entry No.525 dated 25th January, 1984 of village Chitalsar Manpada.

(vii) Narayan was aware that the said land was being claimed by the Forest Department to be a part of the National Park.

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(viii) The order of the Tahsildar declaring Narayan to be a tenant, indicates that the owner D. Dahyabhai and Company got the land released for acquisition. This is completely erroneous because the owner did not get a single inch of land released from acquisition.

(ix) The land owner had admitted that the entire land in Gut No.59A/1 was forest land, but only raised a plea not to take possession of 24 acres with a promise to surrender an equivalent alternate land.

(x) 168 acres have already been acquired and the possession thereof is with the Sanjay Gandhi National Park.

(xi) The orchards and paddy cultivation is not indicated anywhere.

(xii) The order of the Tahsildar was ex-parte and is not binding upon the State.

(w) Regarding Respondent Nos.3, 4 and 5, the State submits that these Respondents claim to be in possession of some portion of land which is within the area of 24 acres and 32 gunthas in Gut No.59A/1, Manpada, which they claim to have purchased from D. Dahyabhai and Company Private Limited in 1980.

(x) The land owner is aware of the acquisition proceedings and the inquiry under Section 6 of the MPFA, 1975.

(y) By the impugned order, an area of 17 acres and 19 gunthas from Survey No.59/1 has been excluded from the area of

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forest in the village settlement Konkanipada. There is no application by any person made under Section 6 of the MPFA, 1975, claiming exclusion.

(z) No person representing the village settlement, either appeared or advanced any submissions supporting such a claim.

(aa) The State had not been heard whatsoever on the aspect of whether the area of 17 acres and 19 gunthas could be legitimately excluded from the forest area.

(bb) The portion of the impugned order relating to exclusion of 17 acres and 19 gunthas of the area of the village settlement, is completely illegal and invalid.

(cc) Pursuant to the orders of the High Court in Writ Petition No.305 of 2025, proceeding for eviction of the encroachers from the village settlement are underway.

(dd) With regard to Respondent Nos.6 and 7, they claim to have purchased 19 gunthas of land in Gut No.59A/1 from Smt. Kusum Vasant Salkar and three other of her family.

(ee) The predecessors in interest of Respondent Nos. 6 and 7, viz., the Salkar family could, therefore, have no better title than their tranferors.

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(ff) In 1982, several years after the land vested in the Government, it was found that one Smt. Laxmi Vasant Salkar had constructed a hut on a part of the forest in Survey No.59/1, village Manpada and, therefore, she was prosecuted under the Indian Forest Act and was declared guilty. The said Laxmi Vasant Salkar filed a Criminal Revision Application No.133 of 1987 before the Sessions Court at Thane.

(gg) Laxmi Salkar was acquitted after the Revisional Court held that the notification/other official document showing that Survey No.59/1, Manpada was a reserved forest, had not been produced in evidence before the Trial Court and, therefore, it was not proved that the land upon which Laxmi Salkar constructed a hut, was a forest. Hence, she was acquitted by Judgment and order dated 16th April, 1988.

(hh) In 1996, Laxmi Salkar filed Regular Civil Suit No.229 of 1996 before the Civil Judge Senior Division Thane, against the original land owner D. Dahyabhai and Company Private Limited. She claimed to be owner by adverse possession of the area of 19 and half gunthas on Survey No.59/1, village Manpada. The forest department was not made a party to the Suit knowing that the State Government was claiming the said land as acquired private

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forest. In May, 1977, the Suit was decreed ex-parte.

(ii) The Suit was uncontested by the land owner and the State Government was deliberately not made a party to the Suit. Secondly, the decree in question was obtained in a purely private action between the plaintiff and the defendant. Thirdly, there is no determination of the status of the land as forest or otherwise in the said Suit. Even if there had been such determination, the same was not binding upon the Petitioner/State Government as the status could only have been determined in an inquiry under Section 6 of the MPFA, 1975.

(jj) An NGO, Bombay Environmental Action Group filed a PIL No.17 of 2002 in the High Court at Mumbai complaining that the land revenue records in the State of Maharashtra had been updated to show all acquired private forest lands as Government Forest. The High Court passed an interim order directing the State Government to issue immediate order to all revenue officials to make the necessary Mutation entries in the revenue records.

(kk) Pursuant to the interim orders, the State Government issued a circular dated 22nd February, 2005 in connection with correction of revenue records.

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(ll) PIL No.17 of 2002 was concluded by an order dated 22nd June, 2005, by which the interim orders directing correction of the revenue records, were confirmed and the State was directed to complete the task on or before 31st May, 2006.

(mm) Consequently, in respect of Survey No.59/1 village Manpada, the concerned revenue officials made the requisite changes indicating the name of Government of Maharashtra as Kabjedar in the 7/12 extracts and the tenure of land as Government Forest.

(nn) As regards the land holding of Salkar family, viz., vendors to Respondent Nos.6 and 7, their names were shown in the 'other rights' column by Mutation Entry No.729.

(oo) The Salkar family felt aggrieved and made an application to the Sub-Divisional Officer Thane, for reversal of M.E.729. The application was rejected by order dated 31st December, 2007. Salkar family filed an appeal to the Deputy Collector (Appeals), Thane, who reasoned that the circular issued by the Government dated 22nd February, 2005, itself directed correction in the revenue records in those matters where, there were no legal proceedings pending and as Forest Appeal No.165 of 2005 was pending in respect of Gut No.59A/1 village Manpada, the revenue

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record should not have been changed. Accordingly, by order dated 5th August, 2008, the Deputy Collector directed that the Mutation Entry No.729 be reversed and the names of Salkar family members be shown as Kabjedar and that of the Government be shown in the other rights column.

(pp) The State is presently in possession of 168 acres of prime forest situated at Gut No.59A/1, Manpada Thane, as part of the Sanjay Gandhi National Part Division. The effect of the impugned order is to release the same from acquisition into private ownership. Manpada Thane is a highly sought after locality for residential and commercial construction activity. The pristine forest in this area will be completely destroyed by construction activity. This will be irreversible with long term adverse effects on the environment and health. If the impugned order is set aside, the forest will be in the Care and Protection of the Forest Department (Sanjay Gandhi National Park Division).

PLEADINGS AND AVERMENTS OF THE LAND OWNER/RESPONDENT NO.1

(Summarised from the WP records)

12. Respondent No.1, the actual land owner namely D. Dahyabhai and Company Private Limited (in short, the land

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owner/Company) filed its affidavit in reply, in which it has been specifically pleaded as under :

(a) It is denied that the notice dated 29th August, 1975 with respect to land Gut No.59/1 (Part) situated at Manpada, Chitalsar Thane, admeasuring 204 acres, 8 gunthas and 8 annas was legal and valid.

(b) No opportunity of hearing was granted to the actual owner of the property to respond to the impugned notice.

(c) The impugned notice was not signed by the Deputy Conservator of Forest or any other authorised person being authority of the Forest Department. It was signed by the Forest guard (Van Rakshak) Mr N J Joshi.

(d) The Forest Department, while issuing the impugned notice, was well aware that the notice could not be served upon the land owner during the period of subsistence of Section 35 of the Indian Forest Act.

(e) The Forest Department has mentioned incorrect description of a large suit property only with the intention of grabbing the suit land.

(f) The Forest Department failed and neglected to exclude Konkanipada village settlement which was in existence way

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before the impugned notice was issued, from the large suit property.

(g) The Forest Department ignored the fact that a portion of approximately 14 acres of the large suit property was conveyed and transferred by the land owner in favour of Tata Hydro Electric Supply Company Limited and others and the concerned purchasers had already procured necessary non-agricultural permissions and carried out constructions and development thereon.

(h) The Forest Department ignored the fact that certain portion of the large suit property was used for paddy cultivation, orchards and the balance portion was utilized for Wells, Industries, Slums, Structures and godowns.

(i) The Forest Department also ignored the fact that the substantial portion of the large suit property was used for a stones quarry after obtaining all the requisite permissions from the concerned departments.

(j) The State amendment carried out by the Indian Forest (Bombay Amendment) Act 1955 makes it abundantly clear that a notice issued under Section 35(3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908. It is an admitted fact that the notice was never

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issued in accordance with Section 35(5) nor the same was published in the manner prescribed therein.

(k) The land owner placed reliance upon Godrej & Boyce (Supra), to contend that a service of notice issued under Section 35(3) of the Forest Act, has to be (served) on the land owner.

(l) The large suit property does not constitute private forest under Section 2(f) of the MPFA.

(m) The land owner executed two registered deeds of conveyance, both dated 6th July, 1960 and purchased the suit land through the Court Receiver of the Bombay High Court and several other properties as are described in the deeds of the conveyance. The Court Receiver of the Bombay High Court specified the usage of the property while executing the deeds and also specified that portion of the large suit land was under cultivation.

(n) Over a passage of time, the land owner issued several deeds and documents and sold, transferred and conveyed the area admeasuring 14 acres to Tata Hydro Electric Supply Company Limited, Tolani Bros, Eastern Machinery and Trading Company, Adarsh Industries and Fuel Injection Limited. The balance land

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admeasuring 193 acres, 7 gunthas and 4 annas was in the possession and ownership of the land owner, Respondent No.1.

(o) The large suit property was forming a part of Thane Industrial Complex out of Bombay, Panvel Regional Plan of 1970 and large suit property was divided into residential, recreational, industrial and green zone. The said plan was sanctioned before the appointed date of MPFA land owner had started various activities permissible under the regional plan.

(p) The land owner gave lease hold rights to various mining firms for mining stones and operating quarry activities like M/s. Ashok Quarries, M/s. Amar Quarries, M/s. Patel Quarries and M/s. Bootheld Quarries, Rupit Quarries.

(q) The Collector, Thane District issued NA permissions to the above lessees for various portions of the suit property. The copies of the NA permissions as well as the renewals and extensions, are at Exhibit-C.

(r) From perusal of the revenue records, NA permissions and survey reports of the Forest Department indicate that the large suit property was used for non-forest activities on the appointed day.

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(s) The 7/12 extract-village from the year 1955 to 1981 show cultivation of paddy, bellary vegetables, fruit garden, Shenda (Palmyra) and Stone Quarries.

(t) The President of India granted assent to the MPFA on 25th August, 1975 and the same was published in the gazette on 29th August, 1975.

(u) The impugned notice was not issued in the name of the land owner M/s. D. Dahyabhai and Company Private Limited and the notice was sent through post.

(v) Since the notice was issued in the wrong name, it has to be treated as ‘no notice’ issued to the land owner.

(w) The large suit property does not fall within the purview of the private forest under Section 2(f)(iii) of the MPFA.

(x) The Forest Department issued another notice on 4th September, 1975 demanding possession of the large suit land and the same was served through hand delivery on the same day. After receipt of the notice dated 4th September, 1975, the land owner filed Writ Petition No.1026 of 1975 before the Bombay High Court.

(y) In Janu Chandra Waghmare (Supra), the High Court of Bombay had upheld the constitutional validity of MPFA and

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further opined that the aggrieved parties may explore the opportunities under Section 6 of the MPFA.

(z) The Forest Department started initiating criminal action against the owners and occupants of the land and embroiled them in litigation under MPFA and also threatened to block the road in existence which was an access to the suit property. The blockage of the road would have stalled industrial and warehousing activities of the Respondent in the properties adjacent to the suit property.

(aa) With a view to buy peace and to put an end to the litigation, the land owner issued a letter dated 5th July, 1979, addressed to the Minister for Forest, Mantralaya and a letter dated 28th August, 1979, addressed to the Secretary, Revenue and Forest Department, proposing without prejudice, that several parcels of the large suit property admeasuring 24 acres and 32 gunthas which were scattered pieces of land, be released from the purview of the notice dated 29th August, 1975 and further offered equivalent area from other adjacent properties bearing Gut Nos.59/2, 59/3 and 59/16.

(bb) The Assistance Secretary, Revenue Forest Department, by letter dated 31st December, 1979, directed the land owner to approach the Collector Thane under Section 6 of the MPFA for getting the area excluded from acquisition. It is denied

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that the land owner had conceded that an area of 168A, 15G and 4a was forest land.

(cc) The land owner submitted the proposal for settlement to the Deputy Collector Thane, without prejudice to its rights in Writ Petition No.1026 of 1995 and prayed that necessary inquiry may be held under Section 6 of the MPFA.

(dd) The Deputy Collector (Private Forest) Thane, personally inspected the site of larger suit property and verified the horticultural activities, Wells and farmhouses constructed over the larger suit property and also verified the permissions obtained by Respondent No.1/land owner for the same. The Forest Department also prepared plan of the larger suit property showing status of larger suit property and users thereof.

(ee) In pursuance of the settlement proposal submitted by Respondent No.1/land owner, the Deputy Collector (Private Forest) Thane, passed an order dated 3rd June, 1980. The Forest Department rejected the proposal submitted by Respondent No.1/land owner and, therefore, the said proposal submitted at the relevant time considering the relevant peculiar circumstances with an objective of buying peace, cannot be used as tool against Respondent No.1/land owner. The said offer no more stands valid

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and Respondent No.1/land owner has got every right to deal with and dispose of the suit property. It is also pertinent to note that Respondent No.1/land owner had submitted settlement proposal without prejudice and Respondent No.1/land owner had always denied the claim of the Forest Department that the larger suit property or any portion thereof is a forest within the meaning of Section 2(c)(i) of MPFA.

(ff) Respondent No.1/land owner withdrew the Writ Petition No.1026 of 1975 in the light of order passed by the Deputy Collector Private Forest on 3rd June, 1980.

(gg) Being aggrieved by the above order passed by the Deputy Collector, Thane in pursuance of the settlement proposal submitted by Respondent No.1/land owner, the State of Maharashtra filed an appeal before MRT, Bombay bearing Rev/forest appeal no.9 of 1981. The bench of MRT by their order dated 15th October, 1982 set aside the order passed by Deputy Collector Private Forest dated 3rd June, 1980 and remanded the matter for fresh inquiry.

(hh) In the meanwhile Thane Municipal Corporation was established in the year 1982 and village Manpada was included in its territorial jurisdiction. In due course, development plan for Thane Municipal Corporation was published and sanctioned

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wherein certain portions of the larger suit property were reserved for various public purposes such as DP Road, HCMTR (Thane City Metro), Thane Municipal Transportation, Park, Garden etc. The balance portion of larger suit property formed part of commercial zone, godown zone, industrial zone and residential zone as per the development plan for the time being in force. The Forest Department never ever objected the development plan for the larger suit property and permissible use and reservations for public purposes.

(ii) Remand Case No.53 of 1999 was filed before the Deputy Collector (Private Forest), Thane Division at Thane. The Deputy Collector (Private Forest) has specifically observed that, the Forest Department in their arguments, has not denied the presence of such area admeasuring 24A-32G to be under godowns, cultivation for horticulture and road etc. The Forest Department has not denied the presence of fruit gardens. The Forest Department has heavily relied on the notice alone to declare the entire area as Private Forest. The Revenue record shows that, on certain portions of lands out of Gut No.59/1, cultivation was conducted prior to 30th August, 1975 or prior to the date of issuance of notice. The 7/12 extract, i.e. the village form no.7 and 12 also show existence of

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certain industries in the said Survey No.59/1, such as the fuel injection company, much prior to the date of issuance of notice. Tata Hydro Electric Power Supply Company Limited started a sub transmission station in Gut No.59/1, much prior to the commencement of the Private Forest Act, 1975, i.e., since 1970. The village revenue record also shows that an area admeasuring 19 gunthas was also in possession of Tolani Bros Private Limited and had an industrial shed over the land. Then area of 1 acre and 39 gunthas land was transferred to Eastern Machinery and Trading Company prior to the date of issue of notice and area of 2A-0G was transferred to Adarsh Industries out of the area of 207 acres, 30 gunthas and 9 annas as being the Gut No.59/1 part.

(jj) It is, thus, abundantly clear that, the Forest Department failed to prove presence of forest over the larger suit property or any portion thereof. It has merely relied on the notice sent under Section 35(3) of Indian Forest Act and it is also clear that the impugned notice under Section 35(3) was issued without conducting any preliminary survey or inquiry.

(kk) Deputy Collector (Private Forest), Thane Division at Thane, passed an order in Remand Case No.53 of 1999 and thereby declared 132 acres and 32 gunthas as private forest and

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balance area was exempted under Section 3(2) of MPFA.

(ll) Being aggrieved by the order of the Deputy Collector (Private Forest), Thane Division, in Remand Case No.53 of 1999, the Petitioner State had filed Appeal No.165 of 2005 before the MRT and Respondent No.1/land owner had filed an Appeal No.229 of 2009.

(mm) The Member, MRT heard both the Appeals and delivered a common order on 30th June, 2017 and dismissed Forest Appeal No.165 of 2005 and allowed Forest Appeal No.229 of 2009. He declared that the larger suit property is not private forest land as contemplated under Section 2(f)(iii) of the MPFA and, therefore, excluded entirely from the acquisition under the MPFA.

(nn) The Revenue Department has accordingly carried out a necessary mutation entry by mutating the name of Respondent No.1/land owner in the record of rights of the suit property and same was subsequently confirmed by the Sub-divisional Officer Thane in Revision No.182 of 2018.

(oo) Portions of the suit property are reserved for 40 meter DP Road (5500 sq. mtrs.), 20 meter DP Road (5000 sq. mtrs.), 30 meter H.C.M.T.R. (7600 sq. mtrs.). The Thane Municipal Corporation had issued letter dated 2nd November, 2017 to

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Respondent No.1/land owner, calling upon it to handover the vacant possession of certain reserved portion of the suit property since the same was required for developing infrastructure. Since the said reserved portion out of the suit property are reserved for public purposes, Respondent No.1/land owner had no other alternative, but to handover the possession of the said portion of the suit property to the Thane Municipal Corporation.

(pp) Respondent No.1/land owner had accordingly made requisite application to the Thane Municipal Corporation on or about 30th June, 2018 under Development Control Rules and Regulations of 1994. After the said application was made, the Thane Municipal Corporation had verified the title of Respondent No.1/land owner with respect to the said portion of the suit property. The Thane Municipal Corporation and its panel Advocate had verified the order passed by the MRT and also relied on the opinion of Advocate General, Government of Maharashtra and advised to proceed with the TDR proposal.

(qq) The Thane Municipal Corporation also published a public notice in 'Punya Nagari' Local Newspaper on 21st November, 2018 in respect of the said reserved portion inviting objections from the public at large.

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(rr) Respondent No.1/land owner had accordingly signed and executed a Registered Deed of Transfer dated 25th April, 2019 thereby assigning, transferring and conveying DP Road and HCMTR reservation portions in favour of the Thane Municipal Corporation.

(ss) Respondent No.1/land owner has handed over vacant and peaceful possession of the reserved portion of the suit property (reserved for DP road and HCMTR) with a view to enable the Thane Municipal Corporation to implement the development plan.

(tt) Apart from above mentioned reserved portion, certain portions of the suit property admeasuring 404721.02 sq. mtrs. equivalent to approximately 100 acres, is reserved for 'Park' under the Development Plan for City of Thane. The aforesaid portion of 100 acres is hereinafter referred to as the 'Park Reservation Property'. Respondent No.1/land owner had issued notice dated 23rd October, 2017 under the provisions of Section 127 of the MRTP Act to the Thane Municipal Corporation to acquire the said Park Reservation Property since the Thane Municipal Corporation had failed to acquire the Park Reservation Property within stipulated time limit.

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(uu) After receipt of the said notice issued by Respondent No.1/land owner, the Thane Municipal Corporation (TMC), had taken opinions from various legal luminaries and thereafter agreed to acquire the said Park Reservation Property in accordance with the provisions of MRTP Act.

(vv) A public notice was published on 3rd May, 2019 in the local newspaper Punyanagari in respect of Park Reservation Property inviting objections from public at large.

(ww) Respondent No.1/land owner had accordingly signed and executed a Registered Deed of Transfer dated 24th May, 2019 thereby assigning, transferring and conveying Park Reservation Property in favour of the Thane Municipal Corporation.

ADDITIONAL AFFIDAVIT BY THE LAND OWNER

13. Respondent No.1/land owner has filed an additional affidavit in reply and has averred as under :

(a) After filing of the Affidavit in Reply dated 25th November, 2019, it came to know about two affidavits filed on behalf of the Petitioner in the present proceedings. The first affidavit seems to be of Shri. R. B. Kumbhar, Divisional Forest Officer, Wildlife-II, Yeoor dated 1st July, 2019 (hereinafter referred to as the

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'First Affidavit') and the second affidavit is also of said Shri. R.B. Kumbhar, dated 11th December, 2019 (hereinafter referred to as the said 'Second Affidavit'). Vide said first and second affidavits, the Petitioner has attempted to make certain improvements in its case as spelt out in the Writ Petition, so also has attempted to mislead this Hon'ble Court and/or distort the facts.

(b) Respondent No.1/land owner has denied that the area of land bearing Survey No.59A, admeasuring 193 acres, village Chitalsar, Manpada (viz. suit property) is falling within Sanjay Gandhi National Park Division (SGNP) and that it is included in village Form-1A maintained by SGNP as required by the Forest Manual and, therefore, is forest within the meaning of the word as enunciated by the Hon'ble Supreme Court of India in the case of T N. Godavarman V/s. Union of India (Writ Petition No.202 of 1995). The reference of the said judgment of Hon'ble Supreme Court and/or the reliance placed thereupon is nothing, but, frivolous and a malafide attempt on the part of the Petitioner to mislead this Hon'ble Court.

(c) In the same way, the reference to the case of Wildlife Conservation Trust V/s. Union of India (Writ Petition No.337 of 1995) of the Hon'ble Supreme Court given in the said

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paragraph, is also irrelevant, unnecessary and wholly misplaced. Respondent No.1/ land owner mentioned that Revenue and Forest Department of the State of Maharashtra viz. Petitioner published a notification in Maharashtra Gazette dated 16th January, 1996, whereby area of SGNP was specified and defined. In said notification names of villages included in SGNP are specified. In the said names, the name of village Chitalsar, Manpada is not at all mentioned. Thus, none of the properties of village Chitalsar, Manpada (within whose limits admittedly the suit property is situated), are included within the limits of SGNP.

(d) Respondent No.1/land owner submits that the very notice purportedly dated 29th August, 1975 under Section 35(3) of the Indian Forest Act, 1927 (IFA) issued in respect of suit property, is null and void for the reasons elaborately stated in affidavit dated 25th November, 2019, filed by the Respondent No.1/ land owner. The said notice was served upon the affiliate concern on 4th September, 1975, i.e., after the appointed date (30th August, 1975) on which date Section 35 of the IFA, 1927 was repealed as provided under Maharashtra Private Forest Act 1975 (MPFA). Thus, there was no question of said larger land (suit property), falling within the purview of MPFA. Respondent No.1/ land owner also

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states that as on 30th August 1975, on the said larger land (suit property), there was no presence of Forest as defined under Section 2(c)(i) of the MPFA and hence, it could not fall in the definition of private forest as defined in Section 2(f) of the MPFA.

(e) In fact, various non-forest activities such as Industrial user, warehousing, Quarry activities, Horticulture Activities, Agricultural activities, Cultivation by way of production of herbs, vegetables etc. were going on. In 1970, the said larger land (suit property) was included as forming a part of Thane Industrial Complex out of Bombay Panvel Regional Plan of 1970 and thereby it was divided into residential, recreational, Industrial Zones etc.

(f) Respondent No.1/land owner stated that the notice under Section 35(3) was required to be served on the actual owner in the manner provided in the Code of Civil Procedure, 1908 for the Service of summons and was also required to be published in the manner prescribed by the rules. It is admitted fact that the impugned notice was never issued/served in the manner provided under Code of Civil Procedure, 1908. It was never published as prescribed by the rules. The impugned notice was admittedly served on 4th September, 1975, i.e., after the repeal of Section 35 of IFA 1975 and, therefore, the impugned notice was null and void-ab-initio.

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(g) The notice was never acted upon and no further steps such as giving opportunity of hearing, passing of any order, issuance of notification under Section 35(1) of IFA, 1927, were initiated and could have been initiated since Section 35 stood repealed as provided under MPFA. The physical possession of the suit property continued to be with Respondent No.1/land owner. This fact is evident from the letter of the Petitioner dated 23rd January, 1986.

(h) It is pertinent to note that above Judgment and order dated 30th June, 2017 passed by the Hon'ble MRT Court is on the basis of the order passed in the matter of Godrej & Boyce Mfg. Co. Ltd. (Supra) by the Hon'ble three Judges Bench of the Hon'ble Supreme Court.

(i) Respondent No.1/land owner specifically stated that during the process of preparation of DP Plan of TMC and its approval by the State Government as per order No.TPS/NO.1249/ CR/222/94B-12, dated 28th April, 1995, Petitioner never raised any objection to the effect that said portions out of suit property are reserved forest and, therefore, said public reservations cannot be imposed on the suit property.

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(j) It is further pertinent to note that TMC at the relevant time through its Advocate published public notices in Punyanagari local newspaper on 21st November, 2018 and 3rd May, 2019 inviting objections from public at large, but the Petitioner did not raise any objection in response to the said public notices. The TMC, after verification of title, got 2 registered deeds of transfer executed on 25th April, 2019 and 24th May, 2019.

(k) Admittedly, the said reservation affected portion which is totally admeasuring 422821.02 sq. meters, which is equivalent to about 104 acres, is already vested with and in possession of TMC. Admittedly, TMC is a planning authority under MRTP Act and as a planning authority has already acquired the said portion under Section 127 of MRTP Act.

(l) Respondent No.1/land owner submits that it is now the statutory obligation of TMC to provide compensation to Respondent No.1 by way of Development Rights Certificate (DRC). Thus, DRC's issued or to be issued by TMC cannot be ranked defective or illegal just because Petitioner has raised false and frivolous claim on the basis of null and void notice dated 29th August, 1975 under Section 35(3) of the IFA and which admittedly never acted upon thereafter and could not have been acted upon

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after the repeal of Section 35(3) of IFA, which stood repealed on 30th August, 1975 as per provisions of MPFA.

(m) The Mutation Entry No.1056 has been certified pursuant to and on the basis of said Judgment and order dated 30th June, 2017 of the Hon'ble MRT Court. The certification of mutation entry has been lawfully effected. The objection of Forest Department raised vide Case No.182 of 2018 has been lawfully rejected by the Sub-Divisional Officer vide order dated 31st January, 2019. It is pertinent to note that the order dated 31st January, 2019 has not been challenged by the Petitioner before Higher Authority and has attained finality.

(n) The concerned DRC Nos.281, 362 and 363, are issued by TMC in favour of Respondent No.1 and towards acquisition of reservation portions such as 30 meters Road, HCMTR, 20 meters wide DP road, 40 meters wide DP road. Respondent No.1/land owner submits that as aforesaid DRCs are issued in accordance with law, Respondent No.1 is entitled to use, utilize and/or transfer the TDR credit given there under. It is now statutory obligation even of TMC to allow the utilization and/or transfer of TDR credit given under the said three DRCs.

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(o) It is denied that DRCs are issued on the basis of sub-divisions. Respondent No.1/land owner submits that DRCs are issued under the provisions Appendix-W of the Development Control Regulations of TMC and in lieu of surrendered lands affected by various public reservations. In any case, the said DRCs are not the subject matter of challenge in the present Petition.

(p) Respondent No.1/land owner said that the reliance placed on the alleged satellite maps are neither authenticated maps nor could be entertained in a Writ Petition as evidence of fact. Respondent No.1/land owner denies that 193 acres is seen from the satellite data, as well forested.

(q) Respondent No.1/land owner submits that reservation affected portion is already handed over to TMC and those are in possession of TMC.

(r) Respondent No.1/land owner submits that alleged undertaking taken from the constituted attorney of first Respondent by TMC about getting no objection from Forest Department was obtained by force and by exercising misuse of dominant position. First Respondent vide letters dated 31st July, 2019 and 26th December, 2019 raised objections about the validity and legality of the said undertaking.

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(s) TMC has accepted the said objection and accordingly issued letters dated 31st December, 2019, 8th January, 2020 and 15th January, 2020 to the Chief Conservator, Sanjay Gandhi National Park.

(t) It is pertinent to note that even the office of the Petitioner, by its letter dated 17th January, 2020 accepted the right of TMC to take an appropriate decision about the utilization and transfer of DRC.

PLEADINGS AND AVERMENTS OF RESPONDENT NO. 2

(Summarised from the W P records)

14. The legal heirs of the Deceased Respondent No.2 (2.1, 2.3 to 2.12) have filed an affidavit in reply. Their averments can be summarized as under :

(a) The Petition filed by the State is misconceived, not maintainable and liable to be dismissed at the threshold with compensatory costs. There are no grounds for interference with the order dated 30th June, 2017 passed by the MRT. The said order was passed after affording full opportunity of hearing to all the parties concerned and after perusal of the material on record. Respondent No.1/land owner states that the findings recorded in the said order

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are correct, valid, proper and binding and do not suffer from any perversity.

(b) This Petition concerns the land bearing Survey No.59/1 situated at Manpada village in Thane District (Larger Land). Respondent No.1/land owner has been in actual use, occupation and physical possession of a portion of the Larger Land admeasuring 7 Hectors 38 R (equivalent to 18 acres and 18 ghuntas), Gat No.59/1, Chitalsar village, Manpada, Thane District (smaller Land).

(c) The Larger Land was owned by one Mr. Shyamaldas Gandhi before Respondent No.1 became its owner. Respondent No.1 purchased the Larger Land from Mr. Shyamaldas Gandhi in or around 1960s through the High Court Receiver. Respondent No.2 has been cultivating the Smaller Land from the time of Mr. Shyamaldas Gandhi, even before the Respondent No.1 became the owner of the said land.

(d) In or around 1982, the Forest Department filed Criminal Case No.5227 of 1982 against Respondent No.2 before the Judicial Magistrate First Class ('JMFC') under Section 26 of the 1927 Act making false allegation. The said criminal case came to be dismissed vide order dated 30th September, 1992 passed by the

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JMFC. The said order dated 30th September, 1992 was challenged by the Forest Department vide Criminal Appeal No.172 of 1993 before the High Court. This Court, vide order dated 14th June, 1993 dismissed the said Appeal and observed inter alia that Respondent No.2 was in possession of the Land as a tenant of Respondent No.1/land owner, prior to it being declared as a forest. There was no challenge to the order dated 14th June, 1993 and consequently the same attained finality.

(e) The orders dated 14th June, 1993 and 23rd February, 2004 clearly establish the factum of Respondent No.1/land owner's use, occupation and possession of the Smaller Land and the status of being a tenant under the Bombay Tenancy And Agricultural Lands Act, 1948.

(f) Furthermore, the Smaller Land is not in excess of the ceiling area provided by Section 5 of the Maharashtra Agricultural Lands (Ceiling and Holdings) Act, 1961 and therefore, the divesting portion of Section 3(2) of the 1975 Act is not attracted.

(g) In or around March 1991, Respondent No.1 attempted to interfere with the possession of Respondent No.2 in respect of the Smaller Land. On 25th July, 1991, Respondent No.2 filed Application No.16 of 1991 before the Tahsildar, Thane under

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Section 70-B of the BTAL Act, for a declaration of tenancy in respect of the Smaller Land. The said Application No.16 of 1991 was duly served on Respondent No.1 and after due consideration of the matter and the evidence on record, the Tahsildar declared Respondent No.1/land owner as a tenant vide order dated 23rd February, 2004.

(h) Respondent No. 2 intervened in the Case No.53/97/Ch. Manpada before the Sub Divisional Officer, Thane by filing an intervention application. Respondent No.2 expressly stated that he was declared as a tenant in respect of Smaller Land in the proceedings under BTAL Act. Despite this, the Petitioner did not take any steps in respect of the order dated 23rd February, 2004. Hence, in so far as the Petitioner is concerned, the said order dated 23rd February, 2004 has attained finality and is binding upon the Petitioners.

(i) After 11 years, in or around 2015, Respondent No.1 filed Tenancy Appeal No.109 of 2015 before the Deputy Collector challenging the order dated 23rd February, 2004 by which Respondent No.2 was declared as a tenant under the BTAL Act. The Deputy Collector passed an order dated 23rd February, 2017 condoning the delay of 11 years on the part of Respondent No.1

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filing the said appeal. These Respondents thereafter filed Revision Application No.150 of 2017 before the MRT challenging the order dated 23rd February, 2017 passed by the Deputy Collector. The MRT vide order dated 4th May, 2017 allowed Revision Application No.150 of 2017 and set aside the order dated 23rd February, 2017 passed by the Deputy Collector. As a result, Respondent No.1's Tenancy Appeal No.109 of 2015 was disposed off.

(j) On 8th June, 2017 Respondent No.1 filed Writ Petition No.6351 of 2017 before this Court challenging the order dated 4th May, 2017 passed by the MRT in Revision Application No.150 of 2017. This Court, vide order dated 23rd January, 2019 dismissed Writ Petition No.6351 of 2017 and upheld the order dated 4th May, 2017 passed by the MRT in Revision Application No.150 of 2017. Respondent No.1 thereafter filed Special Leave Petition No.9998 of 2019 before the Hon'ble Supreme Court challenging the order dated 23rd January, 2019 passed by this Court in Writ Petition No.6351 of 2017. The Hon'ble Supreme Court vide order dated 29th April, 2019 dismissed SLP No.9998 of 2019. As a result, the order dated 23rd February, 2004 attained finality and Respondent No.2 status as a tenant under the BTAL Act is established.

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(k) As on 30th August, 1975 the Larger Land was within the jurisdiction of the Bombay Metropolitan, Regional Development Authority who had prepared a development plan, wherein, the Larger Land was reserved for industrial purpose. Thereafter, the Larger Land which includes the Smaller Land has been within the limits of the Municipal Corporation of Thane and shown for residential use.

PLEADINGS AND AVERMENTS OF RESPONDENT NO.8 THANE MUNICIPAL CORPORATION

(Summarised from the WP records)

15. Respondent No.8/Thane Municipal Corporation (TMC) has filed an affidavit in reply. It's averments can be summarized as under :

(a) This Petition is filed against order dated 30th June 2017 passed by MRT, Mumbai in Forest Appeal No.165 of 2005. The Thane Municipal Corporation was not a party to earlier proceedings up to MRT. Respondent No.8/Thane Municipal Corporation had filed an Interim Application No.775 of 2021 for intervention and for impleading it as a Respondent in the present Writ Petition, which came to be allowed by order dated 18th July, 2022 passed by this Court.

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(b) The suit property bearing Gut No.59/A/1, is situated at Chitalsar Manpada, within the local limits of TMC. The Development Plan for the city of Thane was sanctioned by the State Government on 4th October, 1999 which came into force from 22nd November, 1999. So also, the Government sanctioned the excluded portion on 8th April, 2003 which came into force from 14th May, 2003. In the said sanctioned DP, various portions of the suit property came to be reserved for, viz. (a) 20 meter wide DP Road, (b) 40 Meter wide DP Road, (c) 30 meter wide High Capacity Mass Transport Route (HCMTR), (d) TMT reservation, (e) Park reservation nos.4,5,6, (f) Municipal Primary School reservation, (g) Maternity Home Reservation, (h) Municipal purpose reservation no.1, (‘a’ to ‘h’ above are collectively referred to as RESERVATION AFFECTED PORTION).

(c) The balance portion of the suit property was shown as reserved for commercial zone, godown zone, industrial zone and residential zone, in the said sanctioned DP. The record does not reveal that during the period from preparation of the said Dev. Plan, till its approval by the State Government, any objection/claim was received by TMC contending that the suit land is a private forest

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under the Maharashtra Private Forest (Acquisition) Act, 1975 (MPFA). It also does not appear that TMC received any objection for placing aforesaid reservations upon portions of the suit property, as also about inclusion of the balance suit property into the above stated various zones.

(d) The Bombay High Court has not granted any interim relief to the Petitioner State, as against the order passed by M.R.T. which is impugned in this Petition. The Entry showing the concerned land to be Maharashtra Government Reserved Forest, came to be deleted from the 7/12 extract of concerned land.

(e) The TMC was served with a Purchase Notice dated 24th August, 2017 under Section 127 of The Maharashtra Regional Town Planning Act, 1966 for Park Reservation No.4. If urgent and effective steps for acquiring the reservation portion would not have been taken by TMC, then the said reservation would have lapsed and said reservation affected portion would have become de-reserved as per the applicable provisions of law. In that eventuality, there would have been loss to the City of Thane and the public at large, for whose benefit the said reservations were put up. The TMC, therefore, by agreement, acquired reserved portions of the said land and issued D.R.C. No.362 (Road) for 10500 sq. meters,

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D.R.C. No.363 (Road) for 7328 sq. meters and D.R.C. No.281 (Reservation) for 15960 sq. meters.

(f) The TMC entered into following transfer deeds which have been registered :

> (i) Deed of Transfer dated 25th April, 2019 duly registered with the Sub Registrar of Assurances, Thane at serial no.TNN-5-6766-2019, by and between the TMC and Respondent No.1 herein i.e. D. Dahyabhai & company Pvt. Ltd. (vide the said deed, the portion out of the suit property, affected by 20 meter wide D.P. Road, 40 Meter wide DP Road, 30 meter wide HCMTR collectively admeasuring 18100 square meters, was acquired by the TMC).
>
> (ii) Deed of Transfer dated 24th May, 2019 duly registered with the Sub Registrar of Assurances, Thane at serial no.TNN-5-8450-2019, by and between the TMC and Respondent No. 1 herein i.e. D.Dahyabhai & company Pvt Ltd. (vide the said deed, the said park reservation portion admeasuring 404721.02 square meters, equivalent to approximately 100 acres.)

(g) In view of the filing of the present Petition, an undertaking was taken from Respondent No.1 to refrain from utilising and/or transferring the aforesaid D.R.C., till receipt of an NOC from the forest department. Respondent No.1, vide its letter dated 26th December, 2019 raised an objection about the said undertaking and requested to delete the condition of ‘taking NOC’

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from the Forest Department. Respondent No.1 also requested the TMC to remove the prohibition upon use and transfer of the said DRCs or else to provide monetory compensation of Rs.78,38,30,000/-.

(h) In view of the said letter dated 26th December, 2019, the TMC addressed a letter dated 31st December, 2019 bearing Ref. No.4548, to the Chief Conservator of Forest, informing him about the objection raised by Respondent No.1 and that if stay from this Court is not obtained, the TMC shall be left with no option, but to remove the prohibition on the use of the TDR under the said DRCs.

(i) In the meantime, Respondent no.1 submitted an application through its Architects for securing TDR 10 folds of the land surrendered vide transfer deed dated 24th May, 2019, by way of DRC. In view of that proposal, the TMC issued the letter dated 8th January, 2020 bearing Ref. No.2405 to the Chief Conservator of Forests. TMC specifically assured that the Park reservation portion will not be used for any non-forest activity and the said portion shall be maintained by keeping it's natural greenery intact, as it is.

(j) It was also further clarified that the TMC, if requested by the Forest Department/State, shall hand over the said park reservation portion to the Forest Department by seeking

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permission of the general body. The TMC further clarified that as per the provisions of law, it was obligatory on the part of the TMC to give compensation to the landowner viz. the Company/Respondent No.1 herein.

(k) In response to the said letters 31st December, 2019 and 8th January, 2020, the TMC did not receive any letter from the Forest Department. Hence, TMC issued one more letter dated 15th January, 2020 to the Chief Conservator of Forest. TMC once again requested the Forest Department to give a written explanation as early as possible.

(l) On 15th January, 2020, the TMC received the letter dated 12th January, 2020 sent by Chief Conservator of Forest to the Additional Secretary (Forest) and a copy of the said letter was marked to the TMC. Vide the said letter the said Chief Conservator sought guidance and further orders in the matter from the State.

(m) On 21st January, 2020, the TMC received a letter from the office of the Chief Conservator of Forest bearing Ref. No.3447 dated 17th January, 2020 addressed to ADTP, TMC. Vide the said letter, TMC was instructed to take appropriate action at its level regarding permitting the use and transfer of DRCs.

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(n) In view of the letter received from the Forest Department, the Thane Municipal Corporation sought guidance from the Urban Development Department vide letter dated 9th November, 2020 regarding the development of the Park Reservation. On 1st June, 2021, the Thane Municipal Corporation received a letter from the Additional Principal Chief Conservator Forest regarding cancellation of DRC's and stoppage of procedure for acquisition of reservation.

(o) On 7th June, 2021, the Thane Municipal Corporation has informed these facts to the Additional Principal Chief Conservator Forest.

(p) In the meantime, Respondent No.1, D. Dahyabhai & Co. Pvt. Ltd., filed Writ Petition No.6603 of 2023, before the Division Bench of this Court, seeking directions from this Court for permitting the use, utilisation and transfer of said three DRCs. This Respondent, as well as the State Petitioner herein, both appeared in the said Petition, filed their respective replies and vide order dated 24th April, 2023, the said Petition was closed for pronouncement of Judgment. It is pertinent to note that in the said Petition, the Petitioner herein requested to tag this Petition with the said Petition.

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(q) Respondent No.1, D. Dahyabhai & Co. Pvt. Ltd. also filed one more Writ Petition No.10024 of 2023, before the Division Bench of this Court seeking a direction against TMC for issuance of DRC against the said Park Reservation No.4. The said Writ Petition is now being heard. In the said Writ Petition, order dated 5th September, 2023 was passed.

(r) In another dispute between Respondent No.1 herein, M/s. D.Dahyabhai & Co. Pvt. Ltd. and one Mr. Rajadhaksha Sharma and two others, in which this Respondent was also party, the Single Bench of this Court (Coram: Nitin W Sambre, J) was pleased to pass an order dated 25th November, 2022 in Appeal from Order No.1051 of 2019, directing this Respondent to issue DRC against the said Park Reservation No.4.

(s) Thus, so far as the issue regarding permitting the utilisation of the said 3 DRCs is concerned, the same is already sub-judice before this Court. So far as issuance of DRC against Park Reservation No.4, the Single Bench has already passed an order dated 25th November, 2022, in the said Appeal from Order No.1051 of 2019, directing this Respondent/TMC to allot DRC. Said issue is also now pending before this Division Bench.

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(t) The Reservation affected portion has now been transferred to the TMC by executing registered instruments. The D.R.C's. have already been issued for the said land affected by reservation for 20 Mt wide D.P. road, 40 Mt wide D.P. road & 30 Mt wide HCMTR reservation,. However, these D.R.Cs. are restrained from transfer & utilization due to the objection raised by the Forest Department. So far as park reservation portion is concerned, a DRC is not yet issued.

(u) There is no judicial order prohibiting utilization and/or transfer of aforesaid D.R.C. The D.R.Cs. are freely transferable to any third party as per the provisions of DCR. The Petitioner has prayed for suspension/cancellation of aforesaid D.R.C., however no orders are passed till the date.

(v) The Forest Department, by letter at Exhibit-F has instructed the TMC to take appropriate decision in the matter. The result of the present Petition shall directly affect the entitlement of Respondent No.1 to get D.R.C. claimed by it. In view of the above, this Court may kindly issue appropriate directions including in respect of transfer and use of aforesaid three DRCs and about issuance of DRC against the park reservation.

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CONSIDERATION OF THE ORAL AND WRITTEN SUBMISSIONS OF THE PARTIES

16. Having considered the pleadings and averments of the parties, we are adverting to their oral and written submissions herein after. Their entire written submissions (verbatim) have been annexed after this judgment, as annexures. Herein below is the summary of their oral and written submissions.

17. SUBMISSIONS OF THE SENIOR ADVOCATE MR. DWARKADAS, SPECIAL COUNSEL FOR THE STATE AND HIS REJOINDER ARGUMENTS.

(Summarised from the written notes of arguments)

17.1. Whether the law laid down by the Hon'ble Supreme Court in ***Rohan Vijay Nahar and Ors. v/s. State of Maharashtra and Ors., 2025 SCC OnLine SC 2366*** *('Rohan Nahar'),* would apply to the present Writ Petition No.3205 of 2018 ?

17.2. On 7th November 2025, a bench of the Hon'ble Supreme Court (Coram : Vikram Nath and Prasanna B. Varale, JJ.), delivered its decision in *Rohan Vijay Nahar* (supra). The Court set aside the Bombay High Court's decision in ***Devkumar Gopaldas Aggarwal and Ors. v/s. State of Maharashtra and Ors., 2018 SCC***

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Online 2823 (‘*Devkumar Aggarwal*’) holding that the High Court was wrong in concluding that the facts of the case in *Devkumar Aggarwal* (supra) differed from those in ***Godrej & Boyce Mfg. Co. Ltd. v/s. State of Maharashtra, (2014) 3 SCC 430*** (*Godrej & Boyce*’).

17.3. The Hon’ble Supreme Court noted that the High Court had framed two issues in *Devkumar Aggarwal* (supra). The main issue was whether the law laid down by the Hon’ble Supreme Court in *Godrej & Boyce* (supra) would apply to the facts in *Devkumar Aggarwal* (supra), and whether subsequent purchasers could rely on *Godrej & Boyce* (supra) even when their predecessors-in-title had not questioned the application of the Maharashtra Private Forests (Acquisition) Act, 1975 (‘Maharashtra Private Forests Act’) or the actions taken under it (Para 12.1/Page 18 of Rohan Nahar).

17.4. In fact, the Hon’ble Supreme Court in *Rohan Nahar* (supra) followed the law laid down in *Godrej & Boyce* (supra), particularly, in paragraph nos.10.2/Page 16, 10.3/Page 16, 10.4/Page 16 and 14.2/Pages 22-23 of *Rohan Nahar* (supra), and observed as follows :

> *“10.2. Interpreting the expression “a notice has been issued” in Section 2(f)(iii) of the MPFA, when read with Section 35 of the IFA, the Court*

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held that "issuance" cannot be divorced from service. Given the statutory scheme, a valid notice under Section 35(3) of the IFA necessarily entails service on the owner, an opportunity to file objections, to adduce evidence, and to be heard. Because interim restraints may be imposed under Section 35(4) of the IFA and penal consequences attach under Section 35(7) of the IFA, service is inherent to the process. Section 35(5) of the IFA, requiring service in the CPC manner and publication as prescribed, reinforces this conclusion.

10.3. On this basis, the view in Chintamani Gajanan Velkar (Supra) that a bare, unserved notice sufficed for Section 2)(f)(iii) of the MPFA was found to have overlooked the Bombay/Maharashtra amendments to Section 35 of the IFA and to have proceeded on an erroneous premise regarding the two-hectare exclusion. It was overruled to that extent.

10.4. The Court further clarified that Section 2(f)(iii) of the MPFA saves only "live" or "pipeline" notices, those issued and pursued in reasonable proximity to 30.08.1975. Notices left undecided for years or decades lapse into desuetude. The State is obliged to act within a reasonable time; a notice from 1956–57, never taken to its statutory culmination, cannot be revived to effect vesting on the appointed day.

……..

14.2. After this categorisation, we are satisfied that there is no legally relevant distinction between the present cases and the decision in Godrej and Boyce (Supra). The ratio in Godrej and Boyce (Supra) turns on service of a notice under Section 35(3) of the IFA, the existence of a live process capable of culminating in a

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notification under Section 35(1) of the IFA, and strict compliance with the statutory steps that alone can support vesting under Section 3(1) of the MPFA Act on the footing of Section 2(f)(iii). The record before us discloses the same deficiencies that were fatal in Godrej and Boyce (Supra). There is no proof of service of any notice under Section 35(3) of the IFA on the then owners. There is no final notification under Section 35(1) of the IFA. Possession has remained with private owners throughout. No contemporaneous action was taken under Sections 4, 5, 6 or 7 of the MPFA Act. These features mirror the very elements that led this Court to hold that vesting had not occurred in Godrej and Boyce (Supra)…."

SUBMISSIONS ON GODREJ & BOYCE AND ROHAN NAHAR

(Part of the written submissions of Sr. Adv. Mr. Dwarkadas)

18. Since the issue in *Rohan Nahar* (supra) is connected to *Godrej & Boyce* (supra), it is necessary to first examine *Godrej & Boyce* (supra). The relevant facts emerging from that judgment are as follows :

18.1. Godrej acquired land in Vikhroli by a registered deed of conveyance dated 30th July,1948 from Nowroji Pirojsha, who had inherited it from Framjee Cawasjee Banaji, the original perpetual leaseholder under an 1835 Government of Bombay grant. The land was classified as 'wasteland' under the original lease, meant to be

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cultivated. The dispute concerns 133 acres and 38 gunthas from specific survey numbers, referred to as the ‘disputed land’. (Paras 3 - 4/Page 12 of Godrej & Boyce)

18.2. In 1951, the Salsette Estates Act (“Abolition Act”) was passed stating that wastelands granted under a perpetual lessor not cultivated before 14th August, 1951 would vest in the State and be the property of the State. However, aggrieved by this Act, Godrej filed a suit in the Bombay High Court for seeking a declaration of its ownership and that the Abolition Act had no application to the lands in question. After litigation, a 1962 consent decree declared that except for 31 gunthas, the rest of the land had been cultivated by Godrej before 14th August, 1951 and therefore, belonged to Godrej. (Paras 5 - 7/Pages 12 - 13 of Godrej & Boyce)

18.3. Development plans for the city of Bombay in 1967 and 1991 designated the disputed land as residential. Godrej received permissions to construct residential buildings and it built four, for staff use. However, on 17th February, 1976 the Urban Land Ceiling Act (1976) came into force and since the disputed land was in excess of the ceiling limit, Godrej sought exemptions to use excess land for industrial and residential purposes. The State granted the exemption, requiring construction of staff housing. With exemptions

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and municipal permissions, Godrej built over 40 multi-storeyed residential buildings, a club house, sub-stations, and other facilities, housing thousands of families. (Paras 9 - 11/Page 13 of Godrej & Boyce)

18.4. In May 2006, Godrej received six ‘stop-work’ notices stating that the disputed land was treated as private forest, requiring Central Government approval for construction under the Forest (Conservation) Act, 1980. Godrej learned that this action arose from a 2005 Bombay High Court order directing the State to update all land records. Godrej learned that, while updating land records, the State had unilaterally changed the revenue entries to classify the land as private forest. It also found that Notice No. WT/53, issued under Section 35(3) Indian Forest Act, 1927 (‘Indian Forest Act’), had been published in the Bombay Government Gazette of 6th September 1956 regarding the land, but the notice had no date, was never served on Godrej, and was never acted upon by the Government. (Paras 16 & 31 - 33/ Pages 14 & 19 of Godrej & Boyce)

18.5. Aggrieved by this, Godrej filed Writ Petition No.2196 of 2006, seeking a declaration that its Vikhroli land was not forest land and requesting the High Court to invalidate the forest

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department's letter, the stop-work notices, and the revenue record mutation. During the case, it emerged that about 170 similar notices were issued in 1956–57 to various entities, including government establishments. (Paras 34 - 35/ Pages 19-20 of Godrej & Boyce)

18.6. The State contended that, based on the Supreme Court's ruling in *Chintamani Velkar* (supra), the disputed land had already vested in the State under Section 3 of the Maharashtra Private Forests Act. The High Court dismissed Godrej's Petitions in 2008, holding that development approvals and planning designations could not override the land's status as private forest, and that the government inaction did not invalidate earlier notices. The Court further held that even a Section 35(3) notice issued without a corresponding Gazette notification did not remove the land from the Maharashtra Private Forests Act and such notices could not be deemed abandoned. It concluded that private forest land remains forest despite any development plans or zoning changes. Aggrieved with this decision, Godrej and other Petitioners filed Special Leave Petitions before the Supreme Court. (Paras 36 - 38/Pages 20-21 of Godrej & Boyce)

18.7. However, the Supreme Court allowed all the appeals and set aside the judgment of the Bombay High Court, and delivered

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the following findings :

18.7.1. Chintamani Velkar was over-ruled which had held that mere issuance of a notice under Section 35(3) of the Indian Forests Act is sufficient and service is not required under Section 2(f)(iii) of the Maharashtra Private Forests Act and held that the word 'issued' in Section 2(f)(iii) must include service of the show-cause notice. (Paras 61 - 62/Page 26 of Godrej & Boyce)

18.7.2. The Supreme Court endorsed the Full Bench decision in ***J. C. Waghmare v/s. State of Maharashtra***, ***AIR 1978 Bom 119***, which upheld the constitutional validity of the Maharashtra Private Forest Act (Paras 22 - 26/Pages 17-18 of Godrej & Boyce). It held that :

(a) Section 2(f)(iii) of the Maharashtra Private Forests Act applies even to land where only a notice had been issued under Section 35 of the Indian Forest Act and the owner's objections remained unheard when that provision was repealed in 1975, such objections can now be heard under Section 6 of the Maharashtra Private Forests Act.

(b) Section 6 provides landowners with the opportunity to file objections and demonstrate that their land should not be classified or declared as forest.

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18.7.3. The Hon'ble Supreme Court held that Section 2(f)(iii) of the Maharashtra Private Forests Act is in sense a saving clause and is meant to save 'pipeline notices'. 'Pipeline notices' or 'live notices' have been defined to mean notices issued in reasonably close proximity to the coming into force of the Maharashtra Private Forests Act and only such 'live notices' could be acted upon. (Paras 71 – 74/Pages 27-28 of Godrej & Boyce)

18.7.4. The Supreme Court held that the notice issued to Godrej could not be considered a 'pipeline' notice, since a pipeline period cannot reasonably extend from 1956–1957 all the way to 1975. Therefore, the notice was not valid for the purpose of treating the land as private forest. (Para 49/Page 24 of Godrej & Boyce)

19. In the background of *Godrej & Boyce* (supra), it would be appropriate to examine the facts of the case in *Rohan Nahar* (supra).

19.1. The Appellants (batch of 96 civil appeals) were landowners in Maharashtra whose cases share a common factual background with each other, as well as with the facts in *Godrej & Boyce* (supra). The State claimed that in the early 1960s, notices

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under Section 35(3) of the Indian Forest Act were issued and published in the Official Gazette, calling upon landowners to show cause why forest-related restrictions should not be imposed. The landowners maintained that these notices were never personally served, no hearings were held, no final notification under Section 35(1) of the Indian Forest Act was issued, and the proceedings remained dormant for decades. (Para 7.1/Page 12 of Rohan Nahar)

19.2. After the Maharashtra Private Forests Act, came into force, the landowners argued that the State did not take possession under Section 5 and that, for decades the lands continued to be treated as private holdings. Transfers were allowed, planning authorities treated these lands as agricultural land or no development zone, and no compensation was paid. The State argued that the 1960s notices under Section 35(3) of the Indian Forest Act read with Section 2(f)(iii) of the Maharashtra Private Forests Act caused automatic vesting of the lands in the State. (Para 7.2/Page 13 of Rohan Nahar)

19.3. However, from around 2001, revenue officers began mutating village records to show lands as affected by forest proceedings. Names of the landowners were replaced with that of the State. The owners alleged these changes were made without

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notice to them and in violation of the Maharashtra Land Revenue Code. The State argued that the entries merely reflected statutory vesting. These annotations had collateral effects and Sub-Registrars refused to register documents having regard to departmental instructions. Possession nonetheless remained with the private parties, compensation was never awarded, and many administrative challenges under Maharashtra Land Revenue Code remained unresolved. Landowners, therefore, approached the High Court seeking correction of records, declaratory relief regarding title and vesting and restoration of entries consistent with private title and possession. (Paras 7.3 - 7.4/ Page 13 of Rohan Nahar)

19.4. Before the High Court, landowners challenged the legality of forest-related mutation entries and sought declarations that their lands were not private forests under the Maharashtra Private Forests Act, along with restoration of their names in the revenue records. The Landowners argued that :

(i) mere Gazette publication of the notice under Section 35(3) of the Indian Forest Act without personal service under Section 35(5) of the Indian Forest Act could not have adverse consequences;

(ii) they emphasized that no inquiry or final notification

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followed after the issuance of the notices under Section 35(3);

(iii) that the notices were stale;

(iv) that the State never took possession of the lands in question or paid compensation for the same; and

(v) the revenue authorities actions violated the Maharashtra Land Revenue Code and natural justice requirements. (Paras 8.1 - 8.2/ Pages 13 - 14 of Rohan Nahar)

19.5. The State responded that issuance of Section 35(3) notices in the 1960s was sufficient for vesting under Section 2(f)(iii) and Section 3 of Maharashtra Private Forests Act and that revenue entries were ministerial reflections of statutory vesting that followed as a matter of law. It also raised objections regarding delay and laches and pointed out to availability of remedies under the Maharashtra Land Revenue Code. (Para 8.3/Page 14 of Rohan Nahar)

19.6. The High Court grouped the cases and considered common questions such as :

(i) Whether issuance of Section 35(3) notices in these cases, without service of these notice on the landowners, alone was enough?

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(ii) Whether service and a Section 35(1) notification were mandatory?

(iii) Whether dormancy affected vesting, and

(iv) Whether the Maharashtra Land Revenue Code procedures had been violated? (Para 8.4/Page 14 of Rohan Nahar)

19.7. The Hon'ble High Court in *Devkumar Aggarwal* (supra) vide its order dated 27th September, 2018, disposed off this batch of 96 petitions and held as follows :

19.7.1. That vesting under Section 3 of Maharashtra Private Forests Act occurred automatically on 30th August 1975, i.e., the appointed day and that entries made in 2002 merely reflected this vesting. (Para 12.2/Page 18 of Rohan Nahar)

19.7.2. It accepted the State's claim that the Section 35(3) notices were issued and served and that in many cases a Section 35(1) notification was already in force. It relied on Gazette extracts, referred to as the 'Golden Register', possession notices, and panchanama. (Para 12.3 of the Rohan Nahar Judgment)

19.7.3. It distinguished *Godrej & Boyce* (supra) as being fact-specific as in *Godrej & Boyce* (supra) the owners had an earlier consent decree, long-standing sanctioned development and an

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evidentiary vacuum on service and follow-through. It also held that requirements of issuance and service were satisfied on the basis of the facts on record. (Paras 12.4 – 12.5/Page 19 of Rohan Nahar)

19.7.4. The principle laid down in *Godrej & Boyce* (supra) that had made a distinction in 'stale' and 'live' notices was not considered by the High Court and it was held that the issue in *Godrej & Boyce* (supra) was fact specific to the facts of that case. It was further held that in any event, the lands in question would come within the primary definition of 'forest' under Section 2(c- i) of the Maharashtra Private Forests Act. (Para 12.6/Page 19 of Rohan Nahar).

19.7.5. In several of the cases the High Court found that the challenges were mounted by subsequent purchasers who had acquired the land post 30th August, 1975, i.e., the appointed day and not by original land owners. The High Court held that the subsequent purchasers were alleging non service of notices without obtaining affidavits from their predecessors-in-title stating whether the notices were in fact served on them or not. It was further held that the subsequent purchasers made these allegations even though the 'burden was effectively placed on the petitioners to dislodge official records'. (Paras 12.7 – 12.8/Page 19 of Rohan Nahar)

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19.7.6. Except one matter remitted for inquiry, the High Court dismissed all Writ Petitions, charactering several as commercially motivated and not bona fide and cautioning that entraining them would weaken forest protection. (Para 12.12/Page 19 of Rohan Nahar)

19.8. However, in the case of *Rohan Nahar* (supra), the Hon'ble Supreme Court overruled *Devkumar Aggarwal* (supra) and held as under :

19.8.1. That the legal position is settled, i.e., for vesting under Section 3 of the Maharashtra Private Forests Act based on Section 2(f)(iii), the Section 35(3), notice must not only be issued, but, must be served. Service is essential because it allows a right in the owner to object. The Court rejected the High Court's view that reproducing the text of Section 35(1) 'beneath' a show-cause notice amounted to a final notification. It further held that mutation entries cannot perfect an acquisition that lacks statutory predicates and that these entries cannot create title in the State or divest title from the private owner. (Para 13.1/Page 20 of Rohan Nahar)

19.8.2. The Court found critical statutory steps to be missing, viz.,

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(i) No proof that Section 35(3) notices were served, nor any final notification under Section 35(1).

(ii) Private owners had remained in continuous possession, as shown by revenue records.

(iii) The State had not taken possession under Section 5, initiated schemes under Section 4, conducted compensation proceedings under Section 7, or held timely inquiries under S. 6.

(iv) The documents relied on by the State, mostly undated or unverified, were unreliable when contrasted with decades of undisputed private possession.

(v) In some cases, the State relied on notices sent to non-owners or on lands long converted to industrial use. In another, it could not even assert that a Section 35(3) notice existed.

(vi) Considering these deficiencies together, made it clear that vesting under Section 3(1) of the Maharashtra Private Forests Act had not been completed (Para 13.2/Page 20 of Rohan Nahar)

19.8.3. The Hon’ble Supreme Court also rejected the High Courts distinctions between original and subsequent purchasers. It was held that compliance with mandatory statutory requirements does not depend on ownership history. Subsequent purchasers

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cannot be prejudiced by undisclosed proceedings. The revenue records themselves showed continued private ownership, undermining the State's case. The Supreme Court rejected the High Court's approach to hold that a subsequent purchaser is in a worst position than the one who developed land would invert the logic of the statute and would reward illegality while penalising restraint. (Para 13.4/Page 21 of Rohan Nahar)

19.8.4. The Hon'ble Supreme Court also refused remand for a Section 6 inquiry, holding that such an exercise decades later would be meaningless and could not cure the lack of mandatory prerequisites. It further held that the High Court misread the Gazette, diluted statutory requirements, and relied on irrelevant material. The judgment therefore could not stand. (Para 13.5/Pages 21-22 of the Rohan Nahar Judgment)

19.8.5. And finally it was held that the facts in those 96 appeals which arose from the Bombay High Court Judgment in *Devkumar Aggarwal* (supra) were indistinguishable in principle from *Godrej & Boyce* (supra). It was held that the record reflects the same jurisdictional defects viz.,

(i) non-service of a notice under Section 35(3) of the Indian Forest Act,

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(ii) absence of a final notification under Section 35(1) of the Indian Forest Act, and

(iii) lack of contemporaneous steps under Sections 4, 5, 6, and 7 of the Maharashtra Private Forests Act.

20. It is submitted by Mr. Dwarkadas that, the facts in *Godrej & Boyce* (supra) and *Rohan Nahar* (supra), are indistinguishable. In both cases, the Section 35(3) notices were issued in the 1960s, never served on the original owners, and never followed by any further action. As held by the Hon'ble Supreme Court in *Godrej & Boyce* (supra), only 'Pipeline Notices', viz., those issued in close proximity to the Maharashtra Private Forests Act coming into force, could be acted upon. This principle has not been interfered with in *Rohan Nahar* (supra).

21. In *Godrej & Boyce* (supra), it is held that mere issuance of a notice under Section 35(3) of the Indian Forest Act is not enough, the notice also has to be served on the owner of the land. It is important to note that while *Rohan Nahar* (supra) reaffirmed this principle regarding issuance and service of the notice under Section 35(3) of the Indian Forest Act, it did not hold that such notices must

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be served before the Maharashtra Private Forests Act came into force on 30th August, 1975.

22. In the light of the above, it is submitted by the Mr. Dwarkadas that the facts in the present case (Writ Petition No.3205 of 2018) are distinguishable from those in *Rohan Nahar* (supra), for the following reasons :

22.1. The notice under Section 35(3) of the Indian Forest Act was issued to Respondent No. 1 on 29th August 1975 and served on 4th September, 1975. This is confirmed in paragraphs 7.11 and 7.12 (Pages 126–127) of Respondent No.1's Reply in Writ Petition No.3205 of 2018.

22.2. The notice under Section 35(3) of the Indian Forest Act was issued on 29th August, 1975 and served on 4th September, 1975 i.e., in close proximity to 30th August 1975. It is, therefore, submitted that such a notice would be a "live" notice/"pipeline" notice as understood in the decision of *Godrej & Boyce* (supra). Significantly, in contrast, the notices in *Rohan Nahar* (supra) were 'stale' notices, issued in the 1960s and never served on the landowners.

22.3. In the present case, after taking possession of the subject land, the Forest Department constructed boundary walls, an

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entry gate, a security cabin, a nature interpretation centre, and other structures for protecting the subject land. By contrast, in *Rohan Nahar* (supra), no action was taken even after issuing notices in the 1960s.

22.4. Furthermore, in the current case, Respondent No. 1 also wrote two letters (dated 5th July, 1979 and 28th August, 1979) requesting exemption of 24 acres and 32 gunthas from Gat No.59/A/1, offering substitute land instead. Respondent No.1 stated that considerable amounts had been spent by it in developing horticulture on the land and wells and farmhouses had been built on the subject land. Since the provisions of the Maharashtra Private Forests Act did not allow substitution of land, the State rejected this request. Respondent No.1 then filed a Section 6 application under the Maharashtra Private Forests Act before the Collector ("SDO"). This is a key distinction from Rohan Nahar, where the owners never got a hearing. Here, the original owner himself approached the authorities and participated in the process.

22.5. In the present case, the purpose of issuing a notice under Section 35(3) has been fulfilled (viz. giving a hearing to the owner of the land) in as much as, after the Section 6 application, the following proceedings were held :

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22.5.1. The Collector, by order dated 3rd August, 1980, accepted Respondent No.1's offer of alternate land. The Petitioner challenged this before the Maharashtra Revenue Tribunal ("MRT").

22.5.2. On 15th October, 1982, the MRT remanded the matter to the SDO for fresh inquiry, holding that the SDO did not have the jurisdiction to allot the 24-acre parcel.

22.5.3. After the remand, the SDO passed a second order on 27th December, 2004, holding that 138 acres was private forest land vesting in the Government, while 55 acres was not.

22.5.4. Both sides appealed. On 15th June 2017, the MRT dismissed the Forest Department's appeal and allowed Respondent No.1's appeal, incorrectly interpreting *Godrej & Boyce* (supra) to hold that because the notice under Section 35(3) of the Indian Forest Act was not served on or before 30th August, 1975, it could not be treated as a valid notice at all and held that the subject land is not a 'private forest' as contemplated under Section 2(f)(iii) of the Maharashtra Private Forests Act and hence the subject land is excluded entirely from acquisition under the Maharashtra Private Forests Act.

22.6. These facts clearly show that, unlike *Rohan Nahar* (supra), the original owner in the present case had multiple

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opportunities to present his case.

22.7. In view of the above, it is submitted that the present case is clearly distinguishable from *Rohan Nahar* (supra). Further, the issues raised in the present petition did not arise for consideration in *Rohan Nahar* (supra).

23. **SUBMISSIONS OF ADVOCATE MR. BALSARA, ON BEHALF OF RESPONDENT NO.1/LAND OWNER.**

(Summarised from the written submissions of Adv Balsara)

23.1. Background :

(a) The Respondent No.1 is the owner of subject land admeasuring 193 acres 07 guntha 4A. The Indian Forest Act, 1927 (IFA) came to be published in official gazette on 27th September, 1927. It contained Section 35. Said Section 35 deals with the aspect of protection of forest for special purpose by the State Government by way of publication of notification in the Official Gazette under Section 35 (1). But before that under Section 35 (3), Government is under obligation to issue the notice to the owner through an officer authorised by the State Government, calling upon such owner to show cause within a reasonable period, as to why a notification

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under Section 35 (1) should not be made? Section 35 (3) mandates calling for objections, giving opportunity of hearing to the owner, passing of an order by the authorised officer, before publication of notification under Section 35 (1).

(b) It is pertinent to note that on 14th August, 1975 a legislation was passed under the name and style as 'Maharashtra Private Forest (Acquisition) Act, 1975' (MPFA). The President of India gave ascent to MPFA on 25th August, 1975. MPFA was published in the Maharashtra Government Gazette Part IV on 29th August, 1975. MPFA, vide clause 2 (a), stipulates that 'Appointed Day' means the day on which the said act comes into force. The said date was notified as 30th August, 1975 vide G.N.R. and F.D. No.PRF1073/40845-F-2 dated 29th August, 1975 The Section 24 (i) of MPFA (acquisition 1975) is reproduced as below :

> *"On and from the appointed day, sections 34a, 35, 36, 36a, 36b, 36c and 37 of the Forest Act shall stand repealed". Whereas, it is obvious, on record the MPFA Act (Acquisiton 1975) received assent of the President on 25th August, 1975 published in Gazette on 29th August, 1975. This itself shows that the Forest Department was very much aware that Section 35 is going to get repealed and hence with the malafide intention has issued a notice under section 35(3) on 29th August, 1975 to the wrong person.*

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(c) Admittedly, during the period from 27th September, 1927 till 29th August, 1975 (for about 48 years), it was never claimed by the State Government that the subject land is a forest and never issued any notice under Section 35 (3) of IFA to the owner of the subject land calling upon the owner as to why the subject land should not be protected as a forest. In fact, during the said period, the subject land was subjected to lawful transfer by registered instruments, cultivation, horticulture, NA user, quarry purposes, etc. (see Exhibit A, Exhibit B, Exhibit C, Exhibit D of affidavit in reply of Respondent No.1 dated 25th November, 2019). The said documents are at page no.283, i.e., Bombay Panvel Regional Plan of 1970, NA Permission granted by Collector Office Thane dated 14th May, 1963 at page no.284, NA Permission granted by Collector Office Thane dated 15th December, 1964 at page no.286, NA Permission granted by Collector Office Thane dated 25th July, 1973 at page no.287, 7/12 extract for the period from 1956 to 1972-73 at page no.288-289, recording cultivation of rice, existence of structures, horticulture, paddy, etc. upon subject land.

(d) It is only after MPFA getting ascent from the President of India, and having realised that Section 35 is repealed, the State Forest Department arbitrarily made a show about issuance

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of notice allegedly dated 29th August, 1975 under Section 35 (3) of IFA (impugned notice). In as much as, the notice issued a day prior to the repealing of the provision of section 35 ceased to have effect after the repeal of Section 35.

(e) The Petitioner has not submitted any documentary proof about actual issuance of the impugned notice, on the alleged date, i.e., 29th August, 1975 and service on the actual land owner.

(f) In para 3 (d) of the Petition it is stated that the impugned notice was served on 4th September, 1975. The position of law is that mere issuance of notice is not sufficient, but its service is also important. Issuance cannot be divorced from service of notice. Section 35 (3) of IFA necessarily entails service on the owner and opportunity to file objections, to adduce evidence and to be heard. Section 35 (5) of IFA requires service of such notice as per Civil Procedure Code and publication as prescribed.

(g) In *Godrej & Boyce* (supra), the above stated position of law is laid down by the Hon'ble Supreme Court. The service of notice on 4th September, 1975 after repeal of the provision, was claimed to be served on D Dayabhai & co., though it was obvious that the land owner were M/s. D.Dayabhai and Co. Pvt.ltd. and that D Dayabhai & Co. was an entirely different entity

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and the real owner of the land was never served with a notice under section 35(3) under Forest Act.

(h) In the latest judgment dated 7th November, 2025 in the case of *Rohan Nahar* (supra), it is specifically held that the law settled in the case of *Godrej & Boyce* (supra), is a declaration under Article 141 of the Constitution. Paragraph 10 in case of *Rohan Nahar* (supra) reads as under:

> *10. The judgment in Oberoi Constructions Private Limited v. State of Maharashtra (supra) was challenged in this Court and decided by a three Judge Bench on 30th January, 2014 and has been the prevailing precedent in such matters viz. Godrej & Boyce (supra). This Court gave the following findings :*
>
> > *10.1. This Court held that the mere issuance of a notice under Section 35(3) of the IFA is not, by itself, sufficient to treat land as a "private forest" within Section 2(f)(iii) of the MPFA. The answer to the principal question was returned in the negative.*
> >
> > *10.2. Interpreting the expression "a notice has been issued" in Section 2(f)(iii) of the MPFA, when read with Section 35 of the IFA, the Court held that "issuance" cannot be divorced from service. Given the statutory scheme, a valid notice under Section 35(3) of the IFA necessarily entails service on the owner, an opportunity to file objections, to adduce evidence, and to be heard. Because interim restraints may be imposed under Section 35(4) of the IFA and penal consequences attach under Section 35(7) of*

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the IFA, service is inherent to the process. Section 35(5) of the IFA, requiring service in the CPC manner and publication as prescribed, reinforces this conclusion.

10.3. On this basis, the view in Chintamani Gajanan Velkar (Supra) that a bare, unserved notice sufficed for Section 2(f)(iii) of the MPFA was found to have overlooked the Bombay/Maharashtra amendments to Section 35 of the IFA and to have proceeded on an erroneous premise regarding the two-hectare exclusion. It was overruled to that extent.

10.4. The Court further clarified that Section 2(f)(iii) of the MPFA saves only "live" or "pipeline" notices, those issued and pursued in reasonable proximity to 30.08.1975. Notices left undecided for years or decades lapse into desuetude. The State is obliged to act within a reasonable time; a notice from 1956-57, never taken to its statutory culmination, cannot be revived to effect vesting on the appointed day.

10.5. On the definitional plane, the Court reaffirmed that the "means and includes" formulation in Section 2(c-i) of the MPFA does not dilute the primary sense of "forest". Lands long designated for urban use, developed under sanctioned plans and permissions, and integrated with municipal infrastructure could not, on the admitted facts, be regarded as "forest" either in the primary or extended sense of Section 2(c-i) of the MPFA.

10.6. Recognising the expropriatory character of the MPFA, the Court applied strict construction. Fundamental norms of fairness and good governance preclude unsettling settled civilian and commercial

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> *arrangements after prolonged State inaction, particularly where the State itself facilitated and acquiesced in development over decades.*
> *10.7. Even assuming arguendo that the lands were forest, wholesale demolition and dispossession after half a century was neither feasible nor in the public interest on the facts recorded. The equities of third-party purchasers and residents, the State's prolonged acquiescence, and the practical impossibility of "restoration" militated against such a course.*
>
> *10.8. In consequence, the appeals were allowed, the High Court's judgement was set aside, and actions premised solely on stale notices under Section 35(3) of the IFA were quashed.*

Also, paragraphs 13 and 14 of the said judgment in the case of *Rohan Nahar* (supra) are relevant.

(i) Cumulative reading of both the judgments, i.e., *Godrej & Boyce* (supra) and *Rohan Nahar* (supra), clearly demonstrate that unless a notice is legally served and further steps under Section 35, i.e., issuance of notification, taking over possession, giving hearing and deciding the objection of the owner etc. are effectively taken up, the vesting of land as private forest, in the State Government under Section 3 of MPFA, is not formalised. When in the present case the validity of the proceeding under section 6 of the Act of 1975 and process initiated under it, is vitiated

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because of the non-service of the notice under section 35(3) of the Act, on the original owner.

(j) Admitted position is that Section 35 stood repealed as per Section 24 of MPFA with effect from 30th August, 1975. Thus after 30th August, 1975 Section 35 was not in existence and therefore the service of notice under Section 35 after 30th August, 1975 is of no effect. Petitioner admittedly has not come up with any documentary proof or case that after 30th August, 1975 they had taken the steps under Section 35 of IFA particularly publication of notification, taking over possession, giving opportunity of hearing to the owner etc.

(k) In fact, the State witness has clearly admitted in cross that notification under Section 35(1) 34(a) and 38 of IFA, have not been published (Page Nos.87 and 88 of additional compilation by Respondent No.1). Considering these factual aspects and law laid down by Hon'ble Supreme Court in the case of *Godrej & Boyce* (supra), the MRT vide impugned judgment dated 30th June, 2017 held that land in dispute is not a private forest and accordingly dismissed the forest Appeal and allowed another Appeal filed by Respondent No.1.

(l) Whereas in the matter of *Godrej and Boyce* (supra),

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the notices which were issued were not acted upon for a huge period of 27 years and hence the Hon'ble Supreme Court held that the notices had became stale and not 'live' and in para 56 in clear terms has observed as follows :

> *56. A notice under Section 35(3) of the Forest Act is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest. It is important to note that such a notice pre-supposes the existence of a forest. The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on the objections. This entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision.*

(m) In the present case, the forest department not only issued the notice under section 35(3) to the wrongful person and not to the owner, but, thereafter also in the year 1982, when the Tribunal remanded the matter, the department, after 17 years, i.e., in the year 1999, got the said remanded proceedings numbered as 53/99. This clearly shows the negligence on the part of the Petitioner.

23.2. Whereas :

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Admittedly, from 2018 till today, the Petitioner failed to obtain any stay to the impugned order of the MRT. The order of MRT has been effected in the revenue record. Substantial portion of land, about 104 acres has been transferred under registered instruments to the planning authority, viz., TMC, for various reservations. These registered instruments of 2019 have not been challenged by any separate legal suit/proceedings or in the present Writ Petition by the Petitioner. The possession of acquired land under registered instrument is handed over to planning authority viz. TMC which is evident from the text of the registered instruments.

23.3 In respect of some of the acquired land, 3 DRCs have been issued. In respect of land admeasuring 100 acres, acquired for PARK RESERVATION No.4, even though TMC did not issue the DRC, there are already three orders of the Hon'ble High Court dated 22nd November, 2022, 28th April, 2025 and 27th June, 2025 whereby the planning authority TMC is directed to issue DRCs. In the 7/12 extract the concerned reservation affected portion is already mutated in the name of TMC. From the TILR report, it is evident that the acquired portion is situated at the eastern boundary of the Sanjay Gandhi National Park. Even otherwise, the circular dated 16th

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January, 1996 of the Government of Maharashtra identifying the boundaries of Sanjay Gandhi National Park is filed on record, i.e., Exhibit-A of additional affidavit of Respondent No.1 page (nos.445 to 447).

23.4 From the said circular, it is evident that the entire village Manpada, where the subject land is situated, is at the eastern boundary of Sanjay Gandhi National Park. Respondent No.1 has already filed another letter dated 23rd January, 1986 issued by the forest department, to the Deputy Collector Thane (said letter dated 23rd January, 1986 is annexed as Exhibit-B to the additional affidavit of Respondent No.1 at Page nos.448, 449). In said letter, the Petitioner has admitted that they could not take over the possession of the subject land.

23.5 Thus, in the present matter, the following factors become undisputed facts :-

(a) There is no proof that notice was issued prior to appointed date, i.e., 30th August, 1975 to the Respondent No.1.

(b) Notice was served on 4th September, 1975 (it is not served on the actual owner as required by CPC).

(c) There is no service or publication of notice as per CPC. No notification under Section 35(1) came to be published.

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(d) No opportunity of hearing was given to the Respondent No.1.

(e) Possession of subject land was not taken over by the Petitioner as per Section 5 of MPFA.

(f) No compensation was paid by the Petitioner to the Respondent No.1.

(g) Subject land was otherwise under cultivation, N.A. users, etc. Thus, there is no question of subject land coming within the definition of private forest defined under Section 2 (f) of MPFA. In the circumstances, there is no question of acquisition and vesting of subject land in the state government under Section 3 of MPFA.

(h). Whereas the MRT in its order dated 30/6/2017 has clearly observed and recorded in para 17 (part of this paragraph is reproduced below) :

> *17. In view of above discussion, as the Forest Department has failed to prove that the notice u/s. 35 (3) was 'served' on the land owner, Resp. No.1 in Appeal No. 165/2005 who is Appellant in Appeal No. 229/2009, prior to the appointed day, and in fact, it has duly come on record that the said notice was actually served on the land owner on 4th September, 1975, i.e. after the repealing of the provisions of section 35 of the Forests Act, the land in dispute cannot be termed to be a 'private forest' as contemplated u/s. 2(f)(iii) of the Act of 1975, inasmuch as the notice issued a day prior to the repealing of the provision of section 35, ceased*

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> *to have effect after the repeal of the section 35. It is also interesting to point out here that in spite of the knowledge about the proposed repealing of section 35, the Department of Forest right from the coming into force of the Indian Forests Act, 1927 in the year 1927, till 29th August, 1975, i.e. till a day prior to the proposed repealing of the provision of section 35, did not take any move or action so as to protect the so-called 'forest' or 'private forest' and only a day prior to the appointed day, i.e. 30/8/1975, on 29/8/1975 just 'issued' a notice which was not served on the land owner, so as to accord him an opportunity of hearing or representing his case in order to protect his rights.…*

(i) The facts of present case are covered by two judgments of the Hon'ble Supreme Court, in *Godrej Boyce* (supra) case and *Rohan Nahar* (supra) case. Cumulative reading of both judgments would indicate that a show cause notice granting time for objection cannot be reconciled with the final decision taken without service of notice and without hearing. Mere issuance of notice cannot clothe the State with authority to vest the land.

(j) Mere issuance of notice under Section 35(3) of Indian Forest Act does not result in automatic vesting of the subject land under Section 3 of MPFA on the appointed date. Statutory requirement of service on the owner, publication of the notification and inquiry, must be satisfied before vesting of land under Section 3 of MPFA to the State.

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(k) Whereas, presently, the maximum land in question in the present Petition is owned and possessed by the Thane Municipal Corporation. So also, on the actual site, TMC has constructed 40Mtr DP Road and there is a TMT bus Depot in existence. TMC has reserved and allocated the funds for development of Garden, Maternity Home, Park, school and for other Municipal purposes. Hence, it is obvious that the said land is acquired for the urban usage and the Respondent has been denied any compensation. The TMC is very much aware that the due legal process under the MPFA has not been followed and no compensation has been paid under MPFA. Hence, now that the land has to be acquired, compensation as per the provisions of "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (RFCTLA), is mandated and the owner shall clearly fall under Section 3 (c) of the said Act so as to be compensated as per RFCTLA read with Section 126 of MRTP Act.

24. The learned Senior Advocate Mr. Balsara has contradicted the submissions of the State and has canvassed a host of grounds, which are summarised as under :

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[A]. Suppression and Misrepresentation by the Petitioner (Re: Para 1.4) :

1. The Petitioner, has deliberately and willfully tried to mislead the Court by suppressing material facts.

(a) The Petitioner has consciously stated that the alleged notice was served upon “D.Dayabhai”, while suppressing the crucial fact that :

(i) The alleged notice was not served upon the original owner, namely M/s D.Dayabhai and Co. Pvt. Ltd.;

(ii) The alleged notice was instead addressed to an incorrect and non-juristic entity, rendering the entire service void ab initio.

(b) It is further an admitted position by the Petitioner that the said notice was received on 4th September 1975, by D Dahyabhai and Co., and after the repeal of the relevant Act.

(c) Once the statute itself stood repealed, no proceedings, rights, obligations or consequences could survive, much less be resurrected on the basis of an invalid and belated notice.

[B]. Illegal Reliance on Inadmissible Evidence :

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(a) The Petitioner has heavily relied upon a xerox/photocopy of a registered post receipt, which is :

(i) Inadmissible in evidence under the Indian Evidence Act;

(ii) Neither primary evidence nor secondary evidence is led in accordance with law;

(iii) Rejected during trial itself for want of proof.

(b) It is a settled principle of law that mere photocopies do not constitute admissible evidence unless foundational requirements are satisfied. The Petitioner's reliance on such inadmissible material vitiates the entire case and exposes the mala fide attempt to create a false record.

[C]. Testimony of Interested Witness :

(a) The Petitioner has relied upon the statement of Shri Pakhre, who is :

(i) An employee of the Forest Department;

(ii) An interested and partisan witness;

(iii) The very person whose conduct has created unnecessary litigation, confusion, and grave hardship to the Respondent.

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(b) Reliance on such a witness, without independent corroboration, cannot override statutory lapses, legal repeal, and absence of lawful service.

[D]. Clear Case of Suppression of Material Facts :

(a) The Petitioner has deliberately suppressed the following material facts :

(i) That the alleged notice was served on the wrong person;

(ii) That the alleged service is sought to be proved only by a xerox copy;

(iii) That the notice was admittedly received after repeal of the Act;

(iv) That there is no legally valid service upon the lawful owner.

(v) That the Petitioner does not have any proof about actual dispatch of notice prior to the appointed day.

(b) Such suppression strikes at the very root of the Petitioner's case and disentitles the Petitioner from any equitable or discretionary relief.

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[E]. MRTP Act – Lapse of Reservation and Collusive Conduct :

(a) Respondent No.1's land in question falls under the development plan passed and published vide notification dated 1986 approved by the State of Maharashtra in the year 1991 for City of Thane after considering all objections and suggestions as per the statutory provisions of MRTP ACT 1966. This unequivocally establishes that the reference land is situated outside the notified boundary of Sanjay Gandhi National Park (SGNP), and that the Thane Municipal Corporation is the competent planning and implementation authority for the said land.

(b) In view of the Development Plan reservation designating the land as a park, the Respondent has at all times refrained from carrying out any non-forest activities and, for the overall welfare and betterment of Thane City, has remained committed to preserving and maintaining its status as a park.

(c) A valid notice under Section 127(2) of the MRTP Act was served; the copy of the said notice is enclosed for ready reference.

(d) The Planning Authority failed to take steps within the statutory period.

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(e) The Respondent respectfully submits that, acknowledging the Petitioner's contention that a park is an essential amenity for the citizens of Thane and respecting public sentiment and necessity, even though a notice under Section 127(2) of the MRTP Act was served and the reservation had lapsed due to inaction, the Respondent nonetheless accepted Transferable Development Rights (TDR) in lieu of monetary compensation for the development of the park. Accordingly, with the intention of enabling the Thane Municipal Corporation to develop and maintain the park reservation and preserve its natural character, the Respondent accepted the TDR for the overall betterment of the citizens of Thane.

(f) The letter dated 8th January, 2020 (Exh. H, page 120 of Writ Petition No.10024 of 2023) issued by TMC to the forest department clearly established the fact and willingness to Develop the park reservation for which last three paragraphs are reproduced as below:

> *"विषयांकित मिळकतीबाबत व त्यावर असलेले पार्क आरक्षणमहापालिकेने सदर क्षेत्र संपादित केल्यानंतर त्याचा वनेत्तरकामाकरीता वापर होणार नसुन, विकास नियंत्रणनियमावलीतील तरतुदीनुसार पार्क आरक्षणाकरीता अस्तित्वातील निसर्ग संपत्ती अबाधित ठेऊन वापर होणार आहे. त्यानुसार भुखंडधारक यांना सदर भुखंडावरील पार्क आरक्षणक्र.४ ने बाधित क्षेत्र हस्तांतरीत केलेले असल्याने सदर*

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क्षेत्राचामोबदला भूखंडधारकास देणे महानगरपालिकेस कायद्यानेबंधनकारक आहे. यदाकदाचित ठाणे महानगरपालिकेनेभुखंडधारकास मोबदला न दिल्यास भुखंडधारक कायदेशीरकार्यवाही करण्याची शक्यता आहे. सबब, उपरोक्त प्रकरणी ग.नं. ५९अ, हि.नं. १/१ वर नमुद मंजुरविकास आराखड्यातील पार्क आरक्षण क्र. ४ चे अस्तित्वातीलनिसर्ग संपत्ती अबाधित ठेवुन नैसर्गिक सौंदयाचे जतन करुनमहापालिका सामाजिक वनीकरण करणार आहे. तसेच सदरभुखंड वन विभागास आवश्यक असल्यास, ठाणेमहानगरपालिका सर्वसधारण सभेची मान्यता प्राप्त करुन वनविभागास देता येईल. तरी सदर भुखंडाबर महापालिकेनेप्रस्तावित केलेल्या बाबीचा विचार होऊन आपल्या विभागाचाअभिप्राय त्वरीत मिळणेस विनंती आहे.
मा. आयुक्त साो. यांचे मान्यतेने, "

(g) It is further pertinent to note that the Land is acquired by the TMC, 7/12 extract is mutated in the name of TMC and pursuant to the order dated 12th July, 2023 passed in Special Civil Suit No.35 of 2020, measurement was carried physically whereby the boundaries and lines of the area possessed by D Dayabhai and Company Pvt. Ltd., is earmarked in blue color dotted lines. The copy of the said Measurement is enclosed for ready reference.

(h) Further, there are Minutes of the 112th meeting of Regional Empowered Committee (REC) of the Regional Office, Ministry of Environment, Forest and climate Change, Nagpur, held on 6th February, 2024 whereby the Agenda of the said Meeting was to discuss diversion of Forest land in favor of MMRDA Thane for

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construction of Twin Tunnel 2 Lanes, on each side. In the said proposal the petitioners land was also considered and the Forest consented MMRDA to construct the said twin tunnels. The above facts clearly establish that the land is already acquired and possessed by various state Government Authorities and falls outside the boundary of SGNP.

[F]. Conclusion :

- The Petitioner's case is built on;
- Suppression of material facts;
- Inadmissible evidence;
- Invalid service of notice;
- Proceedings post repeal of statute;
- Collusive conduct between statutory authorities.
- The Petitioner has, therefore, approbated and reprobated, abused the process of law, and is not entitled to any relief whatsoever.

25. COMMENTS OF RESPONDENT NO.1, ON THE PETITIONER'S REJOINDER

(Summary of the written notes of arguments of Respondent No.1)

(i) The Petitioner is raising a hyper technical issue that Respondent No.1 has taken this stand for the first time after 50 years. Said contention is not correct. Otherwise also, after the judgments in the *Godrej & Boyce* (supra) and *Rohan Nahar* (supra),

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the law is crystallised by the Supreme Court, that notice issued under section 35 (3) of IFA, has to be a valid notice and has to be served on the owner of the land. The burden to prove the validity of the notice is naturally on the Petitioner because Petitioner claims the land with the contention that its notice is valid. The Petitioner could have produced proof of actual issuance and dispatch of the concerned notice by producing the outward register, copy of postal receipt showing date of dispatch of notice, etc. Apart from mention of a number on the notice, there was deliberate failure to produce the outward register by the Forest Department.

(ii) The reliance placed on the evidence of the Petitioner's witness Mr. Pakhare is half hearted. Instead of relying upon what Pakhare has said, Petitioner could have directly produced the document of dispatch showing dispatch of notice prior to appointed day. Non-production of any such document itself demonstrates that Petitioner, till date, has no documentary proof to establish the issuance and dispatch of the notice prior to appointed day.

(iii) Read paragraph 13.3, 13.4 and 13.5 of *Rohan Nahar* (supra), Page 59-60 of Citations filed by R1. The Hon'ble Supreme Court has clearly held that legislation must be construed

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strictly and Article 300A of the Constitution requires that no person is deprived of the property, save, by authority of law. When the statute prescribed a manner of doing a thing, it must be done in that manner or not at all. In paragraph 13.5 it is held that after the passage of nearly half a century, exercise of inquiry under Section 6 is largely academic and would not cure the absence of mandatory preconditions of notice served under Section 35 (3) of IFA and lawful progression towards the notification under Section 35 (1) of IFA.

(iv) In view of the declaration of law by the Hon'ble Supreme Court in the above judgment and in the *Godrej & Boyce* (supra), it becomes the primary duty of the Petitioner to prove beyond doubt, the issuance/dispatch of notice prior to the appointed day regardless whether objection about date of actual issuance is taken at what stage?

(v) The Forest Department, in a substantial number of cases, has not taken any action from 1927 till 29th August, 1975 (Chintamani Velkar and present case). *Godrej & Boyce* (supra) has in paragraph 69 specifically observed that directions were issued to Collector with a draft copy of the MPFA annexed thereto on 27th August, 1975 with instructions to take possession. But possession

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could not be taken over by the Petitioner, which fact is proved from their own letter dated 23rd January, 1986 (Page 448 of additional affidavit in reply of Respondent No.1).

26. Comments of Respondent No.1 on the submissions of the Petitioner in paragraphs 2.1 to 2.5 of it's Rejoinder

(i) It is incorrect to state that, by virtue of pleadings in Writ Petition No.1026 of 1975, any judicious admissions are given by Respondent No.1 about receipt of notice by Respondent No.1 itself. Refer order dated 27th December, 2004 of the Deputy Collector passed after remand (Page Nos.73-86 of WP). Page Nos.75-76 of the said order clearly demonstrate that it has been the consistent stand of Respondent No.1 that notice was addressed to a wrong person, viz., D. Dahyabhai & Co. and not to Respondent No.1, which is private limited company who is the actual owner of subject land. One Chimanlal Shah was examined in that regard, who stated that he is accountant of D. Dahyabhai & Co. which is a different entity. Even the Deputy Collector has accepted this fact, but discarded it by ranking it as a clerical error.

(ii) MRT has accepted the fact that notice was addressed to and received by D. Dahyabhai & Co. (Chimanlal Shah,

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an employee) which is an entirely different entity and held that this shows that the company who was the real owner of the land (Respondent No.1), was never served with the notice under Section 35 (3) of IFA. MRT further held that the Deputy Collector was wrong in branding a fact to be a clerical error, and held that the notice was not served upon the land owner (Respondent No.1) as contemplated by Hon'ble Supreme Court in *Godrej & Boyce* (supra) judgment.

(iii) In spite of the above stated specific conclusion by MRT, the Petitioner in the present WP has not demonstrated through any document that the notice was served on the actual owner, i.e., Respondent No.1.

(iv) Respondent No.1 has filed Writ Petition No.1026 of 1975 because it came to know from Chimanlal Shah the Accountant of the said separate entity, viz., D Dahaybhai & Co. that it had received a notice in respect of Respondent No.1's land and Respondent No.1 was the affected party.

(v) *Godrej & Boyce* (supra) and *Rohan Nahar* (supra) mandate issuance of a valid notice to the real land owner and in the manner prescribed under CPC, so also its publication.

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(vi) The Petitioner, neither in the Writ Petition nor in the rejoinder, has demonstrated compliance of these preconditions of valid notice.

27. Comments of Respondent No.1 on the submissions of the Petitioner in paragraphs 3, 4 , 5, 6 and 7 of the Rejoinder :

(i) The submissions made in the said paragraph 3.1 and the reliance placed upon the judgment of Supreme Court in Peacock Plywood Case or upon Philson (supra) on evidence, is wholly irrelevant and misleading. In the Peacock case, the Insurance Company was not allowed to resile from the representation made by it on account of waiver of privilege and in order to advance a beneficial legislation in favour of the beneficiary. In *Rohan Nahar*'s case (supra), the Hon'ble Supreme Court has held that MPFA is an ex-proprietary legislation so Peacock case is not applicable to the present case.

(ii) Admittedly said letters dated 5th July, 1979 and 28th August, 1979 and also the application dated 19th January, 1980 (Page No.63 of Respondent No.1 compilation), were issued without prejudice to the pending Writ. By filing an appeal against Deputy Collector's acceptance order dated 3rd June, 1980 before MRT by

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the Petitioner, indicates that the offer given by Respondent No.1 was without prejudice. This fact is evident from the whole reading of the MRT order dated 15th October, 1982 (Page 48-56 of Writ Petition).

(iii) From the remand order dated 15th December, 1982 particularly paragraphs 8, 13, 15, 16, 17 and 22 as well as the operative part, it is evident that the matter was remanded for fresh inquiry in respect of entire land admeasuring 204 acres. Accordingly, the Deputy Collector framed issues (Page No.75 of the Writ Petition). It is only in the Appeal No.165 of 2005 before the MRT, that the Petitioner has taken a stand that the inquiry was restricted to 24 acres and that Respondent No.1 has concealed that 168 acres is forest.

(iv) Paragraph 11 of the MRT order demonstrates that a negative finding was given on issue no.1 and accordingly the entire land was held as non-forest. Affirmative finding was given on issue no.2 by holding that proceeding conducted by Deputy Collector stands vitiated because of non-service of notice under Section 35 (3) of IFA upon the real land owner (Respondent No.1).

(v) The Petitioner, neither in the WP nor in the rejoinder, has demonstrated that there was valid service upon the true owner and/or the subject land comes within the definition of

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private forest. The Petitioner has not even filed on record the alleged notice dated 29th August, 1975 (*we find the photostat copy at page 277*). Without showing a single document from the record and without satisfying the Court about actual issuance and service upon real land owner, i.e., Respondent No.1, an attempt has been made by the Petitioner to create confusion by way of misleading this Court by misinterpreting the binding ratio of *Godrej & Boyce* (supra) and *Rohan Nahar* (supra) judgments.

(vi) It is incorrect to state that in Writ Petition No.1026 of 1975, Respondent No.1 has admitted on oath that the land was put to non-forest use only to a limited extent. It is not Respondent No.1 who has to prove that the subject land is not forest, but it is for the Petitioner to prove that the subject land comes within the definition of forest. In fact, since 1975 it had been consistent stand of Respondent No.1 that the subject land does not come within the definition of forest. The remand order dated 15th October, 1982 was to make inquiry in that regard. An inquiry panchnama was carried out by the Petitioner's own officers in which it is recorded that more than 107 acres of land was under non agricultural user (read page nos.65-67 of compilation of Respondent No.1).

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(vii) The Petitioner has attempted to misinterpret paragraph 72 of *Godrej & Boyce* (supra) judgment by contending that the Hon'ble Supreme Court has not used the word served in close proximity and, therefore, for any notice to become a pipeline notice, the requirement is that the issuance should be in close proximity and not service before appointed day. Said interpretation is incorrect because in the earlier paragraphs of the *Godrej & Boyce* (supra) judgment, the word issued used in Section 2 (f) (iii) of MPFA is interpreted as issued and served and it is specifically held that service is inherent in the word 'issued'. The Hon'ble Supreme Court, therefore, never intended in paragraph 72 to exclude service. As per *Godrej & Boyce* (supra) judgment, pipeline notice means issued in close proximity before appointed day and served. *Godrej & Boyce* (supra) judgment, therefore, overrules its previous judgment in *Chintamani Velkar* (supra) to that extent, because in that matter also service was after appointed day.

(viii) Petitioner in the rejoinder and/or in the rejoinder argument unnecessarily attempted to point out certain orders passed in PIL No.305 of 1995. On the basis of said orders, Petitioner tried to urge that even the subject land of the present petition being included in SGNP Division, becomes forest land and vest with the

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State Government. Said argument is misleading. It is respectfully submitted that orders passed in said PIL are passed in different context and not related to the subject land. In any case, subject land, i.e., Survey No.59/1 was not the subject matter of said PIL. Admittedly, Respondent No.1 who is the owner of Survey No.59/1 was not party to the said PIL. In fact, present Petition is a dispute between private land owner and forest department and this dispute has nothing to do with the said PIL or orders passed therein or in any other matter.

(ix) The issue involved in the present petition is that whether by merely saying that forest has issued notice dated 29th August, 1975 under Section 35 (3) of IFA (to the wrong addressee and not to Respondent No.1) whether land of Respondent No.1, which it has purchased from High Court Receiver in 1960, would vest with the State under Section 3 of MPFA and that too without complying with other statutory pre-requisites such as issuance of notification under Section 35 (1) of IFA, giving opportunity of hearing to the owners, etc. For the facts involved in the present matter, relevant judgments are those delivered by the Supreme Court in *Godrej & Boyce* (supra) case and *Rohan Nahar* (supra) case.

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(x) On this backdrop, stating that Government has included the land bearing Survey No.59/1 in SGNP forest division, is a malafide contention and such inclusion, without giving opportunity of hearing to the land owner, viz., Respondent No.1 would be otherwise be violative of fundamental rights of Respondent No.1 under Article 14 of the Constitution. In any case, such alleged inclusion in SGNP division does not amount to automatic vesting of the subject land under Section 3 of MPFA, as well as, such inclusion in SGNP division is violative of Article 300A of the Constitution.

(xi) It is otherwise clear from notification dated 16th January, 1996 (Page Nos.445-447, i.e., Exh.A of Additional Affidavit of Respondent No.1) that Survey No.59/1 is not within the notified area of SGNP. The Petitioner's own letter dated 23/01/1986 (Page 448 i.e. Exh.D of Additional Affidavit of R1) clearly shows that possession of Survey No.59/1 could not be taken over by Forest Department. There are no document such as Panchnama, Possession receipt, etc. filed on record to demonstrate that Petitioner ever took legal and physical possession of subject land from Respondent No.1.

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(xii) Admittedly, from 2019, about 104 acres of land out of subject land is in possession of TMC. About 18 acres of land is under cultivation of Respondent No.2. Upon 17 acres 19 gunthas of land, a village settlement by name Kokanipada, came up. Rest of the land is under cultivation of Respondent No.1 and/or under N A user, quarrying operations, horticulture, construction of godown, roads, etc. In the circumstances, it is fanciful to state that subject land admeasuring 193 acres 7 gunthas and 4 annas is within SGNP forest division. The TILR report recently carried out also demonstrate that subject land is not in possession of SGNP or within SGNP forest division.

(xiii) The Petitioner's reliance on Section 144 of CPC whereby principle of restitution is stipulated, is improper, irrelevant and not applicable to the facts involved in the present matter. It is evident that subject land never vested in Forest Department under Section 3 of MPFA because for such vesting all statutory pre conditions mentioned in Section 35 (1), 34 (A), and 38 of IFA have not been complied with. Unless there is a vesting, there is no question of restitution.

(xiv) The entire rejoinder including submissions made in paragraphs 4, 5, 6 & 7 of the rejoinder are misleading and a

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definite attempt to wrongly distinguish binding effect of judicial precedent of *Godrej & Boyce* (supra) case and *Rohan Nahar* (supra)cCase on the basis of immaterial facts.

(xiii) It will be appropriate to point out paragraph 14.5 and 14.6 of *Rohan Nahar* (supra) judgment, which are reproduced hereunder :

> *14.5. When a judgment minimises a binding ratio, ignores missing statutory steps, and seeks to distinguish on immaterial facts, it creates an appearance of a reluctance to accept precedent. Such an approach conveys a major of pettiness that is inconsistent with the detachment that judicial reasoning demands. In our view this is an unfortunate departure from the discipline of stare decisis.*
>
> *14.6. We accordingly hold that the present appeals are indistinguishable in principle from Godrej and Boyce (Supra). The record discloses the same jurisdictional defects of non-service of a notice under section 35 (3) of IFA, the same absence of a final notification under Section 35 (1) of IFA, and the same want of contemporaneous steps under Section 4,5,6 and 7 of the MPFA Act. In such circumstances the High Court could not consistently with Article 141 of the Constitution avoid the binding ratio by treating immaterial differences as determinative. In our opinion fidelity to binding precedent and to the statutory scheme admits of no other conclusion than that the impugned order must be set aside.*

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28. Case law relief upon by Respondent No.1, particularly regarding effect of repeal, saving clause, retrospective application of Judgment of Supreme Court.

(Summary from the written notes of arguments of Respondent No. 1)

(i) ***C Golakhnath and Others v/s. State of Punjab 1967 SCC (Online) SC 14*** (Paragraphs 45, 50, 51, 52) and ***C.B. Gautam v/s. Union of India 1993 (1) Supreme Court Cases 78*** (Paragraphs 43 and 46). These two judgments were cited to demonstrate that judgment interpreting the legal principles or provisions have retrospective effect. Whenever Supreme Court intends to give prospective effect then it is specifically stated so in the concerned judgment.

(ii) *Godrej & Boyce* (supra) and *Rohan Nahar* (supra), judgments are retrospective in nature. Interpretation of provisions of MPFA, IFA, etc. made therein, has retrospective effect and hence those two judgments are applicable to the facts involved in the present case.

(iii) In fact, even the Petitioner in their note have admitted that *Godrej & Boyce* (supra) and *Rohan Nahar* (supra) judgments are relevant for the present matter, but Petitioner made incorrect attempt to distinguish them with the present facts.

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(iv) Judgment of the Supreme Court in the case of *Chintamani Velkar* (supra), has also been referred to demonstrate that even in that case, S. 35 (3) notice was dated 29th August, 1975 but served on 12th September, 1975, i.e., after repeal of Section 35 of IFA. Thus, said notice was also issued in closed proximity but not served before appointed day. However, the Hon'ble Supreme Court in the said case of *Chintamani Velkar* (supra), held that notice issued under Section 35 (3) would in itself be sufficient if such notice is issued before the appointed day and there is no need for any service of such notice before 30th August, 1975. Said view of the Hon'ble Supreme Court in *Chintamani Velkar* (supra) is overruled in *Godrej & Boyce* (supra) (Para 62) by holding that mere issuance of notice is not sufficient, but issuance includes service as well as mandatory compliance of all preconditions of served notice under Section 35 (5) of IFA. Thus, the view taken by Deputy Collector in *Chintamani Velkar* (supra) case in a sense is upheld and confirmed in *Godrej & Boyce* (supra) case by the Hon'ble Supreme Court. Even in the present matter notice is dated 29th August, 1975 and served on 4th September, 1975 (that too on wrong addressee), i.e., after appointed day, viz., 30th August, 1975. Thus, the judgment of *Godrej & Boyce* (supra) has to be made applicable to the present facts by holding that

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notice was served on 4th September, 1975, i.e., after appointed day and that too on the wrong addressee and hence, is void and not enforceable at law.

(v) In the case of ***Pernod Richord India Pvt. Ltd. v/s. State of Madhya Pradesh & Anr. 2024 (8) SCC 742*** , paragraph 13 states that repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution).

(vi) In the case of ***Hikal Ltd. v/s. Union of India 2025 DGLS (Bom) 2724***, the aspect of repeal of enactment and its enforceability after repeal, is discussed at length by referring to the Constitution Bench. Kindly read paragraph 78 of said judgment in which paragraphs 36 to 40 of Constitution Bench judgments are reproduced.

(vii) In the case of ***Kolhapur Cane Sugar Works Ltd. v/s. Union of India (2000) 2 Supreme Court Cases 536***, in paragraph 37 it is held that "The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the

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provisions of Section 6 (1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards." In the case of MPFA, Section 24 (2) is a limited saving clause applicable only in respect of land restored under Section 22 (A) of MPFA. Said saving clause is not applicable in respect of Section 2 (f) (iii) where issuance of notice under Section 35 (3) is stipulated. No doubt Godrej Case states that Section 2 (f) (iii) itself in a sense is a saving clause, but same can be made applicable only to those notices issued and served before appointed day).

29. **SUBMISSIONS BY ADV. KARL TAMBOLY ON BEHALF OF RESPONDENT NO. 2.1, and 2.3 to 2.12.**

(Summary from the written notes of submissions)

(1) Declaration of Respondent No. 2's tenancy under section 70(b) of the Bombay Tenancy Agricultural Lands Act, 1948 has attained finality.

(a) Since the year 1960, Respondent No. 2 has been a tenant of Respondent No. 1 and in actual occupation, possession

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and cultivation of the land admeasuring 18 acres 18 gunthas bearing Gat No. 59/1 at Manpada village, Thane ("Smaller Land"). [Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 155, paras 3 and 4]

(b) On 29th August 1975, alleged Notice claimed to be issued by the Deputy Conservator of Forests under section 35(3) of the Indian Forest Act, 1927 ("Forest Act") in respect of the land admeasuring 204 acres, 8 gunthas and 8 annas and bearing Gat No. 59/1 at Manpada village, Thane ("Larger Land"). The Smaller Land forms a part of the Larger Land. Respondent No. 1 has failed to produce any proof of issuance of the alleged notice on 29th August 1975.

(c) Criminal Case No.5227 of 1982 was filed by the Maharashtra Forest Department against Respondent No. 2 under section 26 of the Forest Act for the offence of trespassing on forest land, which was dismissed by the Hon'ble Judicial Magistrate Fist Class Thane vide Order dated 30th September 1992. [Exhibit A to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 160 at pg. 168]

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(d) The said Order records the following admissions made by the Maharashtra Forest Department personnel (viz. PW-1 and PW-4) during their cross-examination as witnesses in the criminal proceedings filed against Respondent No. 2:

(e) The Smaller Land was private land of Respondent No. 2 prior to it being declared as a forest in the year 1975. [para 10 at Pg 164].

(f) Respondent No. 2 was in possession of the Smaller Land prior to the year 1975. [para 10 at Pg 165]

(g) Smaller Land originally belonged to Respondent No. 1 and Respondent No. 2 has been cultivating the said land as a tenant. [para 10 at Pg 163]

(h) Nothing has come on record to show that the Forest Department has taken possession of the Smaller Land. [para 10 at Pg 165].

[Exhibit A to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, para 10 at pgs. 164 and 165 and para 13 at pg.166]

(i) An admission made by a party in a previous criminal proceeding, is admissible in subsequent civil proceedings. [Seth Ramdayal Jat vs. Laxmi Prasad, (2009) 11 SCC 545, at paras 20 and 21].

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(j) The Petitioner's Criminal Appeal No. 172 of 1993 against the Hon'ble Judicial Magistrate First Class Thane's Order was dismissed by Judgment dated 14th June 1993 of this Hon'ble Court, which held:

> *1. Respondent No. 2 is in possession as a tenant of Respondent No.1 prior to the land being declared as forest land. [Pg. No.171].*
>
> *2. The construction found on the land is 9 years old and hence no fresh construction or clearing of forest is proved against Respondent No. 2. [Pg No.171] .*
>
> *3. No appeal was filed by the Petitioner against the Hon'ble High Court's judgment, and therefore the findings of the Hon'ble High Court in the said judgment have attained finality.*

[Exhibit B to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 169 at pg. 170]

(k) In March 1991, Respondent No.1 attempted to interfere with Respondent No.2's possession of the Smaller Land, which led Respondent No. 2 to file Application No.16 of 1991 before the Tahsildar ALT Thane under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("BTAL Act") for declaration of his tenancy in respect of the Smaller Land.

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[Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 155, para 6 and Exhibit C, at pg. 171]

(l) By the Tahsildar's Order dated 23rd February 2004, Respondent No. 2 has been declared as a tenant of the Smaller Land since the year 1960. [Exhibit D to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 174 at pg. 179 (English translation at pg.186)]

(m) An Order passed under section 70(b) is appealable under section 74(1)(a) of the BTAL Act and the Petitioner could have challenged the Tahsildar's Order even though the Petitioner was not a party to those proceedings; yet no appeal was filed by the Petitioner. [***Ebrahim Yusuf Lambe vs. Abdul Razak Abdul Rahiman Mulla, AIR 1977 Bom 22***, at para 9; ***Nookala Setharamaiah vs. Kotaiah Naidum, (1970) 2 SCC 13***, at para 24 and ***State of Kerala vs. Mohammed Basheer, (2019) 4 SCC 260***, at paras 19 to 20]

(n) Respondent No. 1 filed Tenancy Appeal No. 109 of 2015 before the Sub-Divisional Officer challenging the Tahsildar's Order, and the delay of 11 years in filing the said appeal was condoned by the Sub-Divisional Officer's Order dated 23rd February 2017. [Exhibit E to Affidavit in Reply dated 11th

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December 2019 of Respondent No. 2's LRs, pg. 187 at pg. 195.]

(o) By Order dated 4th May 2017, the Maharashtra Revenue Tribunal allowed Respondent No. 2's Revision Application No. 150 of 2017 against the Sub-Divisional Officer's Order and dismissed Respondent No. 1's Tenancy Appeal. [Exhibit F to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 197 at pg. 207]

(p) Respondent No. 1's Civil Writ Petition No. 6351 of 2017 filed to challenge the Maharashtra Revenue Tribunal's Order, was dismissed by this Hon'ble Court's Judgment dated 23rd January 2019. [Exhibit G to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 208 at pg. 225, para 25]

(q) Respondent No. 1's Special Leave Petition (C) No. 9998 of 2017 filed to challenge this Hon'ble High Court' Judgment, was dismissed by the Hon'ble Supreme Court's Order dated 29th April 2019. [Exhibit H to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 226]

(r) Respondent No.1's Review Petition No. 366 of 2020 filed against the dismissal of its Special Leave Petition, was dismissed by the Hon'ble Supreme Court's Order dated 6th

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February 2020. [Page 7 & 8 of List of dates Tendered in Court]

(s) The Tahasildar's Order declaring Respondent No. 2 as a tenant of the Smaller Land has therefore attained finality. It therefore stands established that the Respondent No.2 was the tenant in respect of the smaller land, at least since the year 1960. [***Ashalata Anand Dabholkar vs. Vrindevati Tukaram Bhaire, (2005) 1 Mah LJ 418***, at para 9 and ***Gulabrao Laxman Kolhe vs. Tahsildar***, Writ Petition No.2759 of 2018 dated 24th July, 2025, at para 8]

(t) The Tahsildar's Order cannot be reopened in collateral proceedings. [***Union of India vs. S.P. Sharma, (2014) 6 SCC 351***, at para 76 and ***Pankaj Bhargava vs. Mohinder Nath, (1991) 1 SCC 556***, at para 20]. Therefore, it is clear that the attempt on the part of the Petitioner to raise factual controversies with respect to the tenancy and possession of Respondent No.2 in respect of the smaller land is in inapposite and impermissible without prejudice to the same, it is submitted that this Hon'ble Court ought not to enter into factual controversies/ disputed questions of facts in exercise of its writ jurisdiction [***Gunwant Kaur vs Municipal Committee (1969) 3 SCC 769***]

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(u) The smaller land thus being held by Respondent No.2 as a tenant and lawfully being under his cultivation on 30th August 1975 (the appointed day on which the Private Forest came into force), the same is exempted from being declared as private forest under section 3 (2) of the Private Forest Act, 1975 [***State of Kerala vs. Mohammed Basheer, (2019) 4 SCC 260***, para 17 to 21]

(v) Deputy Collector (Private Forests) passed an Order dated 3rd June, 1980 under Section 6 of the MPFA Act, directing that out of the land bearing Gat No. 59/1 at Manpada:

(w) The definition of the term 'private forest' under section 2(f)(iii) of the MPFA Act must be strictly construed. [***Godrej & Boyce Manufacturing Co. Ltd. vs. State of Maharashtra, (2014) 3 SCC 430***, at para 73] [***HPC vs Darius Shapur Chenai 2005 (7) SCC 627,*** para 29]

(x) The Revenue Department mutated Respondent No. 1's name in respect of the Larger Land in the revenue records under Mutation Entry No. 1056, which was subsequently confirmed by the Sub-Divisional Officer's Order dated 31st January, 2019 in the Petitioner' Revision Application No. 182/2018 which was filed to challenge the said Mutation Entry. [Respondent No. 1's

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Additional Affidavit dated 9th April 2021, Exhibit D at pg. 490 and Exhibit E, pg. 492 at pg. 499]

(y) The Sub-Divisional Officer's said Order dated 31st January 2019 has not been challenged by the Petitioner and has, therefore, attained finality. [Respondent No. 1's Additional Affidavit dated 9th April 2021, at pg. 438, para 8]

(z) Manpada Village does not fall within boundaries of Sanjay Gandhi National Park:

(aa) The Maharashtra Forest Department's Notification dated 16th January, 1996 under section 35(4) of the Wildlife (Protection) Act, 1972 specifying the boundaries of the Sanjay Gandhi National Park, does not include the Larger Land (which includes the Smaller Land) within the said boundaries. [Exhibit N to Respondent No.1 Affidavit in Reply dated 25th November 2019, pg. 427. Having not included the Larger land in the aforesaid notification, it is now not open for the Petitioner to contend that the same is a part of SNGP. It is well settled that a party cannot be permitted appropriate and reprobate [***Rajasthan State Industrial Development and Investment Corporation. vs. Diamond & Gem Development Corporation Ltd.,(2013) 5 SCC 470*** para 15 & 16]

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(bb) Respondent No. 1 has also admitted that the Larger Land (which includes the Smaller Land) does not form part of the Sanjay Gandhi National Park. [Respondent No.1 Affidavit in Reply dated 25th November, 2019, para 24 at pg. 275]

(cc) Respondent No. 2's name has been mutated in respect of the Smaller Land in the revenue records.

(dd) By a common Judgment and Order dated 24th March, 2008, the Hon'ble Bombay High Court dismissed the Writ Petitions filed by Godrej & Boyce Manufacturing Co. Ltd. ("Godrej") and others challenging the notices issued by the Forest Department under section 35(3) of the Forest Act.

(ee) In Special Leave Petition (C) No. 11509 of 2008 filed against the Hon'ble High Court's said Judgment, Respondent No. 2 filed Interim Application No. 18 of 2010 for impleadment therein and Interim Application No. 19 of 2010 praying for a direction that Respondent No. 2's Smaller Land is non-forest land and should be free to be developed under Development Control Regulations and municipal bye laws. [Exhibit D to Additional Affidavit dated 21st September 2023 of Respondent No. 2's LRs, pg. 512 at pg. 524.]

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(ff) By Judgment dated 30th January 2014, the Hon'ble Supreme Court allowed the appeals filed by Godrej and others against the Hon'ble High Court's said Judgment and quashed and set aside the impugned notices issued under section 35(3) of the Forest Act. [Exhibit C to Respondent No. 1's Additional Affidavit dated 9th April 2021, pg. 450 at pgs. 488 and 489, paras 87 to 91]

(gg) The Hon'ble Supreme Court's Order also allowed Respondent No. 2's impleadment application and consequently the Smaller Land was exempted from being declared as forest land. [Exhibit C to Respondent No. 1's Additional Affidavit dated 9th April 2021, pg. 450 at pg. 488, para 90]

(hh) By Order dated 16th March 2015, the Sub-Divisional Officer Thane exempted the Smaller Land from reservation as a 'private forest' under section 3(2) of the MPFA Act and directed mutation of Respondent No. 2's name in respect of the Smaller Land in the revenue records. [Exhibit H to Additional Affidavit dated 21st September 2023 of Respondent No. 2's LRs, pg. 565 at pg. 567]

(ii) By Order dated 27th March, 2015, the District Collector, Thane stayed the said Order of the Thane Sub-Divisional

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Officer. [Exhibit I to Additional Affidavit of Respondent No.2 LR's dated 21st September 2023, pg. 568 at pg. 571]

(jj) By letter dated 9th July, 2015, the Divisional Commissioner (Konkan Division) directed the District Collector to vacate the stay on the said Order of the Sub-Divisional Officer. [Exhibit J to Additional Affidavit of Respondent No.2 LR's dated 21st September 2023, pg. 572]

30. COMPILATION OF JUDGMENTS RELIED UPON BY RESPONDENT NOS.2.1, 2.3 TO 2.12.

(Summarised from the written notes of submissions)

Sr. Nos	***Particulars***		
1.	Issue of tenancy having attained finality, cannot be reopened		
	A.	Ashalata Anand Dabholkar vs. Vrindevati Tukaram Bhaire, (2005) 1 Mah LJ 418 "…The earlier decision would not only bind the parties themselves, but also the tenancy authority …with the conclusion of proceedings before the Mamlatdar and the Civil Court between the original landlord and the	Para.6

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		tenant, the issue of defendants being tenants in respect of the suit land on the tillers' day has been finally answered and that issue cannot be reopened…"	
	B.	Gulabrao Laxman Kolhe vs. Tahsildar, W.P. No. 2759/2018 dated 24.07.2025 "the issue of tenancy has attained finality and same cannot be permitted to be reopened."	Para.8
2.	Decision by a competent court cannot be challenged in collateral proceedings		
	A.	Union of India vs. S.P. Sharma (2014) 6 SCC 351 "A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be "confusion and chaos and the finality of proceedings would cease to have any meaning."	Para. 76
	B.	Pankaj Bhargava vs. Mohinder Nath, (1991) 1 SCC 556 "The authority of decided cases is to the effect that the permission granted	Para. 20

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		must be presumed to be valid till set aside. Doctrine of collateral challenge will not apply to a decision which is valid ex-hypothesi and which has some presumptive existence, validity and effect in law. Such a decision can be invalidated by the right person in right proceedings brought at the right time.”	
3.	Admission by a party in a previous criminal proceeding is admissible in a subsequent civil proceeding		
	A.	Seth Ramdayal Jat vs. Laxmi Prasad, (2009) 11 SCC 545 “… judgment of a criminal court shall not be admissible in a civil suit. What, however, would be admissible is the admission made by a party in a previous proceeding.”	Para. 20
4.	Definition of “private forest” u/s 2(f)(iii) of Private Forests Act 1975 must be strictly construed		
	A.	Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [(2005) 7 SCC 627] “…the legislation being an expropriatory legislation, it ought to	Para 29

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		be strictly construed since it deprives a person of his/her land.”	
	B.	Godrej & Boyce Mfg. Co. Ltd. vs. State of Maharashtra, (2014) 3 SCC 430 “Section 2(f)(iii) of the Private Forests Act since it seeks to take away, after a few decades, private land on the ostensible ground that it is a private forest. Section 2(f)(iii) of the Private Forests Act must not only be reasonably construed but also strictly so as not to discomfit a citizen and expropriate his/her property.”	Para. 73
	C.	D.B. Basnett v. LAO, (2020) 4 SCC 572 “…unless, the notice is given in accordance with the provisions contained therein, the entire acquisition proceedings would be vitiated”	Para 15
5.	Order u/s 70(b) is appealable u/s 74(1)(a) of the BTAL Act 1948		
	A.	Ebrahim Yusuf Lambe vs. Abdul Razak Abdul Rahiman Mulla, AIR 1977 Bom 22	Para.9

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		"We are thus of the opinion that s. 4 in the context of s. 74(1)(a) is wide enough to cover every order in regard to claim to tenancy passed under s. 70(b) of the Act and the order under consideration of the Awal Karkun, was appealable to the Collector under s. 74(1)(a) of the Act."	
	B.	Shyamrao Aswale vs. Atmaram Aswale, 1976 SCC Online Bom 146 Note : Ebrahim Yusuf Lambe vs. Abdul Razak Abdul Rahiman Mulla, AIR 1977 Bom 22 followed	Para.7
6.	State, despite not being a party to the S.70(b) proceedings could have appealed against the Order under S.74 of the BTAL Act		
	A.	Nookala Setharamaiah vs. Kotaiah Naidum, (1970) 2 SCC 13 "..it is settled by a long course of authorities that a person who has not been made a party to a proceeding may still appeal"	Para. 24
	B.	State of Kerala vs. Mohammed Basheer, (2019) 4 SCC 260 "…The Certificate issued by Competent Land Tribunal after	Para. 19 & 20

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		finding that the tenant was in possession of the property as cultivating tenant is a conclusive proof of possession as well” “Though the State Government is not a party to this order, there was no bar for it to challenge this order under Section 102 of the Land Reforms Act. No appeal has been filed challenging the certificate of purchase either by the Government or by any other person. Thus, the certificate of purchase has become final.”	
7.	Approbate and reprobate		
	A.	Rajasthan State Industrial Development and Investment Corporation. vs. Diamond & Gem Development Corporation Ltd., (2013) 5 SCC 470 “A party cannot be permitted to blow hot-blow cold, fast and loose or approbate and reprobate”	Para. 15 & 16
8.	Disputed questions of fact cannot be determined in writ proceedings		

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	A.	Gunwant Kaur vs. Municipal Committee, (1969) 3 SCC 769 "In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition "	Para 14

31. SUMMARY OF THE WRITTEN NOTES OF SUBMISSIONS TENDERED BY SENIOR ADVOCATE, MR. R S APTE, FOR THE THANE MUNICIPAL CORPORATION

[The written submissions on behalf of the Thane Municipal Corporation are in support of it's common stand in both the Petitions, considering that TMC has acquired 104 acres of land of the Company and has taken possession of the same].

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31.1. The Petitioner submitted the proposal dated 3.07.2018, through its architect for grant of DRC in lieu of the above-mentioned land, as per the provisions under Regulation No. Appendix N.N.1.5 (a) read with Appendix W of the Development Control Regulations, 1994, for grant of T.D.R. to the Thane Municipal Corporation (page No. 90 of the Petition).

31.2. Pursuant to the said proposal Transfer Deed dated 24th May, 2019 was executed between the Petitioner and the Corporation. Recitals therein clearly indicate that the Petitioner shall be entitled to be awarded Development Rights and/or TDR in accordance with the provisions of the said Development Control Regulations, 1994, and also as per Government Notification dated 29.01.2016 and the amended order dated 02.05.2016 for surrender of the said reserved land (page 99 of the Petition).

31.3. Regulation 4.1.2 of the Notification dated 29th January, 2016 reads as under:

> *"4.1.2 – DRC shall be issued only after the land is surrendered to the Municipal Corporation free of cost and free from encumbrances, and after levelling the land to the surrounding ground level, and after constructing/erecting a 1.5 m high compound wall/fencing, i.e. brick/stone wall up to 0.60 m above ground level and fencing above that up to the remaining height with a gate, at the cost of the owner and to the satisfaction of the*

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Municipal Commissioner. Provided that, if on certain lands such construction/erection of compound wall/fencing is prohibited or restricted by any regulation, then the quantum of Transferable Development Rights (TDR) shall be reduced as prescribed in the proviso to Clause 4.1.1."

It is mandatory for the Petitioner to comply with the above regulation before issuance/ grant of TDR/DRC.

31.4. Regulation 7.1 of the Notification dated 29th January, 2016 reads as under:

"7.1 – The Commissioner, before issuing DRC, shall verify and satisfy himself that the ownership and title of the land proposed for surrender is with the applicant, and get the Record of Rights corrected in the name of the Planning Authority."

It is incumbent upon the Petitioner to get the Record of Rights mutated in the name of the Planning Authority.

31.5. The recitals in the Transfer Deed dated 24th May, 2019 also indicate that the Petitioner had all along represented that they have clear and marketable title, free from all encumbrances.

31.6. It is to be noted that the Petitioner was aware of the filing of Writ Petition No. 3205 of 2018 by the Forest Department of State of Maharashtra, impugning the order dated 30th June, 2017 passed by the MRT, Mumbai. This fact can be ascertained from Paragraph No.17 of the present Petition. In view of pendency of the

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petition NOC of the forest was required form the petitioner.

31.7. By order dated 25th November, 2022 passed in Appeal from Order No. 1051 of 2019, the order dated 10th October, 2019 passed by the learned Civil Judge, Senior Division, Thane, was modified, and the Respondent Corporation was directed to allot TDR/DRC in favour of the Petitioners.

31.8. It is to be noted that the Corporation is and was always ready and willing to allot TDR/DRC in favour of the Petitioner, subject to compliance as contemplated under the Development Control Regulations. The Respondents, in their affidavit dated 27th November, 2025, especially in Paragraph No.19, have clearly averred that the Corporation is ready and willing to grant TDR, and that a letter dated 10th July, 2025, which is in tune with the Development Control Regulations, has been issued to the Petitioners, thereby directing them to comply with the requisitions raised therein (page 438 of the affidavit in reply filed by the Corporation).

31.9. It is to be noted that in response to the letter dated 10th July, 2025, the Petitioners responded by reply dated 15th July, 2025, and as per Paragraph No.4 of the said reply, the Petitioners agreed to erect fencing in the form of metal sheets and stated that they

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would initiate the said work in the near future (page 442, para 4 of the affidavit in reply). Further, by letter dated 6th October, 2025 issued by the Petitioners in response to the Corporation's letter dated 10th July, 2025, the Petitioners have clearly admitted in clause (f) that the work of erecting the compound wall around the park reservation has already been initiated under the supervision of a security guard, which can be verified by the Corporation. Clause (j) of the letter dated 6th October, 2025 also records that the Petitioners assured that they would erect the compound wall within six months and hand it over to the Thane Municipal Corporation. (Page Nos. 465 and 466 of the Affidavit in reply 27th November, 2025 of corporation).

31.10. The Forest Department, being an authority entrusted with environmental protection, has raised objections that have placed TMC in a dilemma as to whether Development Rights Certificates (DRC) can be granted against the reservation in question. Further, the Petitioner has failed to comply with several mandatory conditions prescribed under the Unified Development Control and Promotion Regulations, 2020 (UDCPR-2020). These include:

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31.11. 1. Measurement of the reserved land by the TILR in the presence of all concerned parties, namely the Forest Department, TMC, and the Petitioner; Mutation and reflection of the reserved land in the name of Thane Municipal Corporation by way of an independent and separate 7/12 extract or Property Card, clearly and unambiguously recording TMC as the owner; and

31.11.2. Handover of vacant, unencumbered physical possession of the reserved land to TMC in terms of Regulation 11.2 of the UDCPR-2020.

31.12. It is submitted that TMC has never been handed over physical possession of the writ land. Consequently, the further process for issuance of the DRC has remained incomplete, along with other mandatory prerequisites under the UDCPR-2020.

31.13. In respect of the compliances sought by the Corporation from the Petitioners in its letter dated 10th July, 2025, all such compliances are in consonance with the Development Control Regulations and are required to be complied with.

31.14. The Respondent Corporation issued a letter dated 6th August, 2025 to the Deputy Superintendent of Land Records, thereby requesting measurement of the land under park reservation

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and handing over the measurement plan to the Corporation (pages 450 to 452).

31.15. The Respondent Corporation also issued a letter dated 6th August, 2025 to the Tahsildar, Thane, thereby requesting him to take steps to change the Record of Rights in favour of the Thane Municipal Corporation (pages 453 to 455).

31.16. In other similar matter, TMC had issued three DRCs to the Petitioner after following due procedure; however, the transfer and utilization of the said DRCs were subsequently prohibited after objections raised by Forest Department. Aggrieved by such prohibition, the Petitioner approached this Hon'ble Court by filing Writ Petition No. 6603 of 2023, which is presently sub-judice. In the said proceedings, this Hon'ble Court, by order dated 15th December, 2023, observed that considering the complexion of the issue, it would be appropriate to defer the hearing of the present proceedings as a third judge matter until the adjudication of Writ Petition No. 10024 of 2023. Thus, the Forest Department has, from time to time, raised objections to the issuance of the said three DRCs and has also objected to the issuance of any further DRCs.

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31.17. Appendix ‘W’ read with Appendix N.N.1.5 (a) spells out the regulations for grant of Transferable Development Rights. Regulation 7 of Appendix ‘W’ reads as under:-

> *“A DRC will be issued only on satisfactory compliance with the conditions prescribed in the Appendix.”*

31.18. Regulation 15 of the Development Control Regulations, 1999, reads as under:

> *“Development Rights will be granted and DRCs issued only after the reserved land is surrendered to the Corporation, where it is the Appropriate Authority, or otherwise to the State Government, as the case may be, free of cost and free from encumbrances, after the owner or lessee has levelled the land to the surrounding ground level and after he has constructed a 1.5 m high compound wall (or at a height stipulated by the Commissioner) with a gate at the cost of the owner, and to the satisfaction of the Commissioner, or the State Government (where the Corporation is not the Appropriate Authority). The cost of any transaction involved shall be borne by the owner or lessee.”*

31.19. Regulation 11.2.4(b) of the UDCPR, 2020 is pari materia with Appendix W. It is therefore necessary for the Petitioner to comply with the Development Control Regulations for grant of TDR. Compliance of Law (DCR) in is inherent in an order passed by the Hon’ble Court.

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31.20. Clause 11.2.4(b) read as under:

> *"(b) DRC shall be issued only after the land is surrendered to the Authority free of cost and free from encumbrances and after levelling the land to the surrounding ground level and after constructing/erecting a 1.5 m. high compound wall/fencing i.e. brick/stone wall up to 0.60m. above ground level and fencing above that upto remaining height with a gate, at the cost of the owner and to the satisfaction of the Authority."*

31.21. It is clear that the land is required to be surrendered free from all encumbrances. The Petitioner, in the present Writ Petition No. 10024 of 2023, in (paragraphs 10 to 17), has averred in detail about the claim of the Forest Department, which ultimately culminated in Writ Petition No. 3205 of 2018. In these circumstances, the Corporation has rightly demanded submission of an NOC from the Forest Department in order to comply with the requirement under the Development Control Regulations of surrendering the land "free from all encumbrances."

31.22. It is settled law that one cannot transfer a better title than what one has. It is thus clear that if the Forest Department succeeds in Writ Petition No. 3205 of 2018, the Petitioner will not have title to the suit lands and will not be entitled to any TDR in lieu thereof. It is pertinent to note that the Petitioner was well aware of

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the claim of the Forest Department for all these years prior to submitting the proposal dated 3rd July, 2018 for grant of TDR. The said proposal also states that the Petitioner is entitled to grant of DRC "as per the provisions under Regulation No. Appendix N.1.5 and Appendix W of the DCR, 1994 of TMC, and amendments thereto."

31.23. It is also pertinent to note that the Corporation was earlier prevented from granting TDR in view of the injunctions granted in two civil suits, namely Special Civil Suit No. 440 of 2019 and Special Civil Suit No. 36 of 2019, till 25th November, 2022, when the order came to be passed in Appeal from Order No. 1050 of 2019.

31.24. The Petitioner, in their communication dated 15th September, 2020 (Page 168 of Writ Petition No. 10024 of 2023), the relevant portion of which appears at Page 132, reiterated that the TMC is also under a statutory obligation under the MRTP Act, 1966, read with the Development Control Rules and Regulations.

31.25. It is to be noted that the Petitioners, in their letter dated 21st March, 2023 addressed to the Corporation, have categorically stated that they are entitled to be awarded development rights and

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TDR in accordance with the provisions of the Development Control Regulations (pages 139–140 of the petition).

31.26. It is also pertinent to note that the Forest Department, in its affidavit in reply dated 4th January, 2015, has categorically averred that the land in question is deemed reserved forest, vested in the State Government, and is in the possession of the Sanjay Gandhi National Park.

31.27. The Corporation has taken consistent, timely, and necessary steps to comply with Court orders and statutory obligations.

OUR ANALYSIS AND DISCUSSION

32. It has to be borne in mind that the first Petition pertains to the jurisdiction of the Single Judge Bench under Article 227 of the Constitution of India. The State has invoked the Writ of Certiorari, which is akin to the Revisional jurisdiction of a Court. As such, while we exercise our jurisdiction, which is of a Revisional nature, we ought to keep in mind that, unless the impugned judgment clearly appears to be illegal, perverse, erroneous and unsustainable, it cannot be quashed and set aside. Merely because a

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different view could be possible, the impugned judgment cannot be branded as perverse and illegal.

(Read ***Syed Yakoob v/s. K.S. Radhakrishnan, AIR 1964 SC 477*** and ***Surya Dev Rai V/s. Ram Chander Rai, AIR 2003 SC 3044***).

33. The impugned Judgment dated 30th June, 2017 delivered by the MRT, is in the light of an appeal preferred by the State challenging the order dated 27th December, 2004 passed by the Deputy Collector (Private Forests), Thane Division, in Case No.53 of 1999. The Appeal No.REV/ Forest/165/2005 filed by the State has been dismissed. The Appeal No.REV/Forest/229 of 2009 filed by the Original Landlord, has been allowed. To the extent of the State, we have concurrent findings before us. To the extent of the Original Landlord, the impugned findings of the Deputy Collector have been over-turned.

34. The pleadings, averments and oral submissions of the parties before us, were also advanced before the MRT. The impugned Judgment runs into 29 pages. The submissions of the parties have been considered thread-bare by the MRT and have been dealt with on the basis of the oral and documentary evidence available on record.

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35. Since we have extensively heard the learned Advocates for the parties, considered their pleadings and averments and their Written/oral submissions and have also reproduced the salient features from their written submissions, in a summary form, we are not required to repeat them in our conclusions.

36. The dispute that originated 50 years ago was in respect of land Survey No.59/1 at village Manpada in Thane district. In 1975, the Government of Maharashtra proposed to acquire 217 acres and odd, from the entire land under the provisions of the 1975 Act. A notice dated 29th August, 1975 was said to have been served on 4th September, 1975. There is no dispute that the said notice was served on D. Dahyabai and Company, which is not the owner of the land. It is equally undisputed that the original land owner is D. Dahyabhai and Company Private Limited and not D. Dahyabhai and Company. Hence, as a matter of fact, based on the records, the non-service of the notice on the original land owner, is apparent and fatal.

37. The impugned notice dated 29th August 1975, at page number 277 in the petition paper-book of the first Petition, has been signed by Shri N J Joshi (Forest Guard). It has been addressed to D.

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Dahyabhai and Co. The photostat copy, which is at page 277, is annexed herewith as **Article 'X'**.

For ready reference, the same is typed and reproduced hereunder :-

नोटीस

क्रमांक ६९ सन १९७५–७६
कॉन्झरवेटर ऑफ फॉरेस्ट्स
सर्कल यांची कचेरी
ता. २९ माहे. ऑगस्ट सन १९७५

नंबर ६९ सन १९२७ चा भारताचा जंगलाबाबत अधिनियम (सन १९२७ चा अधिनियम १६ वा) याचे कलम ३५, पोट–कलम (३) व तारीख १९ माहे सप्टेंबर सन १९५० रोजीची शेतकी व जंगल विभागाची सरकारी अधिसूचना क्रमांक ५१३३/४८५१३–जे हीत प्रसिद्ध केलेल्या नियमांपैकी नियम २ यांस अनुसरून मी, श्री. ना. ज. जोशी, वनसंरक्षक, ठाणे.

सर्कल येथील जंगलाचा रक्षक यावरून मी,
यांना नोटीस देतो व त्यांनी ही नोटीस मिळाल्याच्या तारखेपासून दोन महिन्याच्या आत, यास जोडलेल्या परिशिष्टात निर्दिष्ट केलेल्या व त्याच्या मालकीच्या असलेल्या जंगलाच्या बाबतीत मुंबई सरकारने सदरहू कलम ३५, पोट–कलम (१) अन्वये सोबत असलेली अधिसुचना (जीस यात यापुढे 'अधिसूचना' असे म्हटले आहे.) का काढू नये याचे कारण दर्शविण्याकरीता डिव्हिजनल फॉरेस्ट ऑफिसर रा. ऊ. बोरीवली याजसमोर हजर राहिले पाहिजे असे कळवतो.

२. जर सदरहू श्री. X खालील प्रमाणे ... ... या नोटीशी प्रमाणे वागण्यात कसूर करतील तर, सदरहू श्री. X खालील प्रमाणे ... . यांची सदरहू अधिसूचना काढण्याच्या बाबतीत कोणतीच हरकत नाही असे गृहीत धरण्यात येईल.

३. माझे आणखी असे म्हणणे आहे की १ वर्षाहून जास्त नाही इतक्या मुदतीत किंवा अधिसूचना काढण्याच्या तारखेपर्यंत जी कोणती अगोदर असेल त्या मुदतीत किंवा त्या तारखेपर्यंत सदरहू श्री. X —

खालील प्रमाणे आणि सदरहू कलम ३५, पोट–कलम (१) रकाना (१) मध्ये निर्दिष्ट केलेल्या गोष्ट की कोणतीही किंवा सर्व गोष्टी करण्याचा हक्क असलेले किंवा करण्यास परवानगी दिलेले सर्व इसम यांनी मग असा हक्क किंवा अशी परवानगी, कोणताही हक्क, मालकी हक्क किंवा हितसंबंध यांच्या कारणांमुळे किंवा कोणतेही लायसेन्स किंवा करार याअन्वये किंवा इतर रीतीने मिळालेला किंवा देण्यात आलेली असो या नोटिशीच्या तारखेनंतर आणि प्रसंगाप्रमाणे वर सांगितलेल्या मुदतीत व तारखेपर्यंत, सदरहू कलम ३५, पोट–कलम (१) रकाना (१) मध्ये निर्दिष्ट केलेल्या पुढील गोष्टींपैकी कोणतीही गोष्ट करता कामा नये. त्या गोष्टी येणेप्रमाणे.

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(अ) झाडे व इमारती लाकडे कापणे व ती वाहून नेणे, फांद्या छाटणे, करवे घेणे, खाचा पाडणे, खाली काढणे, अगर पाने तोडणे.
(ब) झाडे झुडपे जाळणे व काढून टाकणे.
(क) शेतीसाठी जमीन फोडणे अगर नांगरने.

[मागे पहा]

X

श्री. डी. डायाभाई आणि कंपनी रा. मानपाडा
मु. मानपाड्यासमोर
पो. मानपाडा ठाणे नं.७
तालुका – ठाणे
जिल्हा – ठाणे

परिशिष्ट

जिल्हा	तालुका	गाव	सर्वे नंबर	अदमासे क्षेत्रफळ	दिशा			
					उत्तर	पूर्व	दक्षिण	पश्चिम
ठाणे	ठाणे	मानपाडा	गट नं. ५९/१	२०४–८–८	राखीव जंगल	गट नं. ५९ पै.	राखीव जंगल	राखीव जंगल

जागा : ठाणे
तारीख : २९ ऑगस्ट, १९७५

(ना. ज. जोशी)

जंगलाचा रक्षक
वनसंरक्षक, ठाणे वनमंडळ ठाणे

38. The above reproduced notice indicates many glaring aspects. Firstly, that it has been signed by a Forest Guard and not by any authorised officer or signatory. Secondly, it has been addressed to D. Dahyabhai and Co. and not to the actual owner of the land, M/s D. Dahyabhai and Co. Pvt. Ltd. Thirdly, the said notice was admittedly received by Mr. Chimanlal Shah, the accountant of D.

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Dahyabhai and Co. He was not an employee of the land owner. So also, the State has been unable to point out that the notice was published in the State Gazette.

39. It is also undisputed that 14 acres of land was already transferred to different persons much prior to the issuance of the notice dated 29th August, 1975. A balance of 193 acres was available for acquisition. From this large area of land, the land owner has brought on record the improvement in the land by plantation and construction of residential hutments over an area admeasuring 24 acres, 32 gunthas. The land owner had requested to exclude this area from the proposed acquisition and had also expressed its willingness to hand over an equal area from the adjoining lands bearing Survey Nos.59/2 and 59/3, which belong to the land owner.

40. The Additional Collector/Sub-Divisional Officer initiated an inquiry under Section 6 of the 1975 Act. This inquiry was concluded by an order dated 3rd June, 1980 and the representation made by the land owner for exchange of land parcels was accepted. The Forest Department challenged the order before the Tribunal on the ground that the proposed alternate land had

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some encroachments. The Forest Appeal No.9 of 1981, was allowed and the proceedings were remitted for fresh adjudication. However, the Forest Department or the Revenue Department, did not initiate steps for 17 years. In 1999, the said 'remanded proceeding' was renumbered as 53/1999. A final order was passed on 27th December, 2004 by the Deputy Collector (Private Forest), Thane Division.

41. The Forest Department has contended that the notice was issued for acquiring 204A, 8G and 8A at village Manpada. It was alleged that the actual physical possession of area admeasuring 168A, 15G and 4A was with the Forest Department. Some portion was found to have been unsuitable as it was encroached upon. The notice was issued on 29th August, 1975 and was served upon D. Dahyabhai and Company. The issue before us is as to whether it can be presumed that the notice was rightly served on the original land owner, only because the actual land owner requested the State Government to exempt certain area from acquisition,.

42. We find that such submission of the State is only by way of an attempt to take advantage of the fact that the actual land owner had later on offered alternate land parcels. In fact, even the

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communication dated 23rd January, 1986 by the Divisional Manager, Sanjay Gandhi National Park, Borivali in response to the Assistant District Collector Thane's letter dated 10th January, 1986, indicates that the Forest Department consistently believed that the owner of the suit land was M/s. D. Dahyabhai and Company, when the actual owner is M/s. D. Dahyabhai and Company Private Limited. The Forest Department further averred that Survey Nos.59/2, 59/3 and 59/16, were not covered in the notices issued under Section 35(3) of the Indian Forest Act, 1927.

43. Respondent No.2, who claims to be a tenant, made an application for intervention on 13th October, 2004 claiming to be interested in an area admeasuring 7 hectors 38 R, out of the total 193 acres in Survey No.59/1. Respondent No.2 claimed to be the tenant of the original land owner under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (in short the BTAL Act).

44. When the hearing commenced before the Sub-Divisional Officer, it was revealed that Case No.53/1999 filed under Section 6 of the 1975 Act, had been decided by the Sub-Divisional

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Officer, Thane and 24 acres from Survey No.59/1 were held to be not a forest. The application of Respondent No.2 was allowed and it was held that he was in possession of 7H, 38A, which parcel was not a forest land in Survey No.59/1. An area of 17A and 19G relating to the village settlement (Konkanipada) was also excluded from the Forest Area.

45. Respondent No.2 had produced a copy of one order dated 27th December, 2004, thereby raising an issue that 17 acres and 19 gunthas out of Survey No.59/1, excluded from the reservation on the premise that the said area of 17A and 19G was a village settlement (Konkanipada). It was alleged that when there was no application made by any person under Section 6 of the Act seeking such exclusion, the Sub-Divisional Officer never called upon the parties before him to take up the said issue of exclusion.

46. The original land owner had purchased the land from the Court Receiver on 6th July, 1960 by virtue of two Deeds of Conveyance. This is an admitted position. Respondent No.2 who claims to be a tenant, was said to be in possession of 18 acres 18 gunthas out of Survey No.59/1 quite prior to the introduction of the

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Act of 1975. The Court orders in Criminal Case No.5227/1982 and Criminal Appeal No.172/1993, did not record any finding that Respondent No.2 was in possession of 18A and 18G. The order in the Criminal Case No.5227/1982, refers to only 4 acres, whereas the order of the High Court in Criminal Appeal No.172/1993, does not mention any area.

47. The land owner who had appeared before the MRT by filing its Case No.229 of 2009, had stated that the entire land in Gut No.59/1, was a non-forest land on the appointed date, i.e., 30th August, 1975. We find from the records that it was used for Horticulture, Stone Quarries, Godowns, Residential Units and had various structures thereon. If this be the position, no part of the land bearing Gut No.59/1 could have been declared as Forest/Private Forest Land.

48. Apart from Konkanipada village settlement, the Appellants had adduced evidence to show that the portions of property bearing Gut No.59/1 was used for non-agricultural purposes. Evidence was led to show existence of four stone quarries on the areas shown in the order dated 7th May, 1963. On the appointed day 30th August, 1975 the owners and the licensees were

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carrying on business of stone quarries on the part of the said property. The Collector of Bombay had issued valid permission. Therefore, we find that the Deputy Collector should have exempted that portion of the area in Gut No.59/1, considering it's actual use as on the appointed day.

49. The other Respondents, who are LRs of the deceased Respondent no. 2, have filed an affidavit in reply contending that the deceased was cultivating the said land admeasuring 7H and 38R out of Gut No.59, Hissa No.1 in village Manpada for the last 60 years. They also claimed that the original land owner had purchased this land in 1960 from the Court Receiver, which fact is established. Respondent No.2 was taking crops such as paddy, barley, vegetables etc. Respondent No.2 made an application bearing No.16 of 1991 on 25th July, 1991 under Section 70(b) of the BTAL Act 1948. The Tahsildar and ALT Thane declared Respondent No.2 a tenant over the area admeasuring 7H and 38R. This conclusion has attained finality.

50. Respondent No.2 had averred that the Assistant Conservator of Forest (Protection) Sanjay Gandhi National Park,

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tried to evict Respondent No.2 by concluding that he is an encroacher, by an order dated 4th November, 1999. The said order was carried in appeal by Respondent No.2 and was quashed by an order dated 11th April, 2005, passed by the Additional Commissioner, Konkan Division .

51. It has been contended by Respondent No.2 that no notice under Section 35(3) of the Indian Forest Act, 1927 was issued to him. He has been in actual cultivation and physical possession of the said portion of land as an agricultural tenant of Shyamaldas Gandhi and thereafter, of M/s. D. Dahyabhai and Company Private Limited. The fact of tenancy has been established in separate proceedings by an order dated 13th February, 2004 passed by the Tahsildar in Tenancy Suit No.70(b)/Chi.Manpada/16/91. Hence, the land never vested in the State Government and never became a part of the forest land. We find the said contention to be sustainable from the above facts.

ISSUES FRAMED BY MRT AND IT'S CONCLUSIONS

52. After all the parties canvassed a host of grounds, the MRT framed the following issues :

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(a) Whether the land in dispute can be said to be a 'Private Forest' as contemplated under Section 3(f)(iii) of the Act of 1975?

Answer : In the Negative.

(b) Whether the proceeding conducted by the Deputy Collector (Private Forest), Thane Division, Thane was vitiated by the non-service of notice under Section 35(3) of the 1927 Forest Act on or before the appointed day, i.e., 30th August, 1975?

Answer : In the Affirmative.

53. The MRT has referred to Section 2(f)(iii) of the 1975 Act, which reads as under :

> *Section 2(f) – 'Private Forest' means any forest which is not the property of the Government and includes, -*
>
> *(i) …*
>
> *(ii) …*
>
> *(iii) any land in respect of which a notice has been issued under sub-section (e) 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.*

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54. Section 35(3) of the 1927 Forest Act, reads as under :

> *"Section 35(3) – No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government."*

55. We find from the record that the notice dated 29th August, 1975, has been issued by a Forest Guard, namely Shri N J Joshi. He does not appear to be an authorised signatory. He had no jurisdiction to issue the said notice. It is typed as 'Jungle Rakshak' below his signature, which mean a 'Forest Guard'. Unless, if the authorised officer of the Forest department was then nomenclatured as 'Forest Guard' instead of 'Chief Conservator of Forest' or the like.

56. After considering the law laid down in *Godrej & Boyce* (supra), *Dr. Arjun Sitaram Nitanwar* (supra) and *Ozone Land Agro Pvt. Ltd.* (supra), the MRT has concluded as under :

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(a) The notice dated 29th August, 1975 said to be issued, was served on Dahyabhai and Company, on 4th September, 1975.

(b) The notice was not served on or before the appointed day 30th August, 1975.

(c) The notice was not served on the actual land owner, i.e., D. Dahyabhai and Company Private Limited.

(d) The recipient of the notice Dahyabhai and Company is a distinct entity and is not the actual owner of the land.

(e) The notice dated 29th August, 1975 was never served on the owner as is mandated under Section 35(3) of the 1927 Forest Act, and having been served on an entity which is not the owner of the land, it cannot be construed to have been issued on the owner.

(f) Shri. Narayan Ganu Tangadi (now deceased), Respondent No.2 being a tenant prior to 1st April, 1957, has been declared by the Agricultural Lands Tribunal to be a tenant, which need not be interfered with since the said order has not been challenged by the Forest Department and, as such, the area for which Shri. Narayan Ganu Tangadi has been declared to be a tenant, is deemed to have been purchased by him and, therefore, cannot fall within the purview of ‘Private Forest’.

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CONSIDERATION OF THE FACTS BEFORE US, IN THE LIGHT OF THE LAW LAID DOWN IN GODREJ & BOYCE

57. We deem it appropriate to advert to the important paragraphs in *Godrej & Boyce* (supra), since the following legal principles emerge from the said ruling :

(a) S. 2(f)(iii) of the Maharashtra Private Forests Act is a 'savings' clause;

(b) The term 'saving clause' has been defined in P. Ramanatha Aiyar's Advanced law Lexicon, 4th Edition, as under :

> *"A 'saving clause' is ordinarily a restriction in a repealing Act and saves rights, pending proceedings, penalties, etc., from the annihilation which would result from unrestricted repeal."*

(c) Section 2(f)(iii) of the Maharashtra Private Forests Act can be interpreted to mean that the saving clause is meant to save 'pipeline notices'.

(d) 'Pipeline notices' or 'live notices' mean :

> *"…notices issued in reasonably close proximity to the coming in to force of the Private Forests Act which were, "live" and "could be acted upon".*

(e) The Supreme Court has held that

> *"…Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act…"*

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(f) Since Section 2(f)(iii) of the Maharashtra Private Forests Act is meant to save notices which have been issued under Section 35(3) of the Indian Forest Act, the notices should be 'issued' in a reasonably close proximity of the appointed date under the Maharashtra Private Forests Act.

(g) The service of notice as well as proceedings with regard to settling disputes u/s. 6 of the Maharashtra Private Forests Act could be completed after 30th August 1975.

(h) The Hon'ble Supreme Court, in ***International Ore & Fertilizers (India) P.Ltd. vs. ESI Corporation (1987) 4 SCC 203,*** has considered the importance of welfare legislation in the context of the Employees' State Insurance Act, 1948 as under :

> *"4. … We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified….."*

(i) Paragraph 61 in *Godrej and Boyce* (supra), reads thus :

> *"…By making reference in Section 2(f)(iii) of the Private Forest Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes"*

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> *"…Once that is appreciated (and it was unfortunately overlooked in Chintamani) then it is quite clear that "issued" in Section 2(f) (iii) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act."*

(j) The Hon'ble Supreme Court has concluded that the word 'issue' has to include 'service of the show cause notice'.

(k) We do not find any specific conclusion or the dictum of the Hon'ble Supreme Court that service of the notice has to be effected prior to 30th August, 1975 in order to be saved under section 2(f)(iii) as a "pipeline notice".

> (l) *"By making a reference in Section 2(f)(iii) of the Private Forest Act to "issue" in section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes…"*

The above observation of the Hon'ble Supreme Court would mean that the word 'issue' has been borrowed from Section 35 of the Indian Forest Act only to ensure that the service is effected so as to make the provisions of Section 35(4) to (7) of the Indian Forest Act effective, lest, the issuance of notice would be an empty formality and farcical.

58. If we compare Section 21 of the Maharashtra Private Forests Act with Section 35 of the Indian Forest Act, it becomes

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clear to us that Section 35, requires issuance of the service of the notice prior to the issuance of a final notification under Section 35(1). In the Maharashtra Private Forests Act, issuance and service of the notice are steps which are preceded by the publication of the notification. In our view, which is supported by Godrej & Boyce (supra) and Rohan Nahar (supra), the word 'issued' under Section 2(F)(iii) cannot be read as 'issued and served prior to 30th August, 1975'. This would be contrary, not only to paragraph 72 and 74 of the judgment in Godrej and Boyce, but, also to the provisions of the Maharashtra Private Forests Act, particularly Section 21 thereof. To this extent, we reject the contention of the land owner.

CRUCIAL FACTORS

59. In the proceedings before the Deputy Collector, a specific Affidavit was filed in evidence by Mr. Chimanlal Shah on 3rd December 1999, clearly stating that he is the accountant of D.Dahyabhai & Co. It is a proprietary concern. He received a registered envelop on 4th September, 1975 containing the notice addressed to D.Dahyabhai & Co. (which is not the owner of the subject land in said notice). The said notice, which we have reproduced herein above, does not even mention the name of the

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actual land owner, D Dahyabhai and Co. Pvt. Ltd. This undisputable fact has been either 'glossed' or over-looked by the Petitioner.

60. In our considered view, the present matter is fully covered by the judgment of the Hon'ble Supreme Court in the case of *Godrej & Boyce* (supra), which has been followed in *Rohan Nahar* (supra). In *Godrej & Boyce* (supra) case the word "issued" is interpreted to include the service on the addressee. Paragraph 72 of *Godrej & Boyce* (supra) is in respect of pipeline notice meant to be served. However, Paragraph 72 cannot be interpreted to mean only issuance of notice, sufficient to define it as a pipeline notice or a live notice.

61. To make any notice, to be a pipeline or live, in our view, does not mean that the notice has to be served before the appointed day. In *Rohan Nahar* (supra), the Hon'ble Supreme Court has specifically stated that only upon receipt of notice by the true land owner, that a right to take objection is born. In the case in hands, there is no documentary proof, either about issuance of notice prior to the appointed day or its service upon the true owner. Service is admittedly upon a wrong addressee. This has been a

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consistent stand of Respondent No.1 before the Deputy Collector in the remand inquiry, as well as before the MRT.

62. The Petitioner's contention that notice under Section 35(3) of the Indian Forest Act was issued to Respondent No. 1 on 29th August, 1975 and served on 4th September, 1975, is fallacious for another reason. We find from the record that this is an incorrect statement. The notice in the present case, was signed by a Van Rakshak. A Van-Rakshak (the signatory to the notice dated 29/08/1975), is a Forest Guard. A Conservator of Forest is Van-Sanrakshak. A Deputy Conservator of Forest is Up-Van Sanrakshak. As such, it is apparent that the impugned notice was signed by a Forest Guard, who has no jurisdiction and authority to issue a notice under Section 35(3) of the Indian Forest Act, 1927. The impugned notice dated 29th August, 1975 is at Page No.277 in the Petition paper book of the first Petition signed by Shri. N.J. Joshi (Forest Guard), which is addressed to D. Dahyabhai's Company. Before no authority, has the Petitioner/State produced documentary proof of the notice dated 29th August, 1975, having been signed by an authorized Competent Officer and issued on 29th August, 1975, which should be reflected from the outward registered.

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63. It is in the above backdrop that the actual land owner M/s D. Dahyabhai and Co. Pvt. Ltd. has issued letters dated 5th July, 1979 and 28th August, 1979, requesting the State Government to exempt 24 acres and 32 gunthas from Gut No.59/A/1 of its holding from acquisition. It offered an alternate land of 25 acres 32 gunthas from Gut No.59/2 and 59/16, Manpada. It was under fortuitous circumstances that the actual owner offered alternate land in exchange, to the State. This cannot be said to be service of notice as mandated in *Godrej Boyce* (supra) and *Rohan Nahar* (supra), so as to create a right for raising objections. When the actual owner was not addressed with a notice, there can be no argument that the actual owner was served or heard. It is only the addressee of a notice, who gets the right to object, only on service of notice.

64. No documentary proof about compliance of Section 5 of MPFA is produced by the forest department. The subject land is not vested in State/Forest under Section 3 of the MPFA on the appointed day 30th August, 1975, apparently because the notice under Section 35 (3) of IFA was not served on the owner. The Forest Department could not produce any documentary proof to show that alleged notice dated 29th August, 1975 was actually

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dispatched/issued from the office of Forest Department. Strict compliance of statutory preconditions, which is necessary for vesting as per *Rohan Nahar* (Supra) and *Godrej & Boyce* (Supra), is missing.

SUBSEQUENT EVENTS RELEVANT FOR WRIT PETITION NO. 10024 OF 2023

65. It is contended by the State that, after taking possession of the subject land, the Forest Department constructed boundary walls, an entry gate, a security cabin, a nature interpretation centre, and other structures for protecting the subject land. By contrast, in *Rohan Nahar* (supra), no action was taken even after issuing notices in the 1960s.

66. D. Dahyabhai & Co. Pvt. Ltd. and its Director Mr. Nitesh Kothari (Petitioner), have filed Writ Petition no 10024/2023, seeking directions to the Respondent Thane Municipal Corporation to issue DRC in favour of the Petitioners against acquisition of Park Reservation No.4 (said reservation area is admeasuring 404721.02 sq. meters), which has been acquired by the Respondent Corporation under registered Deed of Transfer dated 24th May, 2019 registered under Serial No.TNN5- 8450-2019 (Exh.E, Page 92-115 of WP).

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67. The Respondent Corporation filed it's reply, admitting the execution of said Transfer Deed, acquisition of the said reservation and having got the possession of the land. Admittedly, there is an order dated 25th November, 2022 (Exh.F, Page No.116 to 118 of the WP) read with an order dated 7th December, 2022 (Exh.G, Page No.119 of the WP), which is passed by the Single Judge Bench of the High Court, directing the Respondent Corporation to issue and allot the said DRC. In spite of such an order passed by the High Court, the Respondent Corporation has withheld the issuance of DRC and, hence, this Petition has been filed.

68. The established position is that vide order dated 30th June, 2017 passed in MRT Appeal No.165 of 2005 and Appeal No.229 of 2009, the MRT has declared the lands under the said reservation and the lands which were subject matter of the notice dated 29th August, 1975, to be a non-forest land.

69. The Forest Department, has filed the first Writ Petition No.3205 of 2018 against rejection of it's Appeal No.165 of 2005. There is no interim order against the said order of MRT dated 30th June, 2017, passed by this Court.

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70. The record reveals that the said reservation is sanctioned by the State Government and is a part of the sanctioned D.P. of Thane 1994-1999 (Thane D.P.). Till date, the Forest Department has neither challenged the Thane D.P. nor the introduction of the said reservation. The Forest Department, during the process of acquisition of the land under reservation, has never raised any objection against the Respondent Corporation in introducing the said reservation.

71. The record further reveals that the registered Deed of Transfer dated 24th May, 2019 is also not challenged. The Deed of Transfer states that the land is acquired and the possession is handed over to the planning authority. (Exh.E, Page Nos.92 to 115, relevant page No.100). The said Deed of Transfer is a registered instrument which ought to have been challenged by filing a suit for cancellation, within the limitation of 3 years, from the date of registration of the said Deed. Admittedly, no such challenge is posed by the Forest Department in any substantive proceeding, which could now be barred by limitation.

72. Three orders are passed by this Court, out of which two orders dated 28th April, 2025 and 27th June, 2025 were passed

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after hearing the State/forest. The Land is acquired, 7/12 extract is mutated in the name of Corporation (Exh.M, Page 469 of Affidavit-in-Reply of Respondent No.2 Corporation). It is only after acquisition of Park Reservation No.4, that the Forest Department woke up from deep slumber and lodged its objection with the Thane Municipal Corporation for allotting TDR to D. Dahyabhai & Co. Pvt. Ltd. The position as it stands today is that, without challenging sanctioned Thane D.P. and without challenging the acquisition of land, the Forest Department is opposing grant of compensation to the land owner.

73. There is no dispute that 100 acres of land is acquired under registered instruments by the planning authority viz. Respondent Corporation for a public purpose under sanctioned D.P. Such D.P. was sanctioned by the State Government itself under the MRTP Act long back in the year 1994. This step of the State Govenment of subjecting the land to reservation for public purposes such as park, road, TMT bus depot, Primary School, HCMTR, etc. has never been objected to by the Forest Department.

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74. It appears from the record that, the land is in possession of the Corporation (Page 100 of WP) from May 2019. Though the Forest department is claiming to be in physical possession, it's letter dated 23rd January, 1986 (Page No.448, of the additional affidavit of Respondent No.1 land owner company, in Writ Petition No.3205 of 2018) demonstrates that they could not take possession of the land prior to 1986. There is no documentary proof placed on record to show that the physical possession was taken by the forest department.

75. As per the registered acquisition instrument dated 24th May, 2019, 100 acres towards park reservation and additional 18100 sq. meter of subject land is also in possession of the Respondent Corporation and on a small portion, a twin tunnel project is being implemented, for which the Forest Department has given it's NOC. The project is said to be progressing rapidly.

76. It is canvassed before us by the land owner that, from the plain reading of Regulation No.11.2.4 of UDCPR, it is evident that Petitioner/D. Dahyabhai Co. Pvt. Ltd. has achieved all compliances. Respondent TMC vide letter dated 10th July, 2025, has

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illegally called upon D Dahyabhai Co Pvt. Ltd. to obtain an NOC from Forest Department despite the fact that the orders of this Court dated 28th April, 2025 and 27th June, 2025 do not impose such condition, which were passed after hearing the Forest Department. The letter dated 8th October, 2025 (Page Nos.483-492 of the Affidavit-in- Reply of the Corporation) from the Conservator of Forest, Sanjay Gandhi National Park indicates an unholy alliance between the TMC and the Forest Department to deprive D. Dahyabhai Co. Pvt. Ltd. from receiving the statutory compensation in violation of Article 300A of Constitution, is the contention.

77. It is further canvassed by the land owner that, as per Regulation No.11.2.4 of UDCPR, construction of the boundary wall is not mandatory. Instead of carrying out such construction, the land owner Company can deposit the cost of construction of compound wall/fencing with the Corporation, provided Corporation issues DRC. All other requirements of the Corporation about TILR survey, mutating name of Corporation in 7/12 extract, certification of mutation entry in that regard, are already complied with (Petitioner's Advocate reply dated 14th July, 2025 and Petitioner's letter dated 6th October, 2025, Page Nos.440-447 and 463-468 of

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Respondent No.2's own affidavit dated 27th November, 2025, in the second WP).

78. It is vehemently contended by the land owner Company that, while acquiring the land and getting the registered instrument executed for acquisition in May 2019, TMC did not find it necessary to seek prior opinion from the Forest Department or TD department of the State Government. Before giving consent for passing the order dated 25th November, 2022 directing TMC to allot DRC, TMC did not seek any opinion of the State Government. When the order dated 28th April, 2025 was passed, at that time also TMC did not make any submission that it desired to consult the State Government. Even in the Interim Application filed for seeking modification of the order dated 28th April, 2025 TMC did not take this stand. It is only after the order dated 27th June, 2025, that the TMC expressed it's desire to seek the opinion of the forest department and TDD for implementation of the orders of this Hon'ble Court. We are in agreement that the above stated grievance and contentions of the land owner needs consideration and we record that the TMC cannot take a summersault to deprive the Company of the compensation in the form of DRC.

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79. Another aspect needs consideration. The Thane Municipal Corporation, vide its letter dated 8th January, 2020 (Exh.H, Page Nos.120 to 126 of WP), addressed to the Conservator of Forest, Sanjay Gandhi National Udyan, has clearly stated that it is not going to change the user of the said reservation and in fact will be maintaining it as a park by keeping the natural greenery. The Corporation has also agreed to handover the said reservation, if the forest department makes such a request, by obtaining permission of the General Body. We are informed that, the Forest Department has not responded to the said letter as yet.

80. It is, thus, clear that these two authorities will have to sort out this issue. Nevertheless, this dead lock cannot defer the issuance of DRC to the land owner, which has the character of compensation. We agree with the contention of the land owner Company, that refusing the DRC, would be unjust and unfair and would impinge the constitutional rights of the land owner Company, guaranteed under article 300 A of Constitution.

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OUR FINAL CONCLUSIONS AND ORDER IN WRIT PETITION NO. 3205 OF 2018

81. We are, therefore, of the considered view that the complete answer to the first Petition filed by the Petitioner State, lies in *Godrej and Boyce* (supra) and *Rohan Nahar* (supra).

82. In Paragraph Nos. 13.1. 13.2 and 13.5, *Rohan Nahar* (supra), the Hon'ble Supreme Court has specifically recorded that '*We are unable to agree with the High Court that the reproduction of a draft text of S.35(1) beneath a S.35(3) show cause in the Gazette amounts to a concluded notification u/s 35(1) of the IFA. A notice that grants time for objections cannot co-exist with a final decision u/s 35(1) without rendering the statutory hearing illusory. Mutation entries are ministerial in nature and cannot perfect an acquisition that lacks the statutory predicates. They neither create title in the State nor divest title from the private owner.*'

83. In Paragraph No.13.2 of *Rohan Nahar* (supra), the Hon'ble Supreme Court has recorded that, '*On the facts across these appeals, we find that the essential links in the statutory chain are*

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missing. There is no proof of service of any S.35(3) notice of the IFA on the then owners. There is no final notification u/s 35(1) of the IFA. Actual possession has at all times remained with private owners and this position is reflected in the revenue records that describe them as occupants. No possession was taken u/s 5 of the MPFA Act, no schemes were set in motion u/s 4, no compensation exercise was undertaken u/s 7, and no inquiry u/s 6 was held at a time proximate to the appointed day of 30th August 1975.

……..

In one instance the State relies on a pipeline notice which was addressed to a person who was not the owner as on 29th or 30th August 1975. In another, the land forms part of an industrial estate converted to non-agricultural use long before 1975.

…….

These features are wholly inconsistent with a completed vesting u/s 3(1) of the MPFA ACT.'

84. As such, the above findings and conclusions, are virtually tailor-made for the case before us. We summarise the decisive factors before us as follows :-

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(a) The original land owner had purchased the land from the Court Receiver on 6th July, 1960 on the basis of two deeds of conveyance.

(b) The notice dated 29th August, 1975 has been signed by an unauthorised person, a Forest Guard N J Joshi.

(c) The said notice has been addressed to a stranger namely, D. Dahyabhai and Co.

(d) The said notice was never served on the actual owner D. Dahybhai and Co. Pvt. Ltd.

(e) That the alleged service is sought to be proved only by a xerox copy on the accountant of D. Dahybhai, Shri Chimanlal Shah.

(f) That there is no legally valid service upon the lawful owner.

(g) That the Petitioner does not have any proof about actual dispatch of notice prior to appointed day.

(h) The land always remained in the possession of the land owner, for almost 6 decades.

(i) The Thane Municipal Corporation (TMC) has acquired the land, taken physical possession of the same and has

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declared reservations for public purposes, public projects on some portions of the land.

(j) The TMC has declared that the land covered by greenary will be protected and the green cover would be maintained, in as much as, that, if the Govt desires to take the land for maintaining the greenary, TMC is willing to hand over the same to the Govt.

85. In Paragraph Nos.13.5 and 14.2 in *Rohan Nahar* (supra), the Hon'ble Supreme Court has further held that :

> '*13.5. We are further of the view that a remand for an inquiry u/s 6 of the MPFA Act is neither warranted nor efficacious. Such an inquiry is designed to be contemporaneous with the appointed day so that meaningful evidence on the character of the land can be adduced by both sides. After the passage of nearly half a century (in our case it is 60 years), that exercise would be largely academic and would not cure the absence of mandatory preconditions of a served notice u/s 35(3) of the IFA and lawful progression towards a notification u/s 35(1). the authorities have also adopted a concluded litigating stance on the very matters they would be called upon to decide, which would not inspire confidence in the fairness of any remanded proceeding. ……..'*
>
> *'14.2. After this categorisation, we are satisfied that there is no legally relevant distinction between the present cases and the decision in Godrej and Boyce (Supra). The ratio in Godrej*

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> *and Boyce (Supra) turns on service of a notice under Section 35(3) of the IFA, the existence of a live process capable of culminating in a notification under Section 35(1) of the IFA, and strict compliance with the statutory steps that alone can support vesting under Section 3(1) of the MPFA Act on the footing of Section 2(f)(iii). The record before us discloses the same deficiencies that were fatal in Godrej and Boyce (Supra). There is no proof of service of any notice under Section 35(3) of the IFA on the then owners. There is no final notification under Section 35(1) of the IFA. Possession has remained with private owners throughout. No contemporaneous action was taken under Sections 4, 5, 6 or 7 of the MPFA Act. These features mirror the very elements that led this Court to hold that vesting had not occurred in Godrej and Boyce (Supra)'*

86. We have no doubt from our analysis and conclusions of the relevant factors before us, that the above conclusions in *Rohan Nahar* (supra) squarely apply to the case before us. We see no purpose in considering a remand of the case for a fresh inquiry to grant the Petitioner an opportunity to lead evidence, after we have concluded that the impugned order deserves no interferance. Moreover, it would serve no object for the reason that the notice dated 29th August, 1975 was issued by an incompetent/unauthorised person and addressed to a partnership firm which is admittedly not the owner of the land.

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87. In view of the above, though we find no fault with the impugned Judgment, we are of the view that the only conclusion drawn by the MRT that, '*the notice should have been served on or before the appointed day'*, is an erroneous observation, though it is of no consequence, since the notice is not proved to have been issued on 29th August, 1975, admittedly signed by Mr. N J Joshi, who was not an authorised officer and not served upon the actual owner. The contention of the State that because the land owner subsequently reacted to the situation, it would indicate that the notice was served on the owner, is a contention in desperation which is a result of surmises, conjectures and presumptions. Therefore, we disregard the only impression of the MRT that the notice should have been served before the appointed date, as being abstruse. Rest of the impugned order does not deserve to be branded as perverse or illegal.

88. Consequentially, **the First Petition No. 3205 of 2018, is dismissed. Rule is discharged.**

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ORDER IN WRIT PETITION NO. 10024 of 2023

89. Presently, the maximum land in question is around 104 acres which is acquired, owned and possessed by the Thane Municipal Corporation. So also, on the actual site today, Thane Municipal Corporation has constructed 40 mtrs DP road, Thane Municipal Bus Depot and has reserved the land for development of a garden, maternity home, park, school and metro rail, as well as, the twin tunnel which is a public project and is at an advanced stage. TMC has made a statement in it's pleadings that the Forest cover would be maintained and if the State desires to take over the Forest, TMC us willing to hand over the said land to the State.

90. In view of our analysis, observations and conclusions set out in paragraph nos. 65 to 80 in this judgment, **the Second Petition No. 10024 of 2023, is allowed.**

91. We direct the Respondent Thane Municipal Corporation to issue/allot the said TDR/DRC, against park reservation No.4 area admeasuring 404721.02 sq. mtrs. which has been acquired vide the Deed of Transfer dated 24th May, 2019 registered under Serial No. TNN5-8450-2019, to the Petitioner

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No.1, within a period of 21 working days from the date of the uploading of this Judgment.

92. **Rule is made absolute in the above terms**.

93. The pending **Interim Applications do not survive and stand disposed off**.

94. We express gratitude to the learned Senior Advocates, Sarvashri Janak Dwarkadas and R S Apte and the learned Advocates, Sarvashri Chirag Balsara, Karl Tamboly and their associate lawyers, for the immense assistance given to us.

(ASHWIN D. BHOBE, J.) **(RAVINDRA V. GHUGE, J.)**

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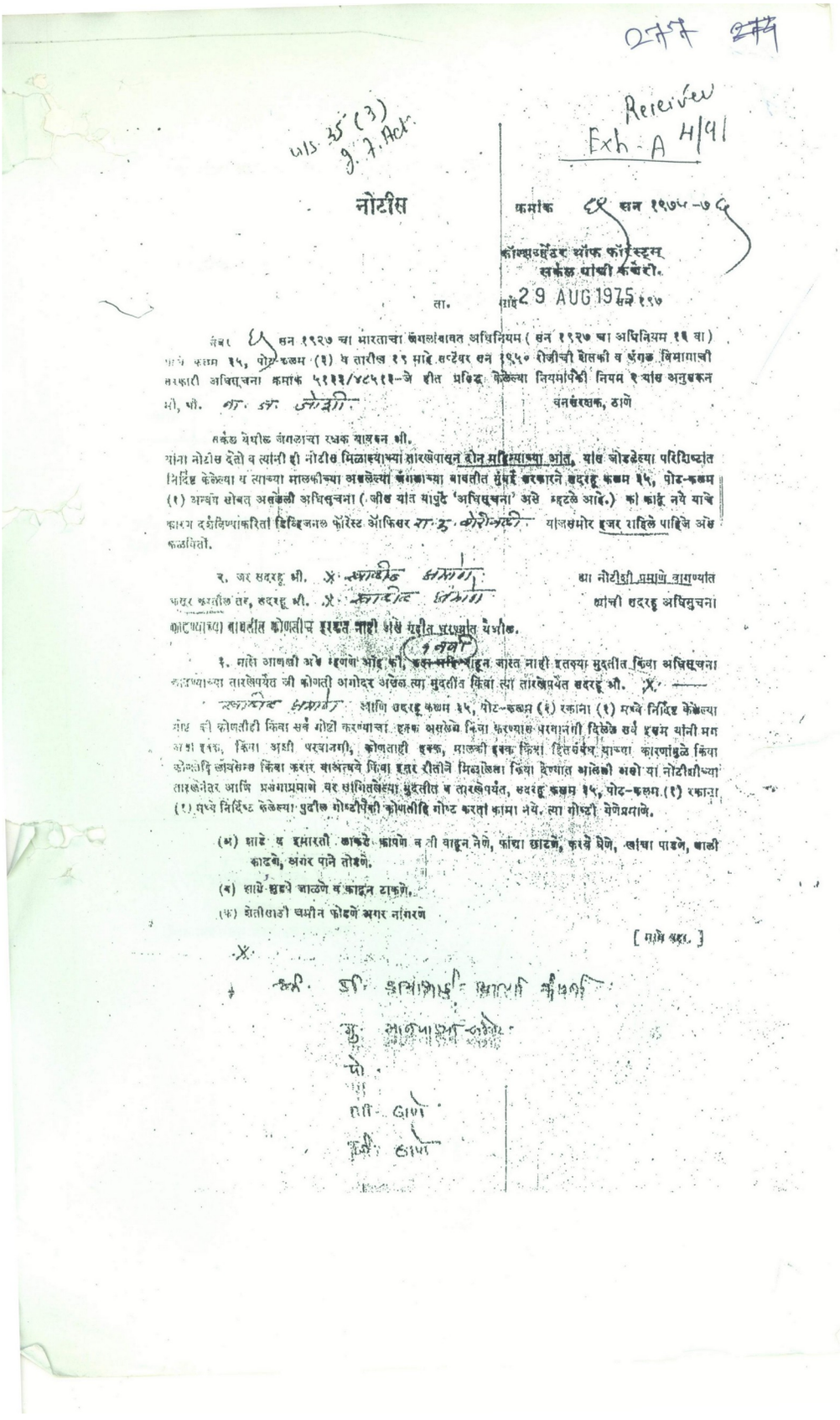

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U/S 35 (3)
9.7.Act

नोटीस

क्रमांक ८२ सन १९७५-७६

कॉन्झर्व्हेटर ऑफ फॉरेस्ट्स्
सर्कल ठाणे कचेरी.

ता. ठाणे 29 AUG 1975 सन १९७

नंबर ८५ सन १९२७ चा भारताचा जंगलांबाबत अधिनियम (सन १९२७ चा अधिनियम १६ वा) याचे कलम १५, पोट-कलम (१) व तारीख १९ माहे सप्टेंबर सन १९५० रोजीची शेतकी व पशुधन विभागाची सरकारी अधिसूचना क्रमांक ५११३/४८५११-जे हीत प्रसिद्ध केलेल्या नियमांपैकी नियम १ यांस अनुसरून

मी, श्री. स.रु. जोशी. वनसंरक्षक, ठाणे

सर्कल येथील जंगलाचा रक्षक याद्वारे श्री.

यांना नोटीस देतो व त्यांनी ही नोटीस मिळाल्याच्या तारखेपासून दोन महिन्याच्या आत, यांस जोडलेल्या परिशिष्टात निर्दिष्ट केलेल्या व त्याच्या मालकीच्या असलेल्या जंगलाच्या बाबतीत मुंबई सरकारने सदरहू कलम १५, पोट-कलम (१) अन्वये सोबत असलेली अधिसूचना (जीत यात यापुढे 'अधिसूचना' असे म्हटले आहे.) का काढू नये याचे कारण दर्शविण्याकरिता डिव्हिजनल फॉरेस्ट ऑफिसर स.रु. जोशी-यांजसमोर हजर राहिले पाहिजे असे फर्मावितो.

२. जर सदरहू श्री. X [illegible] या नोटीशी प्रमाणे वागण्यात
कसूर करतील तर, सदरहू श्री. X [illegible] यांची सदरहू अधिसूचना
काढण्याबद्दल बाबतीत कोणतीच हरकत नाही असे गृहीत धरण्यात येईल.

३. मासे आणखी असे म्हणणे आहे की, वरील मुदतीहून जास्त नाही इतक्या मुदतीत किंवा अधिसूचना काढण्याच्या तारखेपर्यंत जी कोणती अगोदर असेल त्या मुदतीत किंवा त्या तारखेपर्यंत सदरहू श्री. X ——
[illegible] याने सदरहू कलम १५, पोट-कलम (१) रकाना (१) मध्ये निर्दिष्ट केलेल्या गोष्टी की कोणतीही किंवा सर्व गोष्टी करण्याचा हक्क असलेले किंवा करण्यास परवानगी दिलेले सर्व हक्क यांनी मग ते कोणते हक्क, किंवा अशी परवानगी, कोणताही हक्क, मालकी हक्क किंवा हितसंबंध याच्या कारणांमुळे किंवा कोणत्याही लाभसेम्ब किंवा करार वाअन्यथे किंवा इतर रीतीने मिळालेला किंवा देण्यात आलेली असो या नोटीशीच्या तारखेनंतर आणि प्रसंगाप्रमाणे वर सांगितलेल्या मुदतीत व तारखेपर्यंत, सदरहू कलम १५, पोट-कलम (१) रकाना (१) मध्ये निर्दिष्ट केलेल्या पुढील गोष्टींपैकी कोणतीहि गोष्ट करता कामा नये. त्या गोष्टी येणेप्रमाणे.

(अ) झाडे व इमारती लाकडे कापणे व ती वाहून नेणे, फांद्या छाटणे, करवे घेणे, खांचा पाडणे, डाळी काढणे, अगर पाने तोडणे.

(ब) शाखे-झुडपे जाळणे व कायम टाकणे.

(क) शेतीसाठी जमीन फोडणे अगर नांगरणे

[मागे पहा.]

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प्रति.

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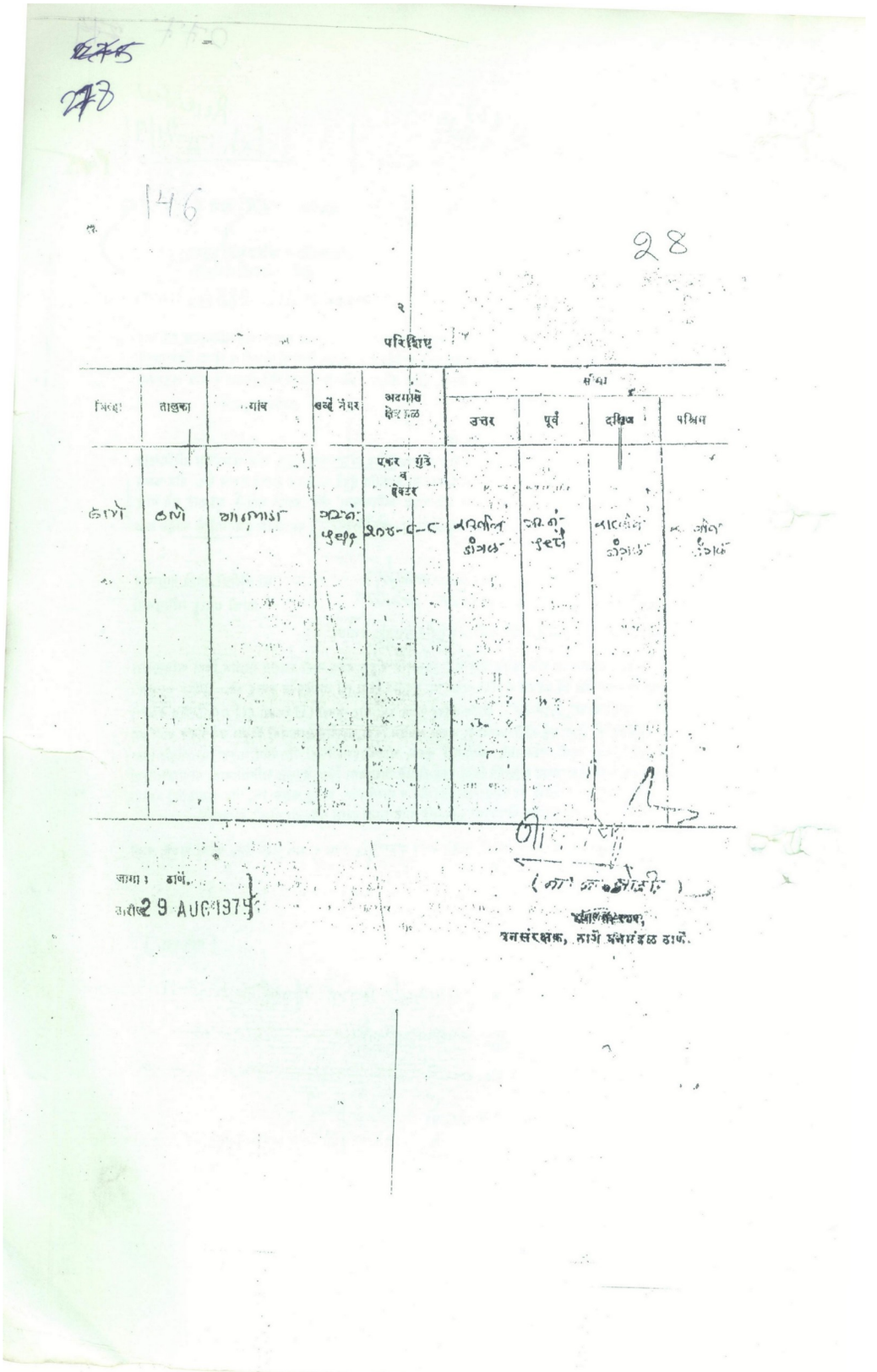

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परिशिष्ट

जिल्हा	तालुका	गांव	ज्यांचे नांवर	अदमासे क्षेत्रफळ	सीमा			
					उत्तर	पूर्व	दक्षिण	पश्चिम
				एकर गुंठे व हेक्टर				
ठाणे	ठाणे	भांडुप	खाजगी पुलपु	२०४-०-०	नदीपलिकडील डोंगर	रा.क. पुलपु	खाजगी डोंगर	खाजगी डोंगर

जमा : ठाणे.
तारीख 29 AUG 1975

(सही)
वनसंरक्षक,
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ANNEXURE 'A'

PETITIONERS NOTE IN RESPECT TO THE SANJAY GANDHI NATIONAL PARK DIVISION

(1) Without prejudice to any other submissions made in the present proceedings, the Petitioner places this note on a limited aspect, namely, to explain the legal status and scope of the Sanjay Gandhi National Park Division ("***SGNP Division***").

(2) In 1995, Bombay Environmental Action Group ("***BEAG***") filed Writ Petition No. 305 of 1995 before this Hon'ble Court ("***BEAG Writ Petition***") seeking, inter alia, removal of encroachments from the SGNP Division (which had not yet been finally notified as a National Park), relocation of occupants to non-forest areas, and demolition of unauthorised structures within the SGNP Division.

(3) During the hearing of the BEAG Writ Petition, this Hon'ble Court passed an interim order dated 7 May 1997 ("***Interim Order***") holding that the SGNP is a protected forest and a National Park under Indian law, containing Vihar and Tulsi lakes which supply drinking water to Mumbai, and representing a rare National Park within an urban metropolis with rich biodiversity.

(4) This Hon'ble Court, relying upon the order of the Hon'ble Supreme Court in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman*), held that the expression "forest" must be understood in its dictionary sense and includes all lands recorded as forest in Government records, irrespective of ownership.

(5) It was further held that the Forest Conservation Act applies to the entire National Park and the SGNP Division. Accordingly, this Court directed strict and time-bound measures, including demarcation of boundaries, prohibition of non-forest activities, cancellation of municipal permissions, and demolition of unauthorised structures.

(6) The relevant paragraphs from the Interim Order are reproduced below:

> *2. The Sanjay Gandhi National Park Division is a*

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protected forest under the Indian Forest Act and has also been notified as a National Park under the provisions of the Wildlife Protection Act. The National-Park Division contains within its boundaries two lakes that provide drinking water to the city of Bombay viz. Vihar and Tulsi Lakes. It is unique in that it is perhaps the only National park in protected forest area within an urban metropolis. A large amount of wildlife as well as important flora and fauna area also to be found within the boundaries of the National Park…..

7. On the 12th December, 1996 the Hon'ble Supreme Court had passed an order in Writ Petition (Civil) No. 202 of 1995 that the word 'forest' must be understood according to its dictionary meaning. This description covers the statutory recommendations of the Forest Act including "reserved, protected or otherwise" for the purposes of section 2.1 of the Forest Conservation Act. The term 'forest land' in section 2 will not only include forest in the dictionary sense but also the area recorded as forests in the Government records irrespective of ownership. This is how it has to be understood for the purposes of section 2 of the Act. The provisions indicated in the Forest Conservation Act for conservation of forests and matters connected therein must clearly apply to all forests irrespective of the ownership or classification thereof. The Supreme court has further held that it would be reasonable to argue that any State Government which had failed to provide the correct position in law so far, would forthwith correct its stance and take necessary remedial measures without any further delay.…

10. Based on the recommendations contained in the report of the Committee we think it necessary to pass the following order do that the committee's recommendations are given effect to and carried out in a time bound manner:

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(a) The Deputy Conservator of Forests of the Sanjay Gandhi National Park Division is directed to prepare a map to show the boundaries of the National park Division with reference to the existing roads and send the same to the Municipal Corporation and also to the General Manager, BEST and the General Manager MTNL (West 3) within a period of four weeks from today. The above mentioned statutory authorities are directed not to grant any permission or allow any non forest activity/ies within the boundaries of the said National park Division.…

(d) The Deputy Conservator of Forests of the National Park Division is directed to make barriers and getes within a period of eight weeks from today to stop public transport such as taxis, autos from entering the forest area.…

(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."

[Emphasis supplied]

(7) The above findings were reiterated in the final judgment dated 15 September 2003, by which the BEAG Writ Petition was allowed. This Hon'ble Court recorded that the area under the control of the Deputy Conservator of Forests, SGNP Division, admeasured 103.09 sq. km., comprising :

(a) 82.23 sq. km. of reserved forest;
(b) 20.76 sq. km. of unclassed forest; and
(c) 0.10 sq. km. of protected forest.

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(8) Importantly, in paragraph 28(13) of the said judgment, this Hon'ble Court clarified that:

> "*In case of any dispute regarding boundary of 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.*"

(9) This Hon'ble Court has further held that there is no distinction in law between Sanjay Gandhi National Park and Sanjay Gandhi National Park Division. The relevant findings are reproduced below:

> *"194. It was urged by Mr. Oka, Mr. Grover and Mr. Vashi that Sanjay Gandhi National Park and Sanjay Gandhi National Park Division are two independent areas. SGNP cannot be equated with a SGNP Division. The notifications under sub-sections (1) and (2) of section 35 (preliminary notification) and under sub-section (4) of section 35 of the Wild Life (Protection) Act, 1972 (final notification), referred to only National Park and not National Park Division. Several areas which have not been included in National Park (SGNP), therefore, cannot form part and parcel of National Park and the notifications will not apply to those areas. It was also submitted that Schedule to both the notifications referred the areas to be included in National Park and the boundaries situated in or around such National Parks. Occupiers of the areas not within SGNP, therefore, would not be affected and no proceedings can be initiated against them. It was submitted that in view of the legal position, though in an order dated 7th May, 1997 the Division Bench of this Court has issued certain directions in respect of occupiers of SGNP Division, they would not apply to the SGNP Division but their application would be limited to occupiers in SGNP.*

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> *195. We are unable to accept the submission of the learned Counsel, the map annexed to the petition, though it is captioned as Sanjay Gandhi National Park (SGNP), is really a map of the Sanjay Gandhi National Park Division (SGNP Division). Several orders which have been passed by this Court as well as by the Supreme Court from time to time also refers to SGNP Division. It, therefore, cannot be contended that the application of notification should be made limited to SGNP.*
>
> *196. It is also pertinent to note at this stage that it does not make any difference whether the area is part of SGNP or SGNP Division. All the land in the Division is " forest" within the meaning of Maharashtra Private Forests (Acquisition) Act, 1975 or the Indian Forest Act, 1927. Once the land is held to be "forest", no relief can be granted to the occupiers as the directions issued in Godavarman would squarely apply to such land. Godavarman goes further and declares that the expression "forest" should not be read in a restrictive manner and it must be understood according to its dictionary meaning which would cover all statutory forests, whether designated as reserved protected or otherwise, and would also include any area recorded as forest in the Government record, irrespective of ownership. In the present case, the case of the State Government is that the area is " forest" and has been recorded as such in the Government record. Hence, the ratio laid down in Godavarman will apply."*
>
> *[Emphasis supplied]*

(10) It is respectfully submitted that a perusal of the official map prepared by the Forest Department pursuant to the Interim Order clearly shows that Gat No. 59/1 forms part of the SGNP Division. The said map is produced along with this note for ease of reference.

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(11) The continuing recognition of the SGNP Division as a protected forest area admeasuring approximately 104 sq. km. has also been reaffirmed in subsequent proceedings, including Contempt Petition (Lodging) No. 9237 of 2023, wherein this Hon'ble Court observed:

> "*1. The present Contempt Petition alleges contempt of various orders passed in Writ Petition No. 305 of 1995 for the protection and preservation of the area of Sanjay Gandhi National Park Division admeasuring approximately 104 square kilometers…*"

(12) In view of the above orders and findings, it is submitted that it is clear that the subject lands fall within the SGNP Division. Consequently, the subject lands are "forest lands" in law, and Gat No. 59/1 indisputably forms part of the SGNP Division.

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ANNEXURE 'B'

WRITTEN NOTES OF ARGUMENTS ON THE LAW LAID DOWN BY THE HON'BLE SUPREME COURT IN GODREJ & BOYCE (SUPRA) AND ROHAN NAHAR (SUPRA)

(1) On 7th November 2025, a bench of the Hon'ble Supreme Court comprising Vikram Nath and Prasanna B. Varale, JJ., delivered its decision in ***Rohan Vijay Nahar & Ors. vs. State of Maharashtra & Ors., 2025 SCC OnLine SC 2366*** ("***Rohan Nahar***"). The Court set aside the Bombay High Court's decision in ***Devkumar Gopaldas Aggarwal and Ors vs State of Maharashtra and Ors, 2018 SCC Online 2823*** ("***Devkumar Aggarwal***") holding that the High Court was wrong in concluding that the facts of the case in *Devkumar Aggarwal* differed from those in ***Godrej & Boyce Mfg. Co. Ltd. v. State of Maharashtra, (2014) 3 SCC 430*** ("***Godrej & Boyce***").

(2) The Hon'ble Supreme Court noted that the High Court had framed two issues in *Devkumar Aggarwal*. The main issue was whether the law laid down by the Hon'ble Supreme Court in *Godrej & Boyce* would apply to the facts in *Devkumar Aggarwal*, and whether subsequent purchasers could rely on *Godrej & Boyce* even when their predecessors-in-title had not questioned the application of the Maharashtra Private Forests (Acquisition) Act, 1975 ("***Maharashtra Private Forests Act***") or the actions taken under it (**Para 12.1/Page 18 of Rohan Nahar**).

(3) In fact, the Hon'ble Supreme Court in *Rohan Nahar* relied and also followed the law laid down in *Godrej & Boyce*. In particular, in paragraphs 10.2/Page 16, 10.3/Page 16, 10.4/Page 16 and 14.2/Pages 22-23 of *Rohan Nahar*, the Supreme Court observed as follows :

> *"10.2 Interpreting the expression "a notice has been issued" in Section 2(f)(iii) of the MPFA, when read with Section 35 of the IFA, the Court held that "issuance" cannot be divorced from service. Given the statutory scheme, a valid notice under Section 35(3) of the IFA necessarily entails service on the owner, an opportunity to file objections, to adduce evidence, and to be heard.*

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Because interim restraints may be imposed under Section 35(4) of the IFA and penal consequences attach under Section 35(7) of the IFA, service is inherent to the process. Section 35(5) of the IFA, requiring service in the CPC manner and publication as prescribed, reinforces this conclusion.

10.3 On this basis, the view in Chintamani Gajanan Velkar (Supra) that a bare, unserved notice sufficed for Section 2)(f)(iii) of the MPFA was found to have overlooked the Bombay/Maharashtra amendments to Section 35 of the IFA and to have proceeded on an erroneous premise regarding the two-hectare exclusion. It was overruled to that extent.

10.4 The Court further clarified that Section 2(f)(iii) of the MPFA saves only "live" or "pipeline" notices, those issued and pursued in reasonable proximity to 30.08.1975. Notices left undecided for years or decades lapse into desuetude. The State is obliged to act within a reasonable time; a notice from 1956–57, never taken to its statutory culmination, cannot be revived to effect vesting on the appointed day.

14.2 After this categorisation, we are satisfied that there is no legally relevant distinction between the present cases and the decision in Godrej and Boyce (Supra). The ratio in Godrej and Boyce (Supra) turns on service of a notice under Section 35(3) of the IFA, the existence of a live process capable of culminating in a notification under Section 35(1) of the IFA, and strict compliance with the statutory steps that alone can support vesting under Section 3(1) of the MPFA Act on the footing of Section 2(f)(iii). The record before us discloses the same deficiencies that were fatal in Godrej and Boyce (Supra). There is no proof of service of any notice under Section 35(3) of the

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IFA on the then owners. There is no final notification under Section 35(1) of the IFA. Possession has remained with private owners throughout. No contemporaneous action was taken under Sections 4, 5, 6 or 7 of the MPFA Act. These features mirror the very elements that led this Court to hold that vesting had not occurred in Godrej and Boyce (Supra)…."

FACTS IN THE DECISION OF GODREJ & BOYCE

(4) Since the issue in *Rohan Nahar* is connected to *Godrej & Boyce*, it is necessary to first examine *Godrej & Boyce*. The relevant facts from that judgment are as follows:

(4.1) Godrej acquired land in Vikhroli by a registered deed of conveyance dated 30th July 1948 from Nowroji Pirojsha, who had inherited it from Framjee Cawasjee Banaji, the original perpetual leaseholder under an 1835 Government of Bombay grant. The land was classified as "*wasteland*" under the original lease, meant to be cultivated. The dispute concerns 133 acres and 38 gunthas from specific survey numbers, referred to as the "*disputed land*." (**Paras 3 - 4/Page 12 of Godrej & Boyce**).

(4.2) In 1951, the Salsette Estates Act ("***Abolition Act***") was passed stating that wastelands granted under a perpetual leaser not cultivated before 14th August 1951 would vest in the State and be the property of the State. However, aggrieved by this Act, Godrej filed a suit in the Bombay High Court for declaration of its ownership and that the Abolition Act had no application to the lands in question. After litigation, a 1962 consent decree declared that except for 31 gunthas, the rest of the land had been cultivated by Godrej before 14th August 1951 and therefore belonged to Godrej. (**Paras 5 - 7/Pages 12 - 13 of Godrej & Boyce**).

(4.3) Development plans for the city of Bombay in 1967 and 1991 designated the disputed land as residential. Godrej received permissions to construct residential buildings and built four for staff use. However, on 17th February 1976 the Urban Land Ceiling Act (1976) came into force and since the disputed land was in excess of

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the ceiling limit, Godrej sought exemptions to use excess land for industrial and residential purposes. The State granted the exemption, requiring construction of staff housing. With exemptions and municipal permissions, Godrej built over 40 multi-storeyed residential buildings, a clubhouse, substations, and other facilities, housing thousands of families (**Paras 9 - 11/Page 13 of Godrej & Boyce**).

(4.4) In May 2006, Godrej received six stop-work notices stating that the disputed land was treated as private forest, requiring Central Government approval for construction under the Forest (Conservation) Act, 1980. Godrej learned that this action arose from a 2005 Bombay High Court order directing the State to update all land records. Godrej learned that, while updating land records, the State had unilaterally changed the revenue entries to classify the land as private forest. It also found that Notice No. WT/53, issued under Section 35(3) Indian Forest Act, 1927 ("***Indian Forest Act***"), had been published in the Bombay Government Gazette of 6th September 1956 regarding the land, but the notice had no date, was never served on Godrej, and was never acted upon by the Government. (**Paras 16 & 31 - 33/ Pages 14 & 19 of Godrej & Boyce**)

(4.5) Aggrieved by this, Godrej filed Writ Petition No. 2196 of 2006 seeking a declaration that its Vikhroli land was not forest land and asking the High Court to invalidate the forest department's letter, the stop-work notices, and the revenue record mutation. During the case, it emerged that about 170 similar notices were issued in 1956–57 to various entities, including government establishments. (**Paras 34 - 35/ Pages 19-20 of Godrej & Boyce**)

(4.6) The State contended that, based on the Supreme Court's ruling in *Chintamani Gajanan Velkar v. State of Maharashtra* (2000) ("***Chintamani Velkar***"), the disputed land had already vested in the State under Section 3 of the Maharashtra Private Forests Act. The High Court dismissed Godrej's petitions in 2008, holding that development approvals and planning designations could not override the land's status as private forest, and that government inaction did not invalidate earlier notices. The Court further held that even a Section 35(3) notice issued without a corresponding Gazette notification did not remove the land from the Maharashtra

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Private Forests Act and such notices could not be deemed abandoned. It concluded that private forest land remains forest despite any development plans or zoning changes. Aggrieved with this decision, Godrej and other petitioners filed special-leave petitions before the Supreme Cour (**Paras 36 - 38/Pages 20-21 of Godrej & Boyce**).

(4.7) However, the Supreme Court allowed all the appeals and set aside the judgment of the Bombay High Court, and delivered the following findings:

(4.7.1) It overruled *Chintamani Velkar* which had held that mere issuance of a notice under Section 35(3) of the Indian Forests Act is sufficient and service is not required under Section 2(f)(iii) of the Maharashtra Private Forests Act and held that the word "issued" in Section 2(f)(iii) must include service of the show-cause notice (**Paras 61 - 62/Page 26 of Godrej & Boyce**).

(4.7.2) The Supreme Court endorsed the Full Bench decision in ***J. C. Waghmare vs State of Maharashtra, AIR 1978 Bom 119***, which upheld the constitutional validity of the Maharashtra Private Forest Act (**Paras 22 - 26/Pages 17-18 of Godrej & Boyce**). It held that :

(a) Section 2(f)(iii) of the Maharashtra Private Forests Act applies even to land where only a notice had been issued under Section 35 of the Indian Forest Act and the owner's objections remained unheard when that provision was repealed in 1975, such objections can now be heard under Section 6 of the Maharashtra Private Forests Act.

(b) Section 6 provides landowners with the opportunity to file objections and demonstrate that their land should not be classified or declared as forest.

(4.7.3) The Hon'ble Supreme Court held that Section 2(f)(iii) of the Maharashtra Private Forests Act is in sense a saving clause and is meant to save "pipeline notices". "Pipeline notices" or "live notices" have been defined to mean notices issued in reasonably close proximity to the coming into force of the Maharashtra Private Forests Act and only such "live notices" could be acted upon (**Paras 71 – 74/Pages 27-28 of Godrej & Boyce**).

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(4.7.4) The Supreme Court held that the notice issued to Godrej could not be considered a "pipeline" notice, since a pipeline period cannot reasonably extend from 1956–1957 all the way to 1975. Therefore, the notice was not valid for the purpose of treating the land as private forest (**Para 49/Page 24 of Godrej & Boyce**).

FACTS IN THE DECISION OF ROHAN NAHAR

(5) In the background of *Godrej & Boyce*, it is now essential to examine the facts of the case in *Rohan Nahar*.

(5.1) The Appellants (batch of 96 civil appeals) are landowners in Maharashtra whose cases share a common factual background with each other, as well as with the facts in Godrej & Boyce. The State claims that in the early 1960s, notices under Section 35(3) of the Indian Forest Act were issued and published in the Official Gazette, calling upon landowners to show cause why forest-related restrictions should not be imposed. The landowners maintain that these notices were never personally served, no hearings were held, no final notification under Section 35(1) of the Indian Forest Act was issued, and the proceedings remained dormant for decades (**Para 7.1/Page 12 of Rohan Nahar**).

(5.2) After the Maharashtra Private Forests Act, came into force, the landowners argued that the State did not take possession under Section 5 and that for decades the lands continued to be treated as private holdings. Transfers were allowed, planning authorities treated these lands as agricultural land or no development zone, and no compensation was paid. The State argued that the 1960s notices under Section 35(3) of the Indian Forest Act read with Section 2(f)(iii) of the Maharashtra Private Forests Act caused automatic vesting of the lands in the State(**Para 7.2/Page 13 of Rohan Nahar**).

(5.3) However, from around 2001, revenue officers began mutating village records to show lands as affected by forest proceedings. Names of the landowners were replaced with that of the State. The owners alleged these changes were made without notice to them and in violation of the Maharashtra Land Revenue Code. The State argued that the entries merely reflected statutory vesting. These annotations had collateral effects and Sub-Registrars refused to

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register documents having regard to departmental instructions. Possession nonetheless remained with the private parties, compensation was never awarded, and many administrative challenges under Maharashtra Land Revenue Code remained unresolved. Landowners therefore approached the High Court seeking correction of records, declaratory relief regarding title and vesting and restoration of entries consistent with private title and possession. (**Paras 7.3 - 7.4/ Page 13 of Rohan Nahar**).

(5.4) Before the High Court, landowners challenged the legality of forest-related mutation entries and sought declarations that their lands were not private forests under the Maharashtra Private Forests Act, along with restoration of their names in the revenue records. The Landowners argued that :

(i) mere Gazette publication of the notice under Section 35(3) of the Indian Forest Act without personal service under Section 35(5) of the Indian Forest Act could not have adverse consequences;

(ii) They emphasized that no inquiry or final notification followed after the issuance of the notices under Section 35(3);

(iii) that the notices were stale;

(iv) that the State never took possession of the lands in question or paid compensation for the same; and

(v) the revenue authorities actions violated the Maharashtra Land Revenue Code and natural justice requirements (**Paras 8.1 - 8.2/ Pages 13 - 14 of Rohan Nahar**).

(5.5) The State responded that issuance of Section 35(3) notices in the 1960s was sufficient for vesting under Section 2(f)(iii) and Section 3 of Maharashtra Private Forests Act and that revenue entries were ministerial reflections of statutory vesting that followed as a matter of law. It also raised objections regarding delay and laches and pointed out to availability of remedies under the Maharashtra Land Revenue Code. (**Para 8.3/Page 14 of Rohan Nahar**).

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(5.6) The High Court grouped the cases and considered common questions such as

(i) whether issuance of Section 35(3) notices in these cases, without service of these notice on the landowners, alone was enough?

(ii) whether service and a Section 35(1) notification were mandatory?

(iii) whether dormancy affected vesting, and

(iv) whether the Maharashtra Land Revenue Code procedures had been violated (**Para 8.4/Page 14 of Rohan Nahar**).

(5.7) The Hon'ble High Court in *Devkumar Aggarwal* vide its order dated 27th September 2018 disposed of this batch of 96 petitions and held as follows:

(5.7.1) That vesting under Section 3 of Maharashtra Private Forests Act occurred automatically on 30th August 1975 i.e., the appointed day and that entries made in 2002 merely reflected this vesting (**Para 12.2/Page 18 of Rohan Nahar**).

(5.7.2) It accepted the State's claim that the Section 35(3) notices were issued and served and that in many cases a Section 35(1) notification was already in force. It relied on Gazette extracts, referred to as the "*Golden Register*", possession notices, and panchanama (**Para 12.3 of the Rohan Nahar Judgement**).

(5.7.3) It distinguished *Godrej & Boyce* as being fact-specific as in *Godrej & Boyce* the owners had an earlier consent decree, long-standing sanctioned development and an evidentiary vacuum on service and follow-through. It also held that requirements of issuance and service were satisfied on the basis of the facts on record (**Paras 12.4 – 12.5/Page 19 of Rohan Nahar**).

(5.7.4) **The principle laid down in *Godrej & Boyce* that had made a distinction in "*stale*" and "*live*" notices was not considered by the High Court and it was held that the issue in *Godrej & Boyce* was fact specific to the facts of that case. It was further held that in any**

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event, the lands in question would come within the primary definition of "*forest*" under Section 2(c- i) of the Maharashtra Private Forests Act. (Para 12.6/Page 19 of Rohan Nahar).

(5.7.5) In several of the cases the High Court found that the challenges were mounted by subsequent purchasers who had acquired the land post 30th August 1975 i.e., the appointed day and not by original land owners. The High Court held that the subsequent purchasers were alleging non service of notices without obtaining affidavits from their predecessors -in-title stating whether the notices were in fact served on them or not. It was further held that the subsequent purchasers made these allegations even though the "*burden was effectively placed on the petitioners to dislodge official records*". (Paras 12.7 – 12.8/Page 19 of Rohan Nahar).

(5.7.6) Except one matter remitted for inquiry, the High Court dismissed all writ petitions, charactering several as commercially motivated and not *bona fide* and cautioning that entraining them would weaken forest protection. (Para 12.12/Page 19 of Rohan Nahar).

(5.8) However, in the case of *Rohan Nahar*, the Hon'ble Supreme Court overruled *Devkumar Aggarwal* and held as under:

(5.8.1) That the controlling legal position is settled i.e., for vesting under Section 3 of the Maharashtra Private Forests Act based on Section 2(f)(iii), the Section 35(3) notice must not only be issued but must be served. Service is essential because it triggers the owner's right to object. The Court rejected the High Court's view that reproducing the text of Section 35(1) "*beneath*" a show-cause notice amounted to a final notification. It further held that mutation entries cannot perfect an acquisition that lacks statutory predicates and that these entries cannot create title in the State or divest title from the private owner (Para 13.1/Page 20 of Rohan Nahar).

(5.8.2) The Court found critical statutory steps missing viz.

(i) no proof that Section 35(3) notices were served, nor any final notification under Section 35(1).

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(ii) Private owners had remained in continuous possession, as shown by revenue records.

(iii) The State had not taken possession under Section 5, initiated schemes under Section 4, conducted compensation proceedings under Section 7, or held timely inquiries under Section 6.

(iv) The documents relied on by the State, mostly undated or unverified, were unreliable when contrasted with decades of undisputed private possession.

(v) In some cases, the State relied on notices sent to non-owners or on lands long converted to industrial use. In another, it could not even assert that a Section 35(3) notice existed.

Taken together, these deficiencies made it clear that vesting under Section 3(1) of the Maharashtra Private Forests Act had not been completed (Para 13.2/Page 20 of Rohan Nahar)

Note: It may be noted that in *Rohan Nahar*, the Hon'ble Supreme Court has not reinterpreted the ratio in *Godrej & Boyce* nor has it distinguished the same. Furthermore, the ratio laid down in *Godrej & Boyce* in the paragraphs that are being relied up by the Petitioner in WP 3205 of 2018, viz. paragraphs 61 and 71 - 74, has not been disturbed by the judgement delivered in *Rohan Nahar*.

(5.8.3) The Hon'ble Supreme Court also rejected the High Courts distinctions between original and subsequent purchasers. It was held that compliance with mandatory statutory requirements does not depend on ownership history. Subsequent purchasers cannot be prejudiced by undisclosed proceedings. The revenue records themselves showed continued private ownership, undermining the State's case. The Supreme Court rejected the High Court's approach to hold that a subsequent purchaser is in a worst position than the one who developed land would invert the logic of the statute and would reward illegality while penalising restraint (**Para 13.4/Page 21 of Rohan Nahar**).

(5.8.4) The Hon'ble Supreme Court also refused remand for a Section 6 inquiry, holding that such an exercise decades later would

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be meaningless and could not cure the lack of mandatory prerequisites. It further held that the High Court misread the Gazette, diluted statutory requirements, and relied on irrelevant material. The judgment therefore could not stand. (**Para 13.5/Pages 21-22 of the Rohan Nahar Judgement**).

(5.8.5) And finally it was held that the facts in those 96 appeals which arose from the Bombay High Court Judgement in *Devkumar Aggarwal* were indistinguishable in principle from *Godrej & Boyce*. It was held that the record reflects the same jurisdictional defects viz.

(i) non-service of a notice under Section 35(3) of the Indian Forest Act,

(ii) absence of a final notification under Section 35(1) of the Indian Forest Act, and

(iii) lack of contemporaneous steps under Sections 4, 5, 6, and 7 of the Maharashtra Private Forests Act.

In these circumstances, the High Court could not, consistent with Article 141 of the Constitution, disregard the binding ratio by treating immaterial differences as determinative (**Para 14.6/Pages 23-24 of Rohan Nahar**).

DISTINGUISING FEATURES OF THE PRESENT PETITION FROM ROHAN NAHAR

(6) It is submitted that, based on the above facts and as correctly held in *Rohan Nahar*, the facts in *Godrej & Boyce* and *Rohan Nahar* are indistinguishable. In both cases, the Section 35(3) notices were issued in the 1960s, never served on the original owners, and never followed by any further action. As held by the Hon'ble Supreme Court in *Godrej & Boyce*, only "Pipeline Notices", viz. those issued in close proximity to the Maharashtra Private Forests Act coming into force, could be acted upon. **This principle has not been interfered with in *Rohan Nahar***.

(7) *Godrej & Boyce* held that mere issuance of a notice under

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Section 35(3) of the Indian Forest Act is not enough, the notice also has to be served on the owner of the land. It is important to note that while *Rohan Nahar* reaffirmed this principle regarding issuance and service of the notice under Section 35(3) of the Indian Forest Act, it did not hold that such notices must be served before the Maharashtra Private Forests Act came into force on 30th August 1975.

(8) In light of the above, it is humbly submitted that the facts in the present case (WP 3205 of 2018) are distinguishable from those in *Rohan Nahar* for the following reasons:

(8.1) The notice under Section 35(3) of the Indian Forest Act was issued to Respondent No. 1 on 29th August 1975 and served on 4th September 1975. This is confirmed in Paras 7.11 and 7.12 (Pages 126–127) of Respondent No. 1's Reply in WP 3205 of 2018. This alone marks a significant factual difference from *Rohan Nahar* as in the *Rohan Nahar* the notices were not served at all and in some of the appeals served on non-owners.

(8.2) The notice under Section 35(3) of the Indian Forest Act was issued on 29th August 1975 and served on 4th September 1975 i.e., in close proximity to 30th August 1975. It is therefore submitted that such a notice would be a "live" notice/"pipeline" notice as understood in the decision of *Godrej & Boyce*. Significantly, in contrast, the notices in *Rohan Nahar* were "stale" notices, issued in the 1960s and never served on the landowners.

(8.3) In the present case, after taking possession of the subject land, the Forest Department constructed boundary walls, an entry gate, a security cabin, a nature interpretation centre, and other structures for protecting the subject land. By contrast, in *Rohan Nahar*, no action was taken even after issuing notices in the 1960s.

(8.4) Furthermore, in the current case, Respondent No. 1 also wrote two letters (dated 5th July 1979 and 28th August 1975) requesting exemption of 24 acres and 32 gunthas from Gat No. 59/A/1, offering substitute land instead. Respondent No. 1 stated that considerable amounts had been spent by it in developing horticulture on the land and wells and farmhouses had been built on the subject land. Since the provisions of the Maharashtra Private Forests Act did not allow

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substitution of land, the State rejected this request. Respondent No. 1 then filed a Section 6 application under the Maharashtra Private Forests Act before the Collector ("***SDO***"). This is a key distinction from *Rohan Nahar*, where the owners never got a hearing. Here, the original owner himself approached the authorities and participated in the process.

(8.5) In the present case, the purpose of issuing a notice under Section 35(3) has been fulfilled (viz. giving a hearing to the owner of the land) in as much as, after the Section 6 application, the following proceedings were held:

(8.5.1) The Collector, by order dated 3rd August 1980, accepted Respondent No. 1's offer of alternate land. The Petitioner challenged this before the Maharashtra Revenue Tribunal ("***MRT***").

(8.5.2) On 15th October 1982, the MRT remanded the matter to the SDO for fresh inquiry, holding that the SDO did not have the jurisdiction to allot the 24-acre parcel.

(8.5.3) After the remand, the SDO passed a second order on 27th December 2004, holding that 138 acres was private forest land vesting in the Government, while 55 acres was not.

(8.5.4) Both sides appealed. On 15th June 2017, the MRT dismissed the Forest Department's appeal and allowed Respondent No. 1's appeal, incorrectly interpreting *Godrej & Boyce* to hold that because the notice under Section 35(3) of the Indian Forest Act was not served on or before 30th August 1975, it could not be treated as a valid notice at all and held that the subject land is not a 'private forest' as contemplated under Section 2(f)(iii) of the Maharashtra Private Forests Act and hence the subject land is excluded entirely from acquisition under the Maharashtra Private Forests Act .

(8.6) These facts clearly show that, unlike *Rohan Nahar*, the original owner in the present case had multiple opportunities to present his case.

(8.7) In view of the above, it is submitted that the present case is clearly distinguishable from Rohan Nahar. Further, the issues raised in the present petition did not arise for consideration in *Rohan*

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Nahar.

PART 2 - LIST OF DATES AND EVENTS

SR.	DATE	EVENT	REFERENCE
1.	29th August 1975	Notice u/s 35(3) of the Indian Forest Act, 1927 ("***Indian Forest Act***") was issued to D Dayabhai & Co ("***Respondent No. 1***") re: S.No. 59/A/1 measuring 204 acres 8 Gunthas 8 annas situated at Manpada, Chitalsar, Thane. ("***said land***"). **Note:** It was later found that 14 acres of this land had been sold by Respondent No. 1 to third parties prior to 29.08.1975 and that the balance area available for acquisition was **193A 07g 4a**.	WP Para 3(a) Pg. 5
2.	30th August 1975	The Maharashtra Private Forests (Acquisition) Act, 1975 ("*Maharashtra* ***Private Forests Act***") came into force. Key sections of the Forest Acquisition Act: (i) Sec. 2(a) defines "appointed day" to mean the date on which the Private Forests Act comes into force i.e. 30th August 1975. (ii) Sec 2(c-i) contained definition of "forest" & Sec 2(f) contained definition of "private forest". (iii) Sec 2(f)(iii) provides that a	

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		"private forest" includes any land in respect of which a notice has been issued under Sec. 35(3) of the Indian Forest Act, but excluding an area not exceeding 2 hectares in extent as the collector may specify in this behalf. (iv) Sec 3(1) states that with effect on and from the appointed day i.e., 30.08.1975, private forests in the State shall stand acquired and vest, free from all encumbrances, in and shall be deemed to be the property of the State Government, with all rights in or over the same or appertaining thereto and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the said day shall be deemed to have been extinguished. (v) Sec 3(2) excluded land held by an occupant or tenant and lawfully under cultivation on the appointed day and which is not in excess of the ceiling area provided under Sec 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 or any building or structure standing thereon or appurtenant thereto. (vi) Sec. 6 states that where any question arises as to whether or not any forest is a private forest, or whether or not any forest is a private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under Private Forests Act, the Collector shall	

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		decide the question, and the decision of the Collector shall, subject to the decision of the tribunal in appeal which may be preferred to the tribunal within sixty days from the date of the decision of the Collector, or the order of the State Government under section 18, be final. (vii) Section 21 provides the procedure by which certain lands can be declared as private forests. (viii) Sec 24 repealed Sec 35 of the Forests Act w.e.f 30.08.1975.	
3.	30th August 1975	By virtue of Sec. 3(1) read with Sec. 2(f)(iii) of the Maharashtra Private Forests Act, the said land vested with the State Government and the said land is deemed to be the property of the State Government.	
4.	4th September 1975	By way of a letter to the Petitioner, Respondent No. 1 acknowledged that it had received the notice dated 29th August 1975 that was issued u/s 35(3) of the Indian Forest Act. Respondent No. 1 did not raise any dispute about the "forest" character of any portion of the land but only requested for time to verify the correct extent of the land held by it. **Note 1:** in its reply, Respondent No. 1 has not disputed the receipt of the notice issued u/s. 35(3); **Note 2:** Therefore, the fact of the "issuance" and the "service" of the notice issued u/s 35(3) of the Indian Forest Act on Respondent No. 1	WP Para 3(d) Pg. 6

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		cannot be disputed. **Note 3:** In the letter acknowledging the receipt of the notice, Respondent No. 1 did not dispute that the land in respect of which the notice was issued u/s 35(3) of the Indian Forest Act is not a forest. **Note 4:** In view of the fact that the notice was issued on 29th August 1975 i.e. one day prior to the repeal of the Indian Forest Act and served on Respondent No. 1 on 4th September 1975, the notice falls within the category of a "pipe-line notice" as laid down by the Hon'ble Supreme Court in ***Godrej and Boyce Mfg. Co Ltd v State of Maharashtra***[1]. **Note 5:** In para 72 of the decision of the Hon'ble Supreme Court in Godrej and Boyce (supra), it has been held that: "*Section 2(f)(iii) of the Private Forests Act is not intended to apply to notices that had passed their shelf life and that only "pipeline notices" issued in reasonably close proximity to the coming into force of the Private Forests Act were "live" and could be acted upon.*"	
5.	5th July 1979 & 28th August	4 years after the land had already vested with the State Government , Respondent No. 1 addressed two letters to the Petitioner requesting that the State Government exempt 24 Acres 32 gunthas from Gat No. 59/A/1 of its holding from acquisition	WP Para 3(d) Pg. 6 WP

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	1979	with an offer to substitute another parcel of land admeasuring 24 A 32 g from S. No. 59/2 & 59/16, which were contiguous to the said land as Respondent No. 1 had expended substantial amounts on Gat No. 59/A/1 for converting the same into horticultural use and in this process had constructed two wells and three farmhouses on the said land. **Note 1:** The fact that Respondent No. 1 may have put the 24 acres of land to horticultural use did not however mean that it was not a "forest land". **Note 2:** Such a right to substitute the land is not contemplated under the provisions of the Maharashtra Private Forests Act	Para 3(g) Pg. 7
6.	27th May 1980	Therefore, the State Government rejected Respondent No. 1's proposal requesting the State Government to exempt 24 Acres 32 gunthas from Ghat No. 59/A/1 of its holding.	Exh A Para 17 Pg 53
7.	3rd August 1980	An order was passed by Deputy Collector (Private Forests) Thane Division ("**SDO**") ["**First SDO Order**"] wrongly accepting the application filed by Respondent No. 1 u/s. 6 of the Maharashtra Private Forests Act, for excluding 24-32-12 acres from Gat No 59 A/1, in lieu of 24- 32-12 acres from Gat No 59/2, 59/3 and 59/16 which would vest in the State Government as reserved Forest. **Note:** The Petitioner filed an appeal	WP Para 3(i) Pg. 8

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		against this order before the Maharashtra Revenue Tribunal Mumbai ("***MRT***") against this order under Section 6 of the Maharashtra Private Forests Act.	
8.	15th Octobe r 1982	The MRT passed an order ["**First MRT Order**"] allowing the appeal filed by the Petitioner and remanding the matter to the SDO with the following observations and order: **Observations**: 1. An area of 204 acres 8g 8a bearing Gat No 59/1 answers the definition of Private Forests, which is a common ground between the parties. 2. The SDO had to restrict his inquires to the specific provisions of Sections 2(f)(iii) and 3(2) of the Maharashtra Private Forests Act and the other considerations which weighed with him are beyond his jurisdiction. 3. The Collector has no power to declare any additional land as private forest unless it answers the definition of private forest contained under Section 2(f)(iii) of the Maharashtra Private Forests Act. Similarly the exclusion from the area of private forest is also to be strictly worked out on the consideration of actual cultivation as on the appointed day and the owner's structure if any mentioned under Section 3(2) of	WP Exh A Pgs. 48-56 Para 8 Pg. 50 Para 18 Pg. 54 Para 22 Pg. 55

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		the Maharashtra Private Forests Act. 4. The SDO has no jurisdiction to declare additional area of 23 acres 2 ghuntas and 12 annas as private forest and exclude therefrom the area of 24 acres 32 ghuntas 12 annas under the provisions of the Private Forests Act. **Order:** 1. The case was remanded to the SDO for holding further inquires and for its disposal according to law **keeping in view the observations made in this judgement**. 2. The SDO should call on both the parties to put in their say and such other additional evidence as they may like to adduce in support of their pleas.	Para 24 Pg. 56
9.	25th July 1991	Respondent No. 2 made an Application to the Tahsildar and A.L.T Thane for declaration that he was a tenant of Respondent No. 1 in respect of the area admeasuring 7 hectares and 38 ares (approximately 17.5 acres) out of the said gat no. 59/1.	Exh B Para II[2] Pg. 59
10.	15th March 2004	The Tehsildar by his order declared that Respondent No. 2 is a tenant of Respondent No. 1 in respect of the area admeasuring 7 hectares and 38 ares (approximately 17.5 acres).	Exh B Para II Pg. 59

2 Forms part of the written submissions submitted by Respondent No. 2 as part of his intervention application before the SDO (**Part of Exh B to the WP 3205 of 2018**)

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11.	13th December 2004	Having succeeded in getting himself declared as a tenant of Respondent No. 1 in respect of the area admeasuring 7 hectares and 38 ares (approximately 17.5 acres), Respondent No. 2 filed an intervention application before the SDO seeking that: (i) the SDO declare that the land admeasuring 7 hectares and 38 ares (approximately 17.5 acres) is in actual and physical possession and cultivation of Respondent No. 2 as an agricultural tenant as held by the Tehsildar order dated 15.03.2004. (ii) the said land is an agricultural land and was never a forest or a private forest including on 30.08.1975 and does not vest and was never vested in the state government and (iii) that the provisions of Private Forests Act do not apply to the said land. (**Note:** The land that Respondent No. 2 seeks to exclude is in addition to and not a part of the the 24 acres that Respondent No. 1 seeks to exempt from acquisition under the Maharashtra Private Forest Act)	Exh B Para IX Pg. 63
12.	18th December	The Petitioner opposed Respondent No. 2's intervention application on *inter-alia* the following grounds:	Exh C Pgs. 64-72

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	2004	1. The status of Land in Gat No 59/1 as forest land had never been disputed by Respondent No. 1 and that the issue had only been re 24 Acres sought to be excluded/ substituted, and that the area claimed by Respondent No. 2 did not fall within this 24 acre area. 2. Moreover the 7/12 extracts in 1975 did not show that any part of the land was under cultivation. Accordingly the 7/12 extracts of 1981 & 1987 showing cultivation by Respondent No. 2 in two subsequent years only, were irrelevant. 3. The orders passed by the Tehsildar confirming the tenancy of Respondent No. 2 under the BTAL Act had been obtained without joining the Petitioner and *ex parte* qua Respondent No.1 **Note:** Pursuant to the intervention application filed by Respondent No. 2, the Second SDO Order excluded 17 acres (7 hectares) of land from the said land on the ground that the same were under cultivation by Respondent No. 2 as a tenant of Respondent No. 1.	Para 2/ Pgs. 66-67 Para 5/Pg. 68 Paras 7 and 9(f)/Pgs. 69 and 71
13.		Respondent Nos. 3-7 also claim to be in possession of some portions of the subject land. However, these Respondents raised their claims for the same when the matter was pending before MRT for the second time i.e., when the Second SDO Order was being challenged. The case	

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		of these Respondents is as follows: 1. Respondent Nos. 3, 4 and 5 claimed to be in possession of land within the 24 Acre area sought to be excluded from acquisition by Respondent No. 1, which they alleged they had purchased from Respondent No. 1 in 1980 (5 years after the appointed day under the Maharashtra Private Forests Act). 2. Respondent Nos. 6 & 7 claim to have purchased 19 gunthas (approximately 0.5 acre) of land in Gat No. 59/1 from Smt Kusum Vasant Salkar & 3 others of her family, who in turn claimed to be in possession of 19.65 gunthas of land in Gat No 59/1 that were acquired by them by way of adverse possession against Respondent No. 1. The Petitioner was not joined as party to the suit filed by Smt Kusum Vasant Salkar and her family claiming adverse possession againt Respondent No. 1, which suit came to be decreed *ex-parte*. **Note 1:** Though Respondent Nos. 3-7 claim ownership of certain portions of the subject land, they have never appeared nor filed any replies in the current proceedings before this Hon'ble Court. **Note 2:** These Respondents claim to be owners of certain portions of the subject the land only after 30th August 1975 i.e., after the land came to be vested with the State Government by	

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		virtue of Section 3(1) of the Maharashtra Private Forest Act.	
14.	27th December 2004	The SDO finally passed an order in the matter that had been remanded to it by virtue of the MRT Order dated 15th October 1982 (**after a period of 22 years**) ["**Second SDO Order**"]. The SDO framed the following three issues: (i) Whether the said land is a 'Forest/Private Forest' within the meaning and definition of Private Forest u/s2(f)(iii) of the Maharashtra Private Forests Act?; (ii) Whether any portion of the said land qualifies for an exemption under Section 3(2) of the Maharashtra Private Forests Act?; and (iii) What should be the area if any to be vested in the State Government? Answering the above issues, the order held as under: **<u>In answer to Issue 1:</u>** (i) The SDO found that Respondent No. 1 had confirmed having received the Notice u/s 35(3). The SDO rejected Respondent No. 1's contention that the notice under Section 35(3) was invalid on the ground that was issued to "D. Dayabhai & Company" instead of "D Dayabhai & Company Private Limited" holding that the omission to	Exh D Pg. 73-86 Pg 76

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		mention "Itd" was a clerical error and did not invalidate the Notice. The SDO accordingly held that sec 2(f) (iii) was applicable to the said land. <u>In answer to Issue 2:</u> (ii) The Deputy Collector however held that 24 acres of S No 59/1 [being the land in respect of which Respondent No. 1 had sought an exemption on the ground of horticulture and construction of well and farm house] would be required to be excluded from S No 59/1 as: (a) S. No. 59/1 it not a continuous portion of land but are multiple pieces of land scattered intermittently with various survey nos. (b) the topographic situation shows that these scattered pieces of land do not form a continuous part of the Borivali National park which could qualify on its own, merit to be a part and parcel of the national park. (c) there exists permanent structures such as go-downs on these scattered pieces of lands. (iii) The Deputy Collector held that Respondent No. 2 was in possession and cultivation of 18 Acreas 18 gunthas out of the said land and excluded the same u/s 3(2) of the Private Forests Act . (iv) Moreover the Deputy Collector	Pgs. 76-79 Pg. 77 Pg. 77 Pg. 77 Pg. 84

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		held that an area of 17 Acres 19 G was also required to be released as Village settlement (Konkanipada), although this had never been raised in the Inquiry by any party thereto. **<u>In answer to Issue 3:</u>** (v) The Deputy Collector declared the balance area of 132 Acres 18 gunthas 4Anas as having vested under the 1975 Act.	Pg. 85 Pg. 85
15.	15th April 2005	Appeal No. 165/2005 was filed by the Petitioner against the Second SDO Order.	
16.	2009	Cross Appeal No. 229/2009 was filed by Respondent No. 1 against the Second SDO Order	
17.	30th June 2017	The MRT passed an order ("**Second MRT Order**" / Impugned Order) dismissing the Petitioner's Appeal No 165 and allowed Respondent No. 1 Appeal No 229. On a perusal of the Second MRT order, it appears that the following issues were raised by Respondent No. 1 before the MRT: a) Whether the 'issuance of notice' u/s. 35(3) of the Indian Forest Act was sufficient for declaring the land to be a 'private forest' without 'service of said notice' on the land owner. b) the entire land covered under Gat	Exh E Pgs. 87-115 Para 13, Pgs. 109-110

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		No. 59/1 was and is a non-forest land in fact on the appointed day i.e., 30.08.1975 **<u>Note:</u> The above two points have been raised by Respondent No. 1 for the first time since the issuance of the notice u/s 35(3) of the Indian Forest Act on 29.08.1975 i.e., after a period of almost 34 years** c) that the said land was used for horticulture, stone queries, go-downs, residential units and was and is having structures thereupon. d) that the notice u/s 35(3) of the Indian Forest Act was issued in the wrong name and not that of Respondent No. 1 **<u>The MRT held as follows:</u>** (i) The MRT placed reliance on the following judgements of this Hon'ble Court: A. ***<u>Dr Arjun Sitaram Nitanwar vs Tahsildar, District-Thane</u>***[3] to assert that unless a notice u/s. 35(3) of the Indian Forest Act is served on the owners the land in question will not vest in the State Government as a private forest.	Para 2(q), Pg. 96 Para 2(q), Pg. 96 Para 17, Pg. 112

3 2015 (6) Mh.L.J. 634

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		<u>Note: Petitioners Reply</u>: a. In *Dr. Arjun Nitanwar*, the notice in question was dated 13 April 1957, and there was no evidence that this notice had ever been served on the original owner. b. Such a notice constitutes a "stale notice" as explained in *Godrej & Boyce*. The Supreme Court in *Godrej & Boyce* held that stale notices cannot be acted upon. In contrast, in the present case, the notice was issued in close proximity to 30 August 1975. It therefore qualifies as a "live notice" under the principles laid down in *Godrej & Boyce* and can validly be acted upon. B. ***<u>Ozone Land Agro Pvt Ltd vs State of Maharashtra</u>***[4] which dealt with a case where there was no proof of service of the notice u/s. 35(3) of the Indian Forest Act on the owner of the land. **<u>Note: Petitioners Reply</u>**: a. In *Ozone*, it was undisputed that only the issuance of the show-cause notice was established; there was no	

4 2016 (1) Mh.L.J Pg. 483

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		proof that the notice was ever served. In contrast, in the present case, it is an admitted fact that the notice under Section 35(3) was not only issued but also duly served on the Respondent. C. ***Satellite Developers Ltd vs State of Maharashtra***[5] to assert that where the notice u/s. 35(3) of the Indian Forest Act was not acted upon, this Hon'ble Court in its writ jurisdiction set aside the acquisition without further reference to the SDO. **Note: Petitioners Reply**: a. In *Satellite Developers*, the notice in question was issued in 1956, and thereafter no steps were taken to provide a hearing to the owners, nor was any final notification under Section 35(1) of the *Indian Forest Act* issued. b. In contrast, in the present case, the notice was not only issued and duly served on the Respondent, but the Respondent himself filed an application under Section 6 and was afforded an opportunity of hearing. (ii) The MRT placed reliance on the judgment of the Hon'ble	Paras. 13-16/Pgs.

5 WP (OS) 2084 of 2013 decided on 26th November 2014

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		Supreme Court and Godrej and Boyce and wrongly held that as the Notice u/s 35(3) was required to be served on the land owner and as the same had not been served before 30.08.1975 the acquisition u/s 2(f)(iii) was illegal. **<u>Note:- Petitioner's Contentions</u>**: a. the MRT and Respondent No. 1 have wrongly interpreted the law laid down by the Hon'ble Supreme Court in Godrej and Boyce. b. The Supreme Court in *Godrej and Boyce* held that while actual service of notice under Section 35(3) of the Indian Forest Act is necessary, it did not require such notice to be served before 30th August 1975. c. The Apex Court overruled *Chintaman G. Velkar*[6] which	109-112 WP Ground g/Pgs. 17-18

6 (2000) 3 SCC 143

"18. *In our view, the proper clue in this behalf is provided by sub-clause (iii) of Section 2(f) itself. It will be noticed that in cases where a final notification has been issued under Section 35(1) the entire notified land would automatically vest in the State on the appointed date, namely, 30-8-1975. But in the case where only notice has been issued as per Section 35(3) before the appointed day, namely, 30-8-1975 — the Maharashtra Legislature thought that the entire property covered by the notice in the State need not vest but it excluded 2 hectares out of the forest land held by the landholder. That was the consideration for not allowing the benefit of an inquiry under Section 35(3) and for not allowing the notification to be issued under Section 35(1) of the 1927 Act.*

19. *In our view, the legislature has not made any discrimination in regard to the matters where notification had been issued under Section 35(1) of the Forest Act, 1927 on the one hand and in cases where notification had not been issued and the matter stood still at the stage of notice under Section 35(3) on the other. In the latter cases, the legislature thought it fit to exclude 2 hectares of the landholder from vesting.* ***<u>If that was done, a notice that was issued under Section 35(3) would itself be sufficient and if such notice was issued before the</u>***

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		had held that mere issuance of a notice under Section 35(3) of the Indian Forests Act is sufficient and service is not required under Section 2(f)(iii) of the Maharashtra Private Forests Act.	WP Ground g/Pgs. 17-18
		d. The Hon'ble Supreme Court also approved the view of the Full Bench of this Hon'ble Court in *Janu C. Waghmare* which upheld the constitutional validity of the Maharashtra Private Forest Act, observing as follows: (i) Section 2(f)(iii) of the Maharashtra Private Forest Act covers land in respect of which merely a notice has been issued to the owner and his objection may have remained unheard till 30th August 1975 when Section 35 of the Indian Forest Act was repealed. Accordingly, it was conceded by the Government of Maharashtra that such objections could be heard under Section 6 of the Maharashtra Private Forest Act (**Para 43/Pg. 28**) (ii) Under Section 6 of the Maharashtra Private Forest Act, owners of land that is sought to be decelerated as a forest would have an opportunity of raising objections to the proposed	WP Ground g/Pgs. 17-18

***appointed day i.e. 30-8-1975 the land would vest in the State subject, of course that the Collector has to specify the particular extent of 2 hectares which can be retained by the landholder. There is no need for any service of such notice before 30-8-1975, nor for an inquiry nor for a notification under Section 35(1).*"**

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		declaration and of satisfying the government that their lands are not and cannot be treated or declared as forest (**Para 43/Pg. 29**)	
		e. The MRT misinterpreted *Godrej and Boyce* by wrongly concluding that it was held that notice must be served before 30th August 1975. This is neither the finding in *Godrej and Boyce* or even otherwise a correct statement of the law.	WP Ground g/Pgs. 17-18
		f. In the *Godrej* case, the Supreme Court (paras 71, 72, 73, and 74) held that notices issued in reasonably close proximity to the commencement of the Private Forests Act are considered "live" and actionable. In the present case, the notice was issued on 29th August 1975 i.e. in extremely close proximity to 30th August 1975 (the appointed day) and served on 4th September 1975, qualifying it as a "live" or "pipeline" notice as per the judgment in *Godrej and Boyce*. Despite this being highlighted in the Synopsis of Submissions filed before it by the Petitioner, the MRT has misapplied this binding precedent without justification.	WP Ground h/Pgs. 18-19
		g. In this case, a notice under Section 35(3) of the Indian	WP

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		Forest Act was issued on 29.08.1975, just before the commencement of the Private Forests Act, and served on 04.09.1975, which fact has not been disputed. Therefore, the issue of "non-service" of the notice does not arise. In this case, the notice was acted upon by the Petitioner taking possession of 168Acres out of 193Acres (excluding 24A meant for exchange), subject to two rounds of proceedings u/s. 6 of the Private Forests Act. h. Upon reviewing the Second MRT order dated June 30, 2017 / Impugned Order, it is evident that the MRT relied on the Hon'ble Supreme Court's decision in *Godrej and Boyce*. However, it is clear that the MRT misinterpreted the law laid down by the Hon'ble Supreme Court therein. **<u>BRIEF FACTS IN GODREJ AND BOYCE</u>**: (a) The facts in Godrej and Boyce' case were that Godrej acquired land in Vikhroli, Mumbai by a registered deed of conveyance dated 30th July, 1948 from the successor-in interest of Framjee Cawasjee Banaji, who, in turn, had been given a perpetual lease of the land by the Government of Bombay on 7th July, 1835. The land	Ground i/Pgs. 19-20

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		was described in the perpetual lease as “wasteland” and one of the purposes of the lease was to cultivate the wasteland. (b) The appeals before the Hon'ble Supreme Court concern an area of 133 acres and 38 gunthas of land bearing Old Survey Nos. 117, 118 and 120. 72. (c) Then, there was an Act passed, abolishing these estates. After referring to the salient features of this Act, it was stated that Godrej did not accept that the lease was brought to an end by the provisions of this Act and decided to contest the stand of the State Government. It filed a suit in this court for declaration of its ownership and that the Abolition Act had no application to the lands in question. Though the suit was contested by the State Government, later on, there was a consent decree. (d) Consequently, the Development Plan for City of Bombay, including Vikhroli, was published on 7th January, 1967 and the next development plan was published in 1991. In both the plans, the disputed land was described as residential. Thereafter, Godrej applied for and sought development permissions. (e) Later on, the Urban Land (Ceiling and Regulation) Act, 1976 intervened, but M/s. Godrej earned an	

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		exemption from the State Government so that the provisions of this Act do not apply to the lands and they were exempted accordingly. After this order of exemption was passed, Godrej applied for and was granted permission by the Municipal Corporation of Greater Mumbai to construct multi-storeyed buildings and it constructed 40 residential (ground + 4 and ground + 7) buildings, one club house and five electric substations. Over a couple of thousand families occupy these buildings. Further construction was also made for a management institute and other residential buildings. (f) That is how it was aggrieved by a notice bearing no. WT/53 issued to Godrej under section 35(3) of the Act of 1927 and which was published in the Bombay Government Gazette of 6th September, 1956. Godrej contested that and even when they had filed the earlier suit and the consent decree was passed therein on 8th January, 1962, issuance of such a notice was never made known to them. It was stated that it searched the details of this notice in the Department of Archives. The notice, as published in the Official Gazette, bore no date and according to Godrej, it was not served upon it. It was never acted upon. The subsequent events raised doubt whether the notice was issued or served on Godrej	

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		PETITIONER'S SUBMISSIONS: The Petitioner submits that on a true and correct reading, the following legal principles emerge from the Supreme Court's ruling in *Godrej and Boyce:* A. Reading Paras 72 and 74 of Godrej and Boyce, the following propositions will emerge: a. That according to the law laid down by the Supreme Court, 2(f)(iii) of the Maharashtra Private Forests Act "is in a sense a savings clause"; b. In P. Ramanatha Aiyar's Advanced law Lexicon, 4th Edition, the term "saving clause" has been defined as under: *"A "saving clause" is ordinarily a restriction in a repealing Act and saves rights, pending proceedings, penalties, etc., from the annihilation which would result from unrestricted repeal."* c. Section 2(f)(iii) of the Maharashtra Private Forests Act i.e. the saving clause is meant to save "pipeline notices". d. "Pipeline notices" or "live notices" have been defined	

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		in para 72 of Godrej to mean *"…notices* ***issued*** *in reasonably close proximity to the coming in to force of the Private Forests Act which were, "live" and "****could be acted upon****".* e. Even in para 74, the Supreme Court has held that: *"…Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act…"* f. Since Section 2(f)(iii) of the Maharashtra Private Forests Act has been interpreted to be a savings clause meant to save notices which have been **issued** under Section 35(3) of the Indian Forest Act such that they would be considered to be **live** and **could be acted upon**, the only interpretation that can be placed is that what was saved is notices that were "issued" in reasonably close proximity of the Maharashtra Private Forests Act.	

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		g. All further steps including **service** as well as proceedings with regard to settling disputes u/s. 6 of the Maharashtra Private Forests Act could be completed after 30th August 1975. h. Any other interpretation if placed would mean that the savings clause has become redundant because even if a notice were to be issued within time, it would not be acted upon unless including service of the same - only on account of the Indian Forest Act being repealed. i. The Statement of Objects and Reason of the Maharashtra Private Forests Act inter alia provides that it is considered expedient to acquire private forests in Maharashtra generally for conserving their material resources and protecting them from destruction or over exploitation by their owners. j. The provisions of the Indian Forest Act and the provisions of the Maharashtra Private Forests Act are welfare legislations	

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		meant for the welfare of the general public. Thus even if therefore a purposive interoperation is to be placed on a beneficial piece of legislation, it is trite law that overall intention of the legislation is to further the provisions of the act and not to defeat the same. The same principle has been held by the Hon'ble Supreme Court in ***International Ore & Fertilizers (India) P. Ltd. vs. ESI Corporation***[7] observing in the context of the Employees' State Insurance Act, 1948 that: "*4. … We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified.…*." B. The observations made by the Hon'ble Supreme Court in Paras 56-61 of ***Godrej and Boyce*** and in particular para 61 thereof that the word "issue" appearing in	

7 (1987) 4 SCC 203

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		Section 2(f)(iii) must include service of the show cause notice as postulated in Section 35 of the Indian Forest Act were made in the context of interpreting the provisions of Section 35 of the Indian Forest Act. In other words, as observed by the Supreme Court in para 61, applying the principle that a words must be construed in the context that it is used, the Supreme Court held: *"…By making reference in Section 2(f)(iii) of the Private Forest Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes"* C. It is for this reason that the Hon'ble Supreme Court in para 61 has held as follows: *"…Once that is appreciated (and it was unfortunately overlooked in Chintamani) then it is quite clear that "issued" in Section 2(f) (iii) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act."* D. The context in which the Hon'ble Supreme Court has construed the word "issue" to include "service of the show	

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		cause notice" was clearly in the context of the object underlying the provisions of the entirety of Section 35 of the Indian Forest Act. E. In other words, the Supreme Court has come to a conclusion that service of a notice is required for the purposes of Section 35 of the Indian Forest Act to make it effective. It has not come to the conclusion that service of the notice is required prior to 30th August 1975 in order for it to be saved under section 2(f)(iii) as a "pipeline notice". Any other interpretation if placed on para 61 vis a vis para 74, would mean that there is an apparent inconsistency between the conclusion in Para 61 vis a vis the conclusions of para 72 and 74. F. In fact the expression ***"By making a reference in Section 2(f)(iii) of the Private Forest Act to "issue" in section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes…"*** means that the word "issue" has been borrowed from Section 35 of the Indian Forest Act and must therefore be interpreted in that context to	

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		include service of the show cause notice in order to make the provisions of Section 35(4) to (7) of the Indian Forest Act effective. G. On a comparison of Section 21 of the Maharashtra Private Forests Act with the provisions of Section 35 of the Indian Forest Act it is clear that whereas in the case of the Indian Forest Act, Section 35, requires issuance of the service of the notice prior to the issuance of a final notification under Section 35(1), in case of Maharashtra Private Forests Act, issuance and service of the notice are steps that follow subsequent to the publication of the notification. To read the words "issued" under Section 2(F)(iii) as "issued and served prior to 30.08.1975" would be contrary not only to para 72 and 74 of the judgment in Godrej and Boyce but also to the provisions of the Maharashtra Private Forests Act, particularly section 21 thereof. H. Therefore the conclusion of the Supreme Court in para 72 that Sec 2(f)(iii) of Maharashtra Private Forests Act is not intended to apply to notices past their shelf life but only pipeline notices issued reasonably close to the coming into force of the	Para 8/Pgs. 106-108

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		Maharashtra Private Forests Act could be acted upon will bring within the savings clause a notice issued prior to 30.08.1975 under Section 35(3) of the Indian Forest Act, even though served after 30th August 1975, but in close proximity to the Section 35(3) notice. (iii) That although the earlier Appeal & remand were only re the 24 acres sought to be released/ exchanged & although Respondent No. 2 was not claiming this area or any part thereof, the Deputy Collector was entitled to consider Respondent No. 2's claim to be in possession/cultivation under Section 3(2) read with Section 6 of the Private Forests Act. The MRT held that the SDO/Deputy Collector was not restricted only to the issue of 24 acres raised by the Respondent No. 1. <u>Note:- Petitioner's Reply</u>: a. The 7/12 extracts for the subject land in August 1975 do not indicate any cultivation by Respondent No. 2 or anyone else. Instead, they show the land consisted of "palmyra trees and a deserted	WPGround r/Pgs. 25-26

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		stone quarry." Respondent No. 1 never contended either before the State Government or under the Sec. 6 inquiry that the land was being cultivated by a tenant – either in the first or second round of proceedings before the SDO. Moreover, Respondent No. 2 admitted before the Tahsildar that he had no tenancy receipts from Respondent No. 1. There is no credible evidence to support Respondent No. 2's claim of cultivating the subject land prior to the appointed day. (**Ground r/Pgs. 25-26 of WP**). b. Respondent No. 2's application for declaration of tenancy was made on 25-7-1991 ("***tenancy declaration application***") i.e., 16 years after the property was vested completely with the government and nearly 40 years after "Tillers' Day". The Petitioner was not made a party to the tenancy declaration application. (**Grounds s-t/Pgs. 26-27 of WP**) c. W.r.t the Tahsildar order declaring Respondent No. 2 as a tenant ("***Tahsildar order***"), the Petitioner submits as follows: c-1 The Tahsildar order refers to a reply filed by Respondent No. 1., but the contentions taken in the said reply to do not find mention anywhere in the order (**Ground w/Pg. 28 of WP**).	WP Grounds s-t/Pgs. 26-27 WP Ground w/Pg. 28 WP Ground x/Pgs. 28-29

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		c-2 The Tahsildar's order incorrectly states that Respondent No. 1 had the land released from acquisition. In reality, Respondent No. 1 did not secure the release of any part of the land. Respondent No. 1 admitted that the entire subject land (Gat. No. 59A/1) was forest land but only requested that 24 acres not be taken into possession, offering to surrender an equivalent area in other gat numbers instead. Of the 193 acres, 168 acres were acquired and are now part of the Sanjay Gandhi National Park, which includes the land claimed by Respondent No. 2. Importantly, Respondent No. 2 never raised any dispute under Section 6 of the Private Forests Act. The inquiry before the SDO Thane pertains only to the remaining 24 acres, which does not include the land occupied by Respondent No. 2.(**Ground x/Pgs. 28 -29 of WP**) c-3 The Tahsildar order mentions that in the 7/12 extracts between 1981 and 1987 the cultivation column shows the name of the Respondent No. 2. This would be of no consequence because the land was already acquired and deemed to be vested in the State Government as on 30.08.1975. Surreptitious insertion of the Respondent No. 2's name in the cultivator's column for the brief period between 1981 and 1987 could not therefore take the land out of the description of forest	WP Ground y/Pgs. 29-30

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		land under Section 3(2) of the Private Forests Act. <u>There is no explanation why the name of Respondent No. 2 does not appear in the said column before 1981 and after 1987. The table showing the columns "Year" and "Cultivation" clearly show that from 1966 to 1973 and as well as in 1974 and 1975 the land was uncultivated and quarry land</u>. This table does not support the claim that Respondent No 2 was cultivating the land much prior to 'Tiller's day' as required under the BT and A L Act 1948. (**Ground y/Pgs. 29 -30 of WP**). c-4 In the proceedings before the Tahsildar, Respondent No. 1 explicitly denied that Respondent No. 2 was his agricultural tenant. Notably, the Tahsildar's order fails to disclose the date on which it was issued. Furthermore, the order provides an explanation for the absence of rent receipts from Respondent No. 1 to Respondent No. 2, despite Respondent No. 2 not offering any such explanation in his application (**Ground z-bb/Pgs. 30-31 of WP**). d. The criminal proceedings cited by Respondent No. 2 in his intervention application before the SDO arose from his prosecution under Section 26 of the Indian Forest Act for alleged encroachment on forest property and construction of structures. The criminal court, based on the evidence presented, concluded	WP Ground bb/Pgs. 30-32 WP Ground dd/Pgs. 31-32 WP Ground

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		that the structures were older than the period of the alleged encroachment, leading to Respondent No. 2's acquittal, which was upheld by the Mumbai High Court. However, it is a well-established legal principle that a judgment in one proceeding is neither conclusive nor binding in another. Each case must be decided based on the evidence specific to its proceedings (**Ground dd/Pgs. 31-32 of the WP**). e. Respondent No. 2 failed to provide any evidence proving that he was lawfully cultivating the land as of 30.08.1975. The criminal court orders in both proceedings contain no finding that Respondent No. 2 was in possession of 18A 18g prior to 30.08.1975. The Trial Court's order in Criminal Case No. 5227/82 only mentions 4 acres, while the High Court's order in Criminal Appeal No. 172/93 does not specify any area. Thus, reliance on these criminal proceedings is misplaced and reflects a lack of application of mind. (**Grounds ee-gg/Pgs. 32-33 of the WP**) (iv) That the Deputy Collector was entitled to *suo moto* take cognizance of the village settlement (Konkanipada) (**Paras 4 to 6, Pg 103-106**). (**Note: Petitioner's Reply:**	ee-gg/Pgs. 32-33 Paras 4-6/ Pgs. 103-106 WP Ground jj/Pg. 33

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		a. No application was made under Section 6 of the Private Forests Act to claim exclusion of the village settlement. The record shows that no such issue was raised by any party. The then SDO did not ask any parties to address the exclusion of the village settlement, and no representative of the settlement appeared or made any submissions supporting this claim. There was no material or justification for the SDO to consider such a claim or order its exclusion, as stated in the impugned order (**Ground jj/Pg. 35 of WP**). b. As the inquiry was remanded for consideration of the limited aspect of whether the 24 acres approximately was Forest or not, there was no jurisdiction for the then SDO to decide anything else. (Ground kk/Pg. 35 of WP). c. The Petitioner had not been heard whatsoever on the aspect of whether or not the village settlement area (17A 19g) could be legitimately excluded from forest area. The then SDO did not even give the appellant an idea that he was going to decide such an issue (**Ground ll/Pgs. 35-36 of WP**). d. Following the Bombay High Court's orders in WP 305/95, eviction proceedings are underway for encroachers in the village settlement. Many encroachers have made	WP Ground kk/ Pg.35 WP Ground ll/Pgs. 35-36 WP Ground oo/Pgs. 35-36 Para 17/ Pgs.112-

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		payments as required by the High Court to qualify for alternative accommodation. Given this, there was no need to consider whether the village settlement fell outside the scope of 'Forest' under the Private Forests Act. The Petitioner could have presented the records of these proceedings to the SDO if the SDO had indicated any intention to consider the village settlement's case (**Ground oo/Pgs. 35-36 of WP**). (v) That the Notice was also bad as it was addressed to D Dayabhai & Co and not to D Dayabhai & Co Pvt. Ltd. (**Para 17, Pgs. 112-114**). (**Note: Petitioner's Reply**: e. The MRT ruled that no notice was "issued" or "served" on Respondent No. 1 because the notice was addressed to "D Dayabhai and Co." while the name on the 7/12 extract was "D Dayabhai and Co. Pvt. Ltd." The SDO dismissed this as a clerical error. The MRT's reasoning overlooks the fact that Respondent No. 1 never claimed there was another entity called D Dayabhai and Co. owning the land. Respondent No. 1 requested an inquiry under Section 6 of the Private Forests Act and never argued that the notice was not received by it or that the notice was misleading or that the land in question was not theirs or that the land in question is not a forest. Additionally, Respondent No. 1	114 WP Ground m/Pg. 23

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		offered land from other holdings (gat nos. 59/2, 59/3, and 59/16) for exchange, which they would not have done if they believed their land was not subject to acquisition. (**Ground m/Pg. 23 of the WP**) Appeal No 165 was dismissed and Appeal 229 was allowed and it was held that the said land was not covered by the Forest Acquisition Act.	

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ANNEXURE 'C'

WRITTEN NOTES ON BEHALF OF RESPONDENT NO.1:-

1. **Background:-**

   a. The Respondent No.1 is the owner of subject land admeasuring 193 acres 07 guntha 4A. The Indian Forest Act, 1927 (IFA) came to be published in official gazette on 27/09/1927. It contained Section 35. Said Section 35 deals with the aspect of protection of forest for special purpose by the State Government by way of publication of notification in the Official Gazette under Section 35 (1). But before that under Section 35 (3), Government is under obligation to issue the notice to the owner through an officer authorised by State Government, calling upon such owner to show cause within a reasonable period why notification under Section 35 (1) should not be made? Said Section 35 (3) stipulates calling for objection, giving opportunity of hearing to the owner, passing of order by the authorised officer, before publication of notification under Section 35 (1).

   b. It is pertinent to note that on **14/08/1975** a legislature was passed under the name and style as Maharashtra Private Forest (Acquisition) Act, 1975 (MPFA). The president of India gave ascent to MPFA on **25/08/1975**. MPFA was published in Maharashtra Government Gazette Part IV on **29/08/1975**. MPFA vide clause 2 (a) stipulates that appointed day means the day on which said act comes into force. Said date was notified as **30/08/1975** vide G.N.R. and F.D. No.PRF1073/40845-F-2 dated 29/08/1975 **The section 24 (i) of MPFA (acquisition 1975) is reproduced as below:**

      "On and from the appointed day, sections 34a, 35, 36, 36a, 36b, 36c and 37 of the Forest Act shall stand repealed".

      Whereas, it is obvious, on record the MPFA Act (Acquisiton 1975) received assent of the President on 25th August, 1975 published in Gazette on 29th August, 1975. This itself shows that the Forest Department was very much aware that Section 35 is going to get repealed and hence with the malafide intention has issued a notice under section 35(3) on 29th August, 1975 to the wrong person.

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c. **Admittedly, during the period from 27/09/1927 till 29/08/1975 (for about 48 years) it was never claimed by the State Government that subject land is forest and never issued any notice under Section 35 (3) of IFA to the owner of subject land calling upon the owner as to why the subject land should not be protected as forest.** In fact, during said period subject land was subjected to lawful transfer by registered instruments, cultivation, horticulture, NA user, quarry purposes, etc. Kindly see **Exhibit A, Exhibit B, Exhibit C, Exhibit D of affidavit in reply of the Respondent No.1 dated 25/11/2019**. The said documents are at **page no.283** i.e. Bombay Panvel Regional Plan of 1970, **NA Permission** granted by Collector Office Thane dated 14/05/1963 at **page no.284**, **NA Permission** granted by Collector Office Thane dated 15/12/1964 at **page no.286**, **NA Permission** granted by Collector Office Thane dated 25/07/1973 at **page no.287**, **7/12 extract** for the period from 1956 to 1972-73 at **page no.288-289** recording cultivation of rice, existence of structures, horticulture, paddy, etc. upon subject land.

d. It is only after MPFA getting ascent from President and having realised that Section 35 is repealed, State through Forest Department arbitrarily **made show about issuance of notice allegedly dated 29/08/1975** under Section 35 (3) of IFA (impugned notice). In as much as, the notice issued a day prior to the repealing of the provision of section 35 ceased to have effect after the repeal of section 35.

e. The Petitioner has not submitted in the present petition **any documentary proof about actual issuance of impugned notice on alleged date i.e. 29/08/1975.**

f. **In para 3 (d) of the Petition it is stated that impugned notice was served on 04/09/1975.** The position of law is that mere issuance of notice is not sufficient but its service is also important and **issuance cannot be divorced from service of notice**. Section 35 (3) of IFA necessarily entail service on the owner and opportunity to file objection, to adduce evidence and to be heard. Section 35 (5) of IFA require service of such

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notice as per Civil Procedure Code and publication as prescribed. In the case of **Godrej & Boyce (2014) 3 Supreme Court Case 430,** above stated position of law is laid down by the Hon'ble Supreme Court. The notice dated 4th September, 1975 after repeal of the provision was claimed to be issued to D Dayabhai & co. though it was obvious that the land owner were D.Dayabhai co.& pvt.ltd. and that D Dayabhai & Co. was entirely different entity and the real owner of the land was never served with a notice under section 35(3) under Forest Act to D. Dayabhai & Co.pvt.ltd. viz. R1.

g. In the latest judgement dated **07/11/2025 in the case of Rohan Vijay Nahar & Ors. V/s. State of Maharashtra** it is specifically held that the law settled in the case of Godrej & Boyce is a declaration of law under Article 141 of the Constitution.
We will like to draw attention of this Hon'ble Court to paragraph number 10 in case of **Rohan Vijay Nahar & Ors. V/s. State of Maharashtra:**

> **10.** The judgement in *Oberoi Constructions Private Limited* v. *State of Maharashtra* (supra) was challenged in this Court and decided by a three Judge Bench on 30.01.2014 and has been the prevailing precedent in such matters *viz*. *Godrej & Boyce* (supra). This Court gave the following findings:
> **10.1.** This Court held that the mere issuance of a notice under Section 35(3) of the IFA is not, by itself, sufficient to treat land as a "private forest" within Section 2(f)(iii) of the MPFA. The answer to the principal question was returned in the negative.
> **10.2.** Interpreting the expression "a notice has been issued" in Section 2(f)(iii) of the MPFA, when read with Section 35 of the IFA, the Court held that "issuance" cannot be divorced from service. Given the statutory scheme, a valid notice under Section 35(3) of the IFA necessarily entails service on the owner, an opportunity to file objections, to adduce evidence, and to be heard. Because interim restraints may be imposed under Section 35(4) of the IFA and penal consequences attach under Section 35(7) of the IFA, service is inherent to the process. Section 35(5) of the IFA,

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requiring service in the CPC manner and publication as prescribed, reinforces this conclusion.

10.3. On this basis, the view in *Chintamani Gajanan Velkar* (Supra) that a bare, unserved notice sufficed for Section 2(f)(iii) of the MPFA was found to have overlooked the Bombay/Maharashtra amendments to Section 35 of the IFA and to have proceeded on an erroneous premise regarding the two-hectare exclusion. It was overruled to that extent.

10.4. The Court further clarified that Section 2(f)(iii) of the MPFA saves only "live" or "pipeline" notices, those issued and pursued in reasonable proximity to 30.08.1975. Notices left undecided for years or decades lapse into desuetude. The State is obliged to act within a reasonable time; a notice from 1956-57, never taken to its statutory culmination, cannot be revived to effect vesting on the appointed day.

10.5. On the definitional plane, the Court reaffirmed that the "means and includes" formulation in Section 2(c-i) of the MPFA does not dilute the primary sense of "forest". Lands long designated for urban use, developed under sanctioned plans and permissions, and integrated with municipal infrastructure could not, on the admitted facts, be regarded as "forest" either in the primary or extended sense of Section 2(c-i) of the MPFA.

10.6. Recognising the expropriatory character of the MPFA, the Court applied strict construction. Fundamental norms of fairness and good governance preclude unsettling settled civilian and commercial arrangements after prolonged State inaction, particularly where the State itself facilitated and acquiesced in development over decades.

10.7. Even assuming arguendo that the lands were forest, wholesale demolition and dispossession after half a century was neither feasible nor in the public interest on the facts recorded. The equities of third-party purchasers and residents, the State's prolonged acquiescence, and the practical impossibility of "restoration" militated against such a course.

10.8. In consequence, the appeals were allowed, the

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High Court's judgement was set aside, and actions premised solely on stale notices under Section 35(3) of the IFA were quashed.

Also Kindly read para no.**13 and 14** of the said judgment in the case of Rohan Vijay Nahar. Cumulative reading of both the judgements i.e. Godrej & Boyce and Rohan Nahar clearly demonstrate that **unless notice is legally served and further steps under Section 35 i.e. issuance of notification, taking over possession, giving hearing and deciding the objection of the owner etc. are effectively taken up, the vesting of land as private forest in State Government under Section 3 of MPFA cannot happen.** When in the present case the validity of the proceeding under section 6 of the Act of 1975 and process initiated under it is vitiated because of the non-service of the notice under section 35(3) of the Act i.e. before the appointed date 30th August, 1975 to the original owner.

h. Admitted position is that **Section 35 stood repealed** as per Section 24 of MPFA with effect from **30/08/1975**. Thus after **30/08/1975 Section 35 was not in existence and therefore the service of notice under Section 35 after 30/08/1975 is of no effect.** Petitioner admittedly has not come up with any documentary proof or case that after 30/08/1975 they had taken the steps under Section 35 of IFA particularly publication of notification, taking over possession, giving opportunity of hearing to the owner etc. In fact their witness in cross has clearly admitted that notification under Section 35(1) 34(a) and 38 of IFA have not been published (Page No. 87 and 88 of additional compilation y Respondent No.1) Considering these factual aspects and law laid down by Hon'ble Supreme Court in the case of Godrej & Boyce, the MRT vide impugned judgement dated 30/06/2017 **Exhibit-E, at Page 87 to 115** held that land in dispute is not a private forest and accordingly dismissed the forest Appeal and allowed another Appeal filed by the Respondent No.1.

i. Whereas in the matter of *Godrej and Boyce Supra*, the notices

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which were issued were not acted upon for the huge period of 27 years and hence the Hon'ble Supreme Court held that the notices had became stale and not live and in para **56 in clear terms has observed as follows**:

> 56. A notice under Section 35(3) of the Forest Act is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest. It is important to note that such a notice pre-supposes the existence of a forest. The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead evidence in support of the objections. After these basic requirements are met, the owner of the forest is entitled to a hearing on the objections. This entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision.

j. In the present case, the forest department not only issued the notice under section 35(3) after the repeal of the act to the wrongful person and not to the owner but thereafter also in the year 1982, when the Tribunal remanded the matter, the department after 17 years i.e. in the year 1999 got the said remanded proceedings numbered as 53/99. This clearly shows the negligence on the part of Petitioner, which is established as above.

2. **Whereas:-**

A. Admittedly, from 2018 till today Petitioner failed to obtain any stay to the order of MRT. The order of MRT has been effected in the revenue record. Substantial portion of land about **104 acres has been transferred under registered instruments to planning authority viz. TMC for various reservations. These registered instruments of 2019 have not been challenged by any separate legal suit/proceedings or in the present Writ Petition** by the Petitioner. The possession of acquired land under registered instrument is

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handed over to planning authority viz. TMC which is evident from the text of registered instruments. In respect of some of the acquired land, 3 DRCs have been issued. In respect of land admeasuring 100 acres, acquired for park reservation No.4, even though TMC did not issue DRC, there are already three orders of the Hon'ble High Court dated 22/11/2022, 28/04/2025 and 27/06/2025 whereby planning authority TMC is directed to issue DRC. In the 7/12 extract the concerned reservation affected portion is already mutated in the name of TMC. From TILR report it is evident that acquired portion is situated at the eastern boundary of the Sanjay Gandhi National Park. Otherwise also **circular dated 16/01/1996** of Government of Maharashtra identifying the boundaries of Sanjay Gandhi National Park is filed on record i.e. **Exhibit-A** of Additional affidavit of Respondent No.1 **page No.445 to 447**. From said circular it is evident that the entire **village Manpada** where the subject land is situate is situated at the eastern boundary of Sanjay Gandhi National Park. Respondent No.1 has already filed another letter dated **23/01/1986** issued by forest department itself to Deputy Collector Thane (said letter dated 23/01/1986 is annexed as **Exhibit-B** to Additional affidavit of Respondent No.1 at **Page No.448, 449**) In said letter Petitioner itself has admitted that they could not take over the possession of the subject land. Thus, in the present matter following become undisputed facts.

(i) **There is no proof that notice was issued prior to appointed date i.e. 30/08/1975 to the Respondent No.1.**

(ii) **Notice was served on 04/09/1975 (it is not served on the actual owner as required by CPC)**

(iii) **There is no service or publication of notice as per CPC.**

(iv) **No opportunity of hearing was given to the Respondent No.1. No notification under Section 35(1) came to be published.**

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(v) **Possession of subject land was not taken over by Petitioner as per Sec. 5 of MPFA.**

(vi) **No compensation was paid by Petitioner to the Respondent No.1**

(vii) **Subject land was otherwise under cultivation, N.A. users, etc. Thus, there is no question of subject land coming within the definition of private forest defined under Section 2 (f) of MPFA. In the circumstances, there is no question of acquisition and vesting of subject land in the state government under Section 3 of MPFA.**

B. Whereas the MRT in its order dated 30/6/2017 has clearly observed and recorded in para 17 as below of which partially been reproduced:-

"17. In view of above discussion, as the Forest Department has failed to prove that the notice u/s. 35 (3) was 'served' on the land owner, Resp. No.1 in Appeal No. 165/2005 who is Appellant in Appeal No. 229/2009, prior to the appointed day, and in fact, it has duly come on record that the said notice was actually served on the land owner on 4th September, 1975, i.e. after the repealing of the provisions of section 35 of the Forests Act, the land in dispute cannot be termed to be a 'private forest' as contemplated u/s. 2(f)(iii) of the Act of 1975, inasmuch as the notice issued a day prior to the repealing of the provision of section 35, ceased to have effect after the repeal of the section 35. It is also interesting to point out here that in spite of the knowledge about the proposed repealing of section 35, the Department of Forest right from the coming into force of the Indian Forests Act, 1927 in the year 1927, till 29th August, 1975, i.e. till a day prior to the proposed repealing of the provision of section 35, did not take any move or action so as to protect the so-called 'forest' or 'private forest' and only a day prior to the appointed day, i.e. 30/8/1975, on 29/8/1975 just 'issued' a notice which was not served on the land owner, so as to accord him an opportunity of hearing or representing his case in order to protect his rights…."

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C. The facts of present case are covered by two judgements of Hon'ble Supreme Court in Godrej Boyce case and Rohan Vijay Nahar case. **Cumulative reading of both judgments would indicate that a show cause notice granting time for objection cannot be reconciled with the final decision taken without service of notice and without hearing. Mere issuance of notice cannot clothe the State with authority to vest the land.** Mere issuance of notice under Section 35(3) of Indian Forest Act **does not result in automatic vesting on the appointed date of the subject land under Section 3 of MPFA. Statutory requirement of service, publication and enquiry must be satisfied before vesting of land under section 3 of MPFA** to the State.

D. Whereas currently the maximum land in question in the present Petition is owned and possessed by Thane Municipal Corporation also on actual site it has constructed 40Mtr DP Road and there is TMT bus Depot in process, TMC has reserved and allocated the funds for development of Garden, Maternity Home, Park, school and for other Municipal purposes. Hence, it is obvious that the said land is acquired silently for the urban usage and the Respondent has been denied any compensation. The TMC is very much aware that the no due legal process under the MPFA has been followed and no compensation has been paid under MPFA. Hence, now that land has to be acquired in the provisions of ""Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" (RFCTLA) then owner shall clearly fall under Section 3 (c) of the said Act and needs to be compensated as per RFCTLA read with Section 126 of MRTP Act. Kindly read the present note together with the comments made in red by R1 in the modified dates and events tendered in the court during the course of oral argument by the counsel of R1.

E. Whereas in view of these facts, Writ Petition No.3205 of 2018 needs to be rejected as per MRT judgement.

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ANNEXURE 'D'

STATE OF MAHARASHTRA
VS
D DAYABHAI AND CO PVT LTD
WP/3205/2018

PART 1 - PARTIES IN THE WP

MODIFICATION/ADDITIONS MADE BY R1

Parties	Referred To As
The State of Maharashtra	Petitioner
D. Dayabhai and Co.Pvt.Ltd	Respondent No. 1 (Original Owner of the Subject Land)
Narayan Ganu Tangadi	Respondent No. 2 (Claiming 17 acres of land)
Neelaben Pravinchandra Parekh	Respondent No. 3 (Claiming some portion of the 24 acres of land that Respondent No. 1 sought exclusion)
Tiku P Parekh	Respondent No. 4 (Claiming some portion of the 24 acres of land that Respondent No. 1 sought exclusion)
Rajeev P Parekh	Respondent No. 5 (Claiming some portion of the 24 acres of land that Respondent No. 1 sought exclusion)
Meghjibhai Sojibhai Patel	Respondent No. 6 (Claiming exclusion from 19 i.e., about 0.45 acres guntas from the subject land)
Kalyanjibhai Natha Patel	Respondent No. 7 (Claiming exclusion from 19 i.e., about 0.45 acres guntas from the subject land)

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IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3205 OF 2018

DISTRICT : THANE

Modification/Additions made by R1 with its comments in the list of dates and events submitted by the Petitioner

Sr. No.	Date	EVENT	REFERENCE
1.	From 27/09/1927 to 29/08/1975	Indian Forest Act came into force on 27/09/1927. Even though it contains section 35 contemplating issuance of notice to the owner and publication of notification in Official Gazette about any land being forest, no such notice was ever issued during the said period of 48 years by the State Petitioner claiming suit land as forest. During this period particularly on 06/07/1960 Respondent No.1 purchased suit property and other properties from Court Receiver Bombay in Court Auction under 2 registered Conveyance Deed. Under subsequent registered instrument 14 acres was sold by R1 to third parties. In 1970 suit land came to be included in Bombay Panvel Regional plan and divided into 4 parts. N A Permissions dated 14/05/1963, 15/12/1964, 25/07/1973 came to be granted by Collector office, Thane in respect of suit land	WP Page No.5 & Para No.3 (a) Affidavit in reply of R-1 Exhibit B, Page No.283 Affidavit in reply of R-1 Page No.284 to 287 Affidavit in reply of R-1 Page No.288 to 289

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		7/12 extract for the period from 1956 to 1972-73 records the user of suit land for cultivation of rice, paddy, horticulture, fruits, etc. so also the existence of various structures. **MPFA was passed on 14/08/1975. MPFA got ascent from President of India on 25/08/1975 and MPFA was published on Maharashtra Gazette on 29/08/1975. Section 24 (1) of MPFA repeals Section 35 of IFA.**	
2.	**30/08/1975**	**Appointed day under MPFA.**	
3.	29th August 1975	Notice u/s 35(3) of the Indian Forest Act, 1927 ("*Indian Forest Act*") was issued to D Dayabhai & Co ("*Respondent No.1*") re: S. No. 59/A/1 admeasuring 204 acres8 Gunthas 8 annas situated at Manpada, Chitalsar, Thane. ("*said land*"). Note (by Petitioner): It was later found that 14 acres of this land had been sold by Respondent No. 1 to third parties prior to 29.08.1975 and that the balance area available for acquisition was 193A 07g 4a. **Comments of R1** **The notice dated 29/08/1975 is not addressed to Respondent No.1. Respondent No.1 is D. Dahyabhai & Co. Pvt. Ltd., who is the owner of subject land but notice was wrongly addressed to affiliate Company of Respondent No.1 which affiliate company is known as D. Dahyabhai & Co. (In fact, there is a admission in the cross by Petitioner's witness that original notice is not produced on record (Page Nos.87 & 88 of additional compilation filed by R1)** **Even though notice is showing as dated**	WP Para3(a) Pg. 5 R1

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		29/08/1975 there is no proof filed on record by the Petitioner to the effect that it was actually issued or left the office of Petitioner on 29/08/1975 or before appointed day.	affidavit Para 7.11 Deputy Collector Order, Page 76 and MRT Order, page 113
4.	30th August 1975	The Maharashtra Private Forests (Acquisition) Act, 1975 ("*Maharashtra Private Forests Act*") came into force. Key sections of the Forest Acquisition Act: a. Sec.2 (a) defines "appointed day" to mean the date on which the Private Forests Act comes into force i.e.30thAugust 1975. (i) Sec2(c-i) contained definition of "forest" & Sec 2 (f) contained definition of "private forest". (ii) Sec 2(f)(iii) provides that a "private forest" includes any land in respect of which a notice has been issued under Sec. 35(3) of the Indian Forest Act, but excluding an area not exceeding 2 hectares in extent as the collector may specify in this behalf. (iii) Sec 3(1) states that with effect on and from the appointed day i.e., 30.08.1975, private forests in the State shall stand acquired and vest, free from all encumbrances, in and shall be deemed to be the property of the State Government, with all rights in or over the same or appertaining thereto and all rights, title and interest of the owner or any person other than Government subsisting in any such forest on the	

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		said day shall be deemed to have been extinguished. (iv) Sec 3(2) excluded land held by an occupant or tenant and lawfully under cultivation on the appointed day and which is not in excess of the ceiling area provided under Sec. 5 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 or any building or structure standing thereon or appurtenant thereto. (v) Sec. 6 states that where any question arises as to whether or not any forest is a private forest, or whether or not any forest is a private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under Private Forests Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the tribunal in appeal which may be preferred to the tribunal within sixty days from the date of the decision of the Collector, or the order of the State Government under section 18, be final. (vi) Section 21 provides the procedure by which certain lands can be declared as private forests. (vii) Sec 24 repealed Sec 35 of the Forests Act w.e.f30.08.1975. **Comment of R1** **Section 24(2) is a saving clause but saving**	

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		is only for limited purposes that is in respect of land restored under section 22A of MPFA.	
5.	30th August 1975	By virtue of Sec. 3(1) read with Sec. 2(f) (iii) of the Maharashtra Private Forests Act, the said land vested with the State Government and the said land is deemed to be the property of the State Government. **Comments of R1** **Subject land did not vest with the State Government under Section 3 (1) read with Section 2(f) (iii) of MPFA for following reasons.** a. **There is no proof that there was any live process as on appointed day because there is no proof on record of actual issuance of notice before appointed day.** (a) **Notice was admittedly addressed to wrong addressee and received by wrong addressee after repeal of Section 35 of IFA.** (b) **In the case of Godrej & Boyce as well as Rohan Vijay Nahar, it is held that there is no automatic vesting in the State. All statutory pre-conditions mentioned in Section 35 are required to be strictly complied and that too in the manner provided under the statute. (kindly refer para 58 of Godrej & Boyce's case and para 11.1, 11.3, 13.1, 13.2, 13.3, 13.5 of Rohan Vijay Nahar's case)** (c) **Admittedly in the present matter notification under Section 34A, 35(1) and 35 (8) of IFA has not been published. No opportunity of hearing was given to the Owner to raise objection. No order was passed. No**	

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		further steps contemplated under Section 35 were ever initiated. In fact no steps could have been initiated under Section 35 after receipt of notice on 04/09/1975, because on that day said Section 35 of IFA was already repealed. (d) In the absence of proof about actual issuance of notice before appointed day and its service in the manner provided under CPC and publication under Rules prescribed and that too upon true owner of the land, mere contention of Petitioner that notice is dated 29/08/1975 cannot be considered as a "duly done", act under Section 7 of Maharashtra General Clauses Act and hence even under said Act it cannot be saved. (e) When issuance of notice prior to appointed day, itself is in doubt there is no question of vesting of land in State automatically under Section 3 of MPFA on the appointed day. (f) Deputy Collector in its order dated 03/08/1980 (Page 76) while considering Respondent No.1's objection to the notice that it is addressed to wrong person held that it was a clerical mistake but MRT in its order dated 30/06/2017 (Page 113, para 17) has considered the same as a fatal defect. (g) Godrej & Boyce and Rohan Vijay Nahar, both state that notice cannot be divorced from service and notice has to be served to the correct land owner and in the manner provided	

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		under CPC & Para 11.1, 11.3, 13.1, 13.2, 13.3 and 13.5 of Nahar's Judgment & Para 58 of Godrej Judgment. Thus, strict compliance is mandatory. There is no strict compliance in the present matter hence there is no vesting.	
6.	4th September 1975	By way of a letter to the Petitioner, Respondent No.1 acknowledged that it had received the notice dated 29th August 1975 that was issued u/s35(3) of the Indian Forest Act. Respondent No.1 did not raise any dispute about the "forest" character of any portion of the land but only requested for time to verify the correct extent of the land held by it. **Note1:**In its reply, Respondent No.1 has not disputed the receipt of the notice issued u/s. 35(3). **Comments of R1 on Note-1:-** **It is false.** **Record would demonstrate that Respondent No.1 filed Writ Petition No. 1026 of 1975 (Page 297 to 323) challenging the notice received on 04/09/1975 as well as validity of MPFA . Kindly see Exhibit -F of Affidavit in reply of Respondent No.1 (Page 293 and 338) . Two important grounds (Page 308 ground no.c onwards) were taken in Writ Petition that subject land cannot be ranked as forest and that notice is illegal.** **Note 2:**Therefore, the fact of the "issuance" and the "service" of the notice issued u/s35(3) of the Indian Forest Act on Respondent No. 1 cannot be disputed. **Comments of R1 on Note – 2:-** **It is false.** **Issuance and service, both are disputed by**	WP Para 3(d) Pg. 6

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		Respondent No.1. **Note 3:**In the letter acknowledging the receipt of the notice, RespondentNo.1didnot dispute that the landin respect of which the notice was issued u/s 35(3) of the Indian Forest Act is not a forest **Comments of R1 on Note-3:-** **It is false.** **It is evident from Writ Petition No.1026 of 1975 that such objection has been taken.** **Note 4:**In view of the fact that the notice was issued on 29th August 1975 i.e. one day prior to the repeal of the Indian Forest Act and served on Respondent No. 1 on 4th September 1975, the notice falls within the category of a "pipe-line notice" as laid down by the Hon'ble Supreme Court in ***Godrej and Boyce Mfg. Co Ltd v State of Maharashtra***[1]. **Note5:**Inpara72ofthedecisionoftheHon'ble Supreme Court in Godrej and Boyce (supra), it has been held that: "*Section2(f)(iii)of the Private Forests Act is notintended to apply to notices that had passed their shelf life and that only "pipeline notices" issued in reasonably close proximity to the coming into force of the Private Forests Act were "live" and could be acted upon.*" **Comments of R1 on Note-4 and 5:-** **It is also false and misleading.** **In the present matter there is no proof on record to show that impugned notice was actually issued before appointed day. Admittedly it was served upon wrong addressee after appointed day. Godrej & Boyce state that service cannot be divorced from issuance. Hence impugned**	

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		notice cannot be termed as pipeline notice. In fact it is a stale/dead notice, because neither there is a proof about issuance of notice before appointed date nor there is any proof about its receipt by Respondent No.1 at its registered address and in the manner provided in CPC. Admittedly notice was not published. Thus, notice when served on 04/09/1975 there was no live process in existence. Process shall become live or notice can become pipeline notice only if it is served before the appointed day and strictly by complying with mandatory procedure contemplated under Section 35 and not otherwise.	
7.	04/09/1975	The Forest Department issued another notice to the R-1, demanding possession of the subject land.	Page No.8 & 9 of additional compiliation of R1
8.	09/09/1975	R-1 filed WP 1026/1975 challenging the notices dated 04/09/1975 as well as the validity of the Act of 1975.	Page No.297 of WP
9.	09/09/1975	Forest Dept. threatened to take action against R-1 for non-forest activities.	
10.	11/07/1977	Hon'ble Bombay High Court was pleased to stay the acquisition proceedings by granting ad-interim stay in the above proceedings. Validity of MPFA was upheld in Janu Chandra Waghmare.	Page No.293 to 295 of WP
11.	5th July, 1979 & 28th August, 1979	4 years after the land had already vested with the State Government Respondent No.1 addressed two letters to the Petitioner requesting that the State Government exempt 24 Acres 32 gunthas from Gat No. 59/A/1 of its holding from acquisition with an offer to substitute another parcel of land admeasuring 24A 32g from S.No. 59/2 & 59/16, which were contiguous to the said land as Respondent	WP PARA 3 (D) Pg.6

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		No. 1 had expanded substantial amounts on GatNo.59/A/1 for converting the same in to horticultural use and in this process had constructed two wells and three farmhouses on the said land. **Note1:**The fact that Respondent No.1 may have put the 24acres of land to horticultural use did not however mean that it was not a "forest land". **Note 2:**Such a right to substitute the land is not contemplated under the provisions of the Maharashtra Private Forests Act **Comment of R1.** **This is false.** **The fact of filing of above stated Writ Petition has been concealed by the Petitioner. Above stated letters were given without prejudice. Communication made without prejudice does not amount to admission under Section 23 of Evidence Act.**	WP PARA 3 (G) Pg.7
12.	**31/12/1979**	**Secretary Revenue & Forest Department directed R-1 to approach the Collector Thane u/s 6 of Mah. Private Forest Act for getting the area excluded from acquisition.**	**Additional Compilation of documents by R-1 Page No. 62**
13.	**19/01/1980**	**Accordingly, R-1 made application (which was without prejudice) to Dy. Collector to conduct enquiry under Section 6 of MPFA and to give finding so as to submit it in pending writ petition no.1026 of 1975.**	
14.	**27/03/1980**	**Panchanama was carried out at the instance of Petitioner in which existence of quarry, office, structures upon 107 acres of land is specifically recorded so also the existence of road, acquisition of land, existence of garden and cultivation, etc. is also recorded.**	**Additional Compilation of documents by R-1 Page No.65 to 67**
15.	27th May 1980	Therefore, the State Government rejected Respondent No.1's proposal requesting the State Government to exempt 24 Acres 32 gunthas from Gut No. 59/A/1 of its holding.	Exh.A Para17 Page 53

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16.	3rd August,1980	An order was passed by Deputy Collector (Private Forests) Thane Division ("**SDO**") ["**First SDO Order**"] wrongly accepting the application filed by Respondent No.1 u/s.6 of the Maharashtra Private Forests Act, for excluding 24- 32-12acres from Gat No59A/1, in lieu of 24-32-12 acres from Gat No59/2, 59/3 and 59/16 which would vest in the State Government as reserved Forest. **Note:**The Petitioner filed an appeal against this order before the Maharashtra Revenue Tribunal Mumbai ("***MRT***") against this order under Section 6 of the Maharashtra Private Forests Act.	WP Para3(i) Pg. 8
17.	15th October 1982	The MRT passed an order "FIRST MRT ORDER" allowing the appeal filed by the Petitioner and remanding the matter to the SDO with the following observations and order. Observations: a. An area of 204 acres 8g 8a bearing Gat No. 59/1 answers the definition of Private Forests, which is a common ground between the parties. 1. The SDO had to restrict his inquires to the specific provisions of Sections 2(f)(iii) and 3(2) of the Maharashtra Private Forests Act and the other considerations which weighed with him are beyond his jurisdiction. 2. The Collector has no power to declare any additional land as private forest unless it answers the definition of private forest contained under Section 2(f)(iii) of the Maharashtra Private Forests Act. Similarly, the exclusion	WP Exh A Pgs. 48 – 56 Para 8 Pg. 50 Para 18 Pg. 54 Para 22 Pg. 55

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		from the area of private forest is also to be strictly worked out on the consideration of actual cultivation as on the appointed day and the owner's structure if any mentioned under Section 3(2) of the Maharashtra Private Forests Act. 3. The SDO has no jurisdiction to declare additional area of 23 acres 2 ghuntas and 12 annas as private forest and exclude therefrom the area of 24 acres 32 ghuntas 12 annas under the provisions of the Private Forests Act. Order: a. The case was remanded to the SDO for holding further inquires and for its disposal according to law <u>keeping in view the observations made in this judgement</u>. 1. The SDO should call on both the parties to put in their say and such other additional evidence as they may like to adduce in support of their pleas. **Comments of R1** **Paragraph 8 Page 50 and Paragraph 22, Page 55 expressly provide enquiry and remand for the entire land. Same are reproduced as under:** **Para 8 of the said order is also important in which it is clearly recorded that whether land admeasuring 204 acres is answering the definition of forest, is the common stand between the parties.** **In para 22 in the remand order it was clearly held that the dispute regarding**	Para 24 Pg. 56

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		whether a land is Private Forest and whether it is vested in the State has to be resolved by the Collector under Section 6, but same was not done hence matter was remanded for fresh inquiry.Those will indicate that remand was for entire land and never restricted only for 24 acres.	
18.	Oct. 1982	Thane Municipal Corporation was established. DP Plan of TMC sanctioned & certain portions of larger suit property (about 130 acres of land) reserved for various public purposes such as D.P. Road, Park, HCMTR, etc. Balance part for commercial zone, godown zone, industrial Zone and residential zone.	
19.	23/01/1986	Petitioner issued letter to Deputy Collector, Thane, inter-alia, admitting that R1 did not handover the possession of subject land and instead filed application under Section 6 of MPFA. Para 1 of the letter.	Additional affidavit of R-1 Exhibit B Page No. 448
20.	25th July, 1991	Respondent No. 2 made an Application to the Tahsildar and A.L.T Thane for declaration that he was a tenant of Respondent No. 1 in respect of the area admeasuring 7 hectares and 38 acres (approximately17.5acres) out of the said Gut no.59/1.	Exh.B Para II[2] Pg. 59
21.	16/01/1996	Petitioner published in Government Gazette a circular specifying the land area covered under Sanjay Gandhi Rashtriya Udyan. In said circular survey number of subject land is not included. In fact, it is mentioned that entire village Manpada is situate at Eastern Boundary of SGNP._Admitedly, R1's land is in village Manpada (Kindly see Para 1 Page No.4 of WP)._____	R-1 Exhibit A Page No. 445-447
22.	1999	The remanded proceedings were formally numbered as Case No. 53 of 1999 by	WP Exh.E Page

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		Deputy Collector, Thane. **Statement of Haresh Jani was recorded on behalf of R1 so also of one Chimanlal Shah, accountant of addressee company.**	**No.91 and Para No.2 (a) Additional Compilation of R1, Page No.70-72**
23.	**24/11/1999**	**Oral evidence of Ramesh Pakhare was adduced in the inquiry on behalf of Petitioner. In the cross he admitted that Petitioner does not have office copy of purported notice. (the said admission makes it absolutely clear that the Petitioner do not have any proof that the said notice though dated 29/08/1975 was actually dispatched prior to 30/08/1975) Along with purported notice plan showing the location of subject land was not annexed. He also admitted that pursuant to purported notice, notification under Section 35 (1), 34 (a) and 38 of the Indian Forest Act have not been published. Strict compliance as mentioned in Godrej's Case (Para 58) and Nahar's Case (Para 11.1, 11.3, 13.1, 13.2, 13.3) has not been made.**	**Additional Compilation of documents by R-1 Page Nos.87 and 88**
24.	15th March 2004	The Tehsildar by his order declared that Respondent No.2 is a tenant of Respondent No. 1 in respect of the area admeasuring 7 hectares and 38 acres (approximately 17.5 acres).	Exh.B Para II Pg. 59
25.	13th December, 2004	Having succeeded in getting himself declared as a tenant of Respondent No.1 in respect of the area admeasuring 7 hectares and 38 acres (approximately 17.5 acres), Respondent No.2 filed an intervention application before the SDO seeking that: (i) the SDO declare that the land admeasuring 7 hectares and 38 acres (approximately 17.5 acres) is in actual and physical possession and cultivation of	Exh.B Para IX Pg. 63

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		Respondent No. 2 as an agricultural tenant as held by the Tehsildar order dated 15.03.2004. (ii) the said land is an agricultural land and was never a forest or a private forest including on 30.08.1975 and does not vest and was never vested in the state government and (iii) that the provisions of Private Forests Act do not apply to the said land. (Note: The land that Respondent No. 2 seeks to exclude is in addition to and not a part of the 24 acres that Respondent No.1 seeks to exempt from acquisition under the Maharashtra Private Forest Act)	
26.	18th December 2004	The Petitioner opposed Respondent No. 2's Intervention application on inter-alia the following grounds: a. The status of Land in Gat No. 59/1 as forest land had never been disputed by Respondent No.1 and that the issue had only been re 24 acres sought to be excluded/substituted, and that the area claimed by Respondent No. 2 did not fall within this 24 acre area. 1. Moreover, the 7/12 extracts in 1975 did not show that any part of the land was under cultivation. Accordingly, the 7/12 extracts of 1981 & 1987 showing cultivation by Respondent No. 2 in two subsequent years only, were irrelevant. 2. The orders passed by the Tehsildar confirming the tenancy of Respondent No. 2 under the BTAL Act had been obtained without joining the Petitioner and ex parte qua Respondent No. 1 Note: Pursuant to the intervention	Exh.C Pgs. 64-72 Para 2/Pgs. 66-67 Para 5/Pg. 68 Paras 7 and 9 (f) /Pgs. 69 and 71

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		application filed by Respondent No. 2, the Second SDO Order excluded 17 acres (7 hectares) of land from the said land on the ground that the same were under cultivation by Respondent No. 2 as a tenant of Respondent No. 1.	
		Respondent Nos.3-7 also claim to be in possession of some portions of the subject land. However, these Respondents raised their claims for the same when the matter was pending before MRT for the second time i.e., when the Second SDO Order was being challenged. The case of these Respondents is as follows: a. Respondent Nos. 3, 4 and 5 claimed to be in possession of land within the 24 Acre area sought to be excluded from acquisition by Respondent No. 1, which they alleged they had purchased from Respondent No.1in1980(5yearsaftertheappointed day under the Maharashtra Private Forests Act). 1. Respondent Nos. 6 & 7 claim to have purchased 19 gunthas (approximately0.5acre) of land in Gat No.59/1 from Smt Kusum Vasant Salkar & 3 others of her family, who in turn claimed to be in possession of 19.65 gunthas of land in Gat No 59/1 that were acquired by them by way of adverse possession against Respondent No. 1. The Petitioner was not joined as party to the suit filed by Smt Kusum Vasant Salkar and her family claiming adverse possession against Respondent No. 1, which suit came to be decreed *ex-parte*. **Note 1:**Though Respondent Nos. 3-7	

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		claim ownership of certain portions of the subject land, they have never appeared nor filed any replies in the current proceedings before this Hon'ble Court. **Note2:**These Respondents claim to be owners of certain portions of the subject the land only after 30th August 1975 i.e. after the land came to be vested with the State Government by virtue of Section 3(1) of the Maharashtra Private Forest Act.	
26	27th December 2004	The SDO finally passed an order in the matter that had been remanded to it by virtue of the MRT Order dated 15th October 1982 (after a period of 22 years) ("Second SDO Order ") The SDO framed the following three issues; a. Whether the said land is a 'Forest/Private Forest' within the meaning and definition of Private Forest u/s 2(f) (iii) of the Maharashtra Private Forests Act?; (i) Whether any portion of the said land qualifies for an exemption under Section 3(2) of the Maharashtra Private Forests Act?; and (ii) What should be the area if any to be vested in the State Government? Answering the above issues, the order held as under: **In answer to Issue 1:** (i) The SDO found that Respondent No. 1 had confirmed having received the Notice u/s 35(3). The SDO rejected Respondent No. 1's contention that the notice under Section 35(3) was invalid on the ground that was issued to "D. Dayabhai &	Exh D Pg.73-86 Pg 76

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		Company" instead of "D Dayabhai & Company Private Limited" holding that the omission to mention "Ltd" was a clerical error and did not invalidate the Notice. The SDO accordingly held that sec 2(f) (iii) was applicable to the said land. **<u>In answer to Issue2:</u>** b. The Deputy Collector however held that 24 acres of S No 59/1 [being the land in respect of which Respondent No.1 had sought an exemption on the ground of horticulture and construction of well and farmhouse] would be required to be excluded from S No 59/1 as: (a) S.No.59/1 it not a continuous portion of land but are multiple pieces of land scattered intermittently with various survey nos. (b) the topographic situation shows that these scattered pieces of land do not form a continuous part of the Borivali National park which could qualify on its own, merit to be a part and parcel of the national park. (c) There exists permanent structures such as godowns on these scattered pieces of lands. (iii) The Deputy Collector held that Respondent No. 2 was in possession and cultivation of 18 Acre as 18 gunthas out of the said land and excluded the same u/s 3(2) of the	Pgs. 76-79 Pg. 77 Pg. 77 Pg.77 Pg 84

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		Private Forests Act . (iv) Moreover the Deputy Collector held that an area of 17 Acres 19 G was also required to be released as Village settlement (Konkanipada), although this had never been raised in the Inquiry by any party thereto. **<u>In answer to Issue3:</u>** (v)The Deputy Collector declared the balance area of 132 Acres 18 gunthas 4 Anas as having vested under the 1975 Act.	Pg. 85 Pg. 85
27.	15th April, 2005	Appeal No. 165/2005 was filed by the Petitioner against the Second SDO Order.	
28.	2009	Cross Appeal No. 229/2009 was filed by Respondent No.1 against the Second SDO Order Pg. 85	
29.	30th June 2017	The MRT passed an order ("**Second MRT Order**" / Impugned Order) dismissing the Petitioner's Appeal No 165 and allowed Respondent No. 1 Appeal No 229. On a perusal of the Second MRT order, it appears that the following issues were raised by Respondent No. 1 before the MRT: a. Whether the 'issuance of notice' u/s. 35(3) of the Indian Forest Act was sufficient for declaring the land to be a 'private forest' without 'service of said notice' on the land owner. 3. The entire land covered under Gat No.59/1 was and is a non-forest land in fact on the appointed day i.e., 30.08.1975 **<u>Note:</u> The above two points have been raised by Respondent No.1 for the first**	ExhE Pgs.87-115 Para13, Pgs.109-110 Para2(q), Pg. 96

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		time since the issuance of the notice u/s 35(3) of the Indian Forest Act on 29.08.1975 i.e., after a period of almost 34 years **Comment of R1-** **It is false that above points were raised for the first time after 34 years.** 4. that the said land was used for horticulture, stone queries, go-downs, residential units and was and is having structures thereupon. 5. that the notice u/s 35(3) of the Indian Forest Act was issued in the wrong name and not that of Respondent No. 1 **<u>The MRT held as follows:</u>** (i) The MRT placed reliance on the following judgements of this Hon'ble Court: a. ***<u>Dr Arjun Sitaram Nitanwar vs Tahsildar, District-Thane</u>***[3] to assert that unless a notice u/s.35(3)of the Indian Forest Act is served on the owners the land in question will not vesting the State Government as a private forest. **<u>Note:Petitioners Reply</u>**: a. In *Dr. Arjun Nitanwar*, the notice in question was dated 13 April 1957, and there was no evidence that this notice had ever been served on the original owner. a. Such a notice constitutes a "stale notice" as explained in *Godrej & Boyce*. The Supreme Court in *Godrej & Boyce* held that stale	Para2(q), Pg. 96 Para17,Pg. 112

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		notices cannot be acted upon. In contrast, in the present case, the notice was issued in close proximity to 30 August 1975. It therefore qualifies as a "live notice" under the principles laid down in *Godrej & Boyce* and can validly be acted upon. B. ***Ozone Land Agro Pvt Ltd vs State of Maharashtra***[4] which dealt with a case where there was no proof of service of the notice u/s. 35(3) of the Indian Forest Act on the owner of the land. **Note:Petitioners Reply**: a. In *Ozone*, it was undisputed that only the issuance of the show-cause notice was established; there was no proof that the notice was ever served. In contrast, in the present case, it is an admitted fact that the notice under Section 35(3) was not only issued but also duly served on the Respondent. ***C. Satellite Developers Ltd vs State of Maharashtra***[5] to assert that where the notice u/s. 35(3) of the Indian Forest Act was not acted upon, this Hon'ble Court in it's writ jurisdiction set aside the acquisition without further reference to the SDO. **Note:Petitioners Reply**: a. In *Satellite Developers*, the notice in question was issued in 1956, and thereafter no steps were taken to provide a hearing to the owners, nor was any final notification under Section 35(1) of the *Indian Forest Act* issued. a. In contrast, in the present case, the	

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		notice was not only issued and duly served on the Respondent, but the Respondent himself filed an application under Section 6 and was afforded an opportunity of hearing.	Paras 13-16/Pgs.109-112
		b. The MRT placed reliance on the judgment of the Hon'ble Supreme Court and Godrej and Boyce and wrongly held that as the Notice u/s 35(3) was required to be served on the land owner and as the same had not been served before 30.08.1975 the acquisition u/s 2(f)(iii) was illegal.	
		<u>Note:-Petitioner's Contentions</u>:	
		the MRT and Respondent No. 1 have wrongly interpreted the law laid down by the Hon'ble Supreme Court in Godrej and Boyce.	WP Ground g/Pgs.17-18
		The Supreme Court in *Godrej and Boyce* held that while actual service of notice under Section 35(3) of the Indian Forest Act is necessary, it did not require such notice to be served before 30th August 1975.	WP Ground g/Pgs 17-18
		The Apex Court overruled *Chintaman G. Velkar*[6] which had held that mere issuance of a notice under Section 35(3) of the Indian Forests Act is sufficient and service is not required under Section 2(f)(iii) of the Maharashtra Private Forests Act.	WP Ground g/Pgs 17-18 WP Ground g/Pgs 17-18
		d. The Hon'ble Supreme Court	

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		also approved the view of the Full Bench of this Hon'ble Court in *Janu C. Waghmare* which upheld the constitutional validity of the Maharashtra Private Forest Act, observing as follows: (i) Section 2(f)(iii) of the Maharashtra Private Forest Act covers land in respect of which merely a notice has been issued to the owner and his objection may have remained unheard till 30th August 1975 whenSection 35 of the Indian Forest Act was repealed. Accordingly, it was conceded by the Government of Maharashtra that such objections could be heard under Section 6 of the Maharashtra Private Forest Act (**Para 43/Pg. 28**) (ii) Under Section 6 of the Maharashtra Private Forest Act, owners of land that is sought to be decelerated as a forest would have an opportunity of raising objections to the proposed declaration and of satisfying the government that their lands are not and cannot be treated or declared as forest (**Para 43/Pg. 29**) e. The MRT misinterpreted *Godrej and Boyce* by wrongly concluding that it was held that notice must be served before 30th August 1975. This is neither the finding in *Godrej and Boyce* or even otherwise a correct statement of the law.	WP Ground g/Pgs 18-19 WP Ground g/Pgs 19-20

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		f. In the *Godrej* case, the Supreme Court (paras 71, 72, 73, and 74) held that notices issued in reasonably close proximity to the commencementof the Private Forests Act are considered "live" and actionable. In the present case, the notice was issued on 29th August 1975 i.e. in extremely close proximity to 30th August 1975 (the appointed day) and served on 4th September 1975, qualifying it as a "live" or "pipeline" notice as per the judgment in *Godrej and Boyce*. Despite this being highlighted in the Synopsis of Submissions filed before it by the Petitioner, the MRT has misapplied this binding precedent without justification. g. In this case, a notice under Section 35 (3) of the Indian Forest Act was issued on 29.08.1975, just before the commencement of the Private Forests Act, and served on 04.09.1975, which fact has not been disputed. Therefore, the issue of "non-service" of the notice does not arise. In this case, the notice was acted upon by the Petitioner taking possession of 168Acres out of 193Acres (excluding 24A meant for exchange),subject to two rounds of proceedings u/s. 6 of the Private Forests Act. h. Upon reviewing the Second MRT order dated June 30, 2017 / Impugned Order, it is evident	

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		that the MRT relied on the Hon'ble Supreme Court's decision in *Godrej and Boyce*. However, it is clear that the MRT misinterpreted the law laid down by the Hon'ble Supreme Court therein.	
SUBSEQUENT EVENTS AFTER IMPUGNED ORDER WAS PASSED.			
30.	22/09/2017	Nitesh Kothari, Director of R-1 applied to the Talathi for effecting a mutation in the land records i.e. 7/12 extract, on the basis of the Impugned Order.	Petitioner Additional Affidavit Page No. 120 Para No.4
31.	25/09/2017	Mutation Entry No. 1056 was effected, which recorded the name of R-1 and deleted the name of the State Government with respect to the Subject Land ("said Mutation Entry")	Petitioner Additional Affidavit Page No. 120 Para No.4
31.	02/11/2017	TMC issued letter to R-1 for handing over of possession of reserved portion of part property i.e. D.P. Road and HCMTR (METRO)	
32.	13/03/2018	Present writ petition no.3205 of 2018 was filed before this Hon'ble High Court.	WP Page Nos.1 to 47
33.	30/06/2018	R-1 sought release of TDR proposed to be given after surrendering property as mentioned hereinabove.	
34.	20/11/2018	TMC issued public notice thereby notifying the various acquisitions of part of the subject land for various reservations of Thane Municipal Corporation & calling objections (To which forest did not raise any objection)	Affidavit in reply of R-1 Exhibit-I Page No. 342

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35.	09/01/2019	Title Certificate was issued by Adv. Prasad Kulkarni the empanelled Advocate of TMC.	
36.	30/01/2019	Subsequently M.E. No.1056 Confirmed by SDO in Revision No. 182 of 2018	Additional Affidavit in reply of R-1 Exhibit-D Page No. 490-491.
37.	25/04/2019	Reg. Deed of Transfer executed by R-1 in favour of Thane Municipal Corporation with respect to reserved portions (DP Road and HCMTR) for an area admeasuring about 18100 sq. mtrs. Which is equivalent to 4.47 Acres. (Till date Petitioner has not challenged the said acquisition, said deed and/or the fact of handing over the possession of the concerned land by the R1 to TMC.)	Affidavit in reply of R-1 Exhibit-J Page No. 343 to 405.
38.	03/05/2019	Thane Municipal Corporation issued Public notice with respect to balance area of 4,04,721.02 sq. mtrs. Which is equivalent to 100 Acres reserved for park. (To which Forest Department did not raise any objection)	Affidavit in reply of R-1 Exhibit-L Page No. 407
39.	24/05/2019	Regd. Deed of Transfer executed by R1 in favour of TMC w.r.t. balance reserved portion (100 Acre Park). Document clearly state that possession is handed over to TMC by R1. (Till date Petitioner has not challenged the said acquisition, said deed and/or the fact of handing over the possession of the concerned land by the R1 to TMC.)	Affidavit in reply of R-1 Exhibit-M Page No. 408 -426
40.	06/06/2019	TMC issued three DRCs bearing No. 261, 362 & 363 against acquisition of D.P. Road and HCMTR against the land transferred vide	

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		registered Deed of Transfer dated 25/04/2019.	
41.	01/07/2019	Additional Affidavit of Petitioner was filed.	Page Nos.117 to 127
42.	2019 to 15/09/2020	Correspondence by and between TMC, Forest Department and Respondent No. 1 in respect of use and utilisation of TDR and/or regarding issuance of DRC against Park Reservation.	
43.	25/11/2019	Affidavit in reply filed by Respondent No.1.	Page No. 250-276 of Writ Petition.
44.	11/12/2019	Affidavit filed by Petitioner.	Page No. 243-247 of Writ Petition.
45.	11/12/2019	Affidavit in Reply filed by Respondent Nos. 2.1 to 2.12 except 2.2.	Page Nos. 153-159 of Writ Petition.
46.	28/02/2020	Conservation Action Trust filed Intervention Application No. 2785 of 2020 in present Petition in WP No. 3205 of 2018.	Page Nos. 1 to 9 of IA 2785 of 2020.
47.	21/08/2020	TMC filed Intervention Application bearing no. 775 of 2021 in present Writ Petition.	
48.	10/08/2022	Affidavit in Reply filed by Respondent No.1 to the said intervention application No. 2785 of 2020 of Conservation Action Trust.	Page Nos. 14 to 22 of IA 2785 of 2020.
49.		Affidavit in Reply was filed by Respondent No.1 to the said intervention application.	
50.	09/04/2021	Additional Affidavit in Reply filed by Respondent No.1.	Page Nos. 430 to 444 of Writ

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			Petition.
51.	18/07/2022	Order passed by this Hon'ble Court allowing TMC's Intervention Application bearing no. 775 of 2021.	
52.	25/11/2022 & 07/12/2022	Single Bench of this Hon'ble Court in private dispute between Respondent No.1 herein and one M/s. K.S. Group in Appeal from Order arising out of the judgement and order dated 10/10/2019 passed by the learned trial court, by consent passed an order directing Thane Municipal Corporation to issue DRC against Park Reservation No. 4.	
53.	01/06/2023	Respondent No.1 D. Dayabhai & Co. Pvt. Ltd. filed Writ Petition No.6603 of 2023 inter alia seeking direction to TMC for permitting the use and utilisation of three DRC's since the Forest Department had addressed communication to Thane Municipal Corporation erroneously objecting to the grant of DRC.	
54.	05/08/2023	Affidavit in reply filed on behalf of Thane Municipal Corporation to Writ Petition No. 10024 of 2023.	Page Nos. 146 to 225 of Writ Petition No. 10024 of 2023.
55.	08/08/2023	D. Dayabhai & Co. Pvt. Ltd. filed another Writ Petition No. 10024 of 2023 seeking direction against the Thane Municipal Corporation for implementation of Order dated 25/11/2022 passed by the Single Judge read with order dated 07/12/2022 for issuing DRC & the same is also tagged along with the present Writ Petition.	Page Nos. 1 to 145 of Writ Petition No. 10024 of 2023.
56.	21/09/2023	Additional Affidavit in Reply filed by Respondent No. 2.1, 2.3 to 2.12 in WP No.3205/2018.	Page Nos. 452 to 576 in Writ

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			Petition No. 3205 of 2018.
57.	03/10/2023	Affidavit in Reply filed by TMC in WP No.3205/2018.	Page Nos. 577 to 615 in Writ Petition No. 3205 of 2018.
58.	23/10/2023	Order passed by the Division Bench of this Hon'ble Court, in WP No.6603/2023 and in view of divergence of the opinion between the two learned judges of the bench, the said WP No. 6603 of 2023 was directed to be placed before the third judge of this Hon'ble Court.	Page Nos. 340 to 369 of Writ Petition No. 10024 of 2023.
59.	15/12/2023	Order passed by Division Bench of this Hon'ble Court Inter alia clubbing the hearing of the present Writ Petition No. 3205 of 2018 with Writ Petition No. 10024 of 2023.	
60.	15/12/2023	On the same day, by an order passed by 3rd judge, the hearing of the said Writ Petition No.6603/2023 was deferred until the hearing of the present Writ Petition & Writ Petition No.10024 of 2023 (which are placed before the present bench.)	
61.	04/01/2024	Affidavit in reply filed on behalf of State of Maharashtra (i.e. Respondent Nos. 10 to 12) in Writ Petition No. 10024 of 2023.	Page Nos. 226 to 278 of Writ Petition No. 10024 of 2023.
62.	19/09/2024	Affidavit of Rejoinder on behalf of Petitioner is filed in reply to the Affidavit in reply filed on behalf of State of Maharashtra in Writ Petition No. 10024 of 2023.	Page Nos. 279 to 411 of Writ Petition No. 10024 of

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			2023.
63.	**28/04/2025**	**Order passed by this Hon'ble Court directing TMC to implement earlier order dated 25/11/2022.**	
64.	**27/06/2025**	**Order passed by this Hon'ble Court rejecting the prayer of TMC seeking modification to the order dated 28/04/2025.**	
65.		<u>BRIEF FACTS IN GODREJ AND BOYCE</u>: a. The facts in Godrej and Boyce' case were that Godrej acquired land in Vikhroli, Mumbai by a registered deed of conveyancedated30thJuly,1948fromthe successor-in interest of Framjee Cawasjee Banaji, who, in turn, had been given a perpetual lease of the land by the Government of Bombay on 7th July, 1835. The land was described in the perpetual lease as "wasteland" and one of the purposes of the lease was to cultivate the wasteland. The appeals before the Hon'ble Supreme Court concern an area of 133acres and38 gunthas of land bearing Old Survey Nos. 117, 118 and 120. 72. (a) Then, there was an Act passed, abolishing the see states. After referring to the salient features of this Act, it was stated that Godrej did not accept that the lease was brought to an end by the provisions of this Act and decided to contest the stand of the State Government. It filed a suit in this court for declaration of its ownership and that the Abolition Act had no application to the lands in question. Though the suit was contested by the State Government, later on, there was a consent decree.	

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		(b) Consequently, the Development Plan for City of Bombay, including Vikhroli, was published on 7th January, 1967 and the next development plan was published in 1991. In both the plans, the disputed land was described as residential. Thereafter, Godrej applied for and sought development permissions. (c) Later on, the Urban Land (Ceiling and Regulation) Act,1976 intervened, but M/s. Godrej earned an exemption from the State Government so that the provisions of this Act do not apply to the lands and they were exempted accordingly. After this order of exemption was passed, Godrej applied for and was granted permission by the Municipal Corporation of Greater Mumbaitoconstructmulti-storeyedbuildingsanditconstructed40residential (ground + 4 and ground + 7) buildings, one club house and five electric substations. Over a couple of thousand families occupy these buildings. Further construction was also made for a management institute and other residential buildings. (d) That is how it was aggrieved by a notice bearing no. WT/53 issued to Godrej under section 35(3) of the Act of 1927and which was published in the Bombay Government Gazette of 6th September, 1956. Godrej contested that and even when they had filed the earlier suit and the consent decree was passed therein on 8th January, 1962, issuance of such a notice was never made known to them. It was stated that it searched the	

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		details of this notice in the Department of Archives. The notice, as published in the Official Gazette, bore no date and according to Godrej, it was not served upon it. It was never acted upon. The subsequent events raised doubt whether the notice was issued or served on Godrej **PETITIONER'S SUBMISSIONS**: The Petitioner submits that on a true and correct reading, the following legal principles emerge from the Supreme Court's ruling in *Godrej and Boyce:* A. Reading Paras 72 and 74 of Godrej and Boyce, the following propositions will emerge: a. That according to the law laid down by the Supreme Court, 2(f)(iii) of the Maharashtra Private Forests Act "is in a sense a savings clause"; a. In P. Ramanatha Aiyar's Advanced law Lexicon, 4th Edition, the term "saving clause" has been defined as under: "A "saving clause" is ordinarily a restriction in a repealing Act and saves rights, pending proceedings, penalties, etc., from the annihilation which would result from unrestricted repeal." b. Section 2(f)(iii) of the Maharashtra Private Forests Act i.e. the saving clause is meant to save "pipeline notices". c. "Pipeline notices" or "live notices" have been defined in para 72 of Godrej to mean "…notices issued in reasonably close proximity to the coming in to force of the Private Forests Act which were, "live" and "could be acted upon".	

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		d. Even in para 74, the Supreme Court has held that: "…Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the Forest Act…" e. Since Section 2(f)(iii) of the Maharashtra Private Forests Act has been interpreted to be a savings clause meant to save notices which have been issued under Section 35(3) of the Indian Forest Act such that they would be considered to be live and could be acted upon, the only interpretation that can be placed is that what was saved is notices that were "issued" in reasonably close proximity of the Maharashtra Private Forests Act. f. All further steps including service as well as proceedings with regard to settling disputes u/s. 6 of the Maharashtra Private Forests Act could be completed after 30th August 1975. g. Any other interpretation if placed would mean that the savings clause has become redundant because even if a notice were to be issued within time, it would not be acted upon unless including service of the same-only on account of the Indian Forest Act being repealed. h. The Statement of Objects and Reason of the Maharashtra Private Forests Act inter alia provides that it is considered expedient to acquire private forests in Maharashtra generally for conserving their material resources and protecting them from destruction or over exploitation by their owners.	

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		i. The provisions of the Indian Forest Act and the provisions of the Maharashtra Private Forests Act are welfare legislations meant for the welfare of the general public. Thus even if therefore a purposive interoperation is to be placed on a beneficial piece of legislation, it is trite law that overall intention of the legislation is to further the provisions of the act and not to defeat the same. The same principle has been held by the Hon'ble Supreme Court in ***International Ore & Fertilizers (India) P.Ltd. vs. ESI Corporation***[7] observing in the context of the Employees' State Insurance Act, 1948 that: "*4. … We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified…..*" B. The observations made by the Hon'ble Supreme Court in Paras 56-61 of Godrej and Boyce and in particular para 61 thereof that the word "issue" appearing in Section 2(f)(iii) must include service of the show cause notice as postulated in Section 35 of the Indian Forest Act were made in the context of interpreting the provisions of Section 35 of the Indian Forest Act. In other words, as observed by the Supreme Court in para 61, applying the principle that a words must be construed in the context that it is used, the Supreme Court held: "…By making reference in Section 2(f)(iii)	

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		of the Private Forest Act to "issue" in Section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes" C. It is for this reason that the Hon'ble Supreme Court in para 61 has held as follows: "…Once that is appreciated (and it was unfortunately overlooked in Chintamani) then it is quite clear that "issued" in Section 2(f) (iii) of the Private Forests Act must include service of the show-cause notice as postulated in Section 35 of the Forest Act." d. The context in which the Hon'ble Supreme Court has construed the word "issue" to include "service of the show cause notice" was clearly in the context of the object underlying the provisions of the entirety of Section 35 of the Indian Forest Act. D. In other words, the Supreme Court has come to a conclusion that service of a notice is required for the purposes of Section 35 of the Indian Forest Act to make it effective. It has not come to the conclusion that service of the notice is required prior to 30th August 1975 in order for it to be saved under section 2(f) (iii) as a "pipeline notice". Any other interpretation if placed on para 61 vis a vis para 74, would mean that there is an apparent inconsistency between the conclusion in Para 61 vis a vis the conclusions of para 72 and 74. E. In fact the expression "By making a reference in Section 2(f)(iii) of the Private Forest Act to "issue" in section 35 of the Forest Act, it is clear that the word is dressed in borrowed robes…" means that the word "issue" has been borrowed from Section 35 of the Indian Forest Act and must therefore be	

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		interpreted in that context to include service of the show cause notice in order to make the provisions of Section 35(4) to (7) of the Indian Forest Act effective. F. On a comparison of Section 21 of the Maharashtra Private Forests Act with the provisions of Section 35 of the Indian Forest Act it is clear that whereas in the case of the Indian Forest Act, Section 35, requires issuance of the service of the notice prior to the issuance of a final notification under Section 35(1), in case of Maharashtra Private Forests Act, issuance and service of the notice are steps that follow subsequent to the publication of the notification. To read the words "issued" under Section 2(F) (iii) as "issued and served prior to 30.08.1975" would be contrary not only to para 72 and 74 of the judgment in Godrej and Boyce but also to the provisions of the Maharashtra Private Forests Act, particularly section 21 thereof. G. Therefore the conclusion of the Supreme Court in para 72 that Sec 2(f)(iii) of Maharashtra Private Forests Act is not intended to apply to notices past their shelf life but only pipeline notices issued reasonably close to the coming into force of the Maharashtra Private Forests Act could be acted upon will bring within the savings clause a notice issued prior to 30.08.1975 under Section 35(3) of the Indian Forest Act, even though served after 30th August 1975, but in close proximity to the Section 35(3) notice. (iii) That although the earlier Appeal & remand were only re the 24 acres sought to be released/ exchanged & although	Para 8 Pgs.106-108 WP Ground r/Pgs 25-26

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		Respondent No. 2 was not claiming this area or any part thereof, the Deputy Collector was entitled to consider Respondent No. 2's claim to be in possession/cultivation under Section 3(2) read with Section 6 of the Private Forests Act. The MRT held that the SDO/Deputy Collector was not restricted only to the issue of 24 acres raised by the Respondent No. 1. Note:- Petitioner's Reply: a. The 7/12 extracts for the subject land in August 1975 do not indicate any cultivation by Respondent No. 2 or anyone else. Instead, they show the land consisted of "palmyra trees and a deserted stone quarry." Respondent No. 1 never contended either before the State Government or under the Sec. 6 inquiry that the land was being cultivated by a tenant – either in the first or second round of proceedings before the SDO. Moreover, Respondent No. 2 admitted before the Tahsildar that he had no tenancy receipts from Respondent No. 1. There is no credible evidence to support Respondent No. 2's claim of cultivating the subject land prior to the appointed day. (Ground r/Pgs. 25-26 of WP). a. Respondent No. 2's application for declaration of tenancy was made on 25-7-1991 ("tenancy declaration application") i.e., 16 years after the property was vested completely with the government and nearly 40 years after "Tillers' Day". The Petitioner was not made a party to the tenancy declaration application. (Grounds s-t/Pgs. 26-27 of WP). b. W.r.t the Tahsildar order declaring Respondent No. 2 as a tenant ("Tahsildar	WP Ground s-t/Pgs 26-27 WP Ground w/Pgs 28 WP Ground x/Pgs 28-29

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		order"), the Petitioner submits as follows: c-1 The Tahsildar order refers to a reply filed by Respondent No. 1., but the contentions taken in the said reply to do not find mention anywhere in the order (Ground w/Pg. 28 of WP). c-2 The Tahsildar's order incorrectly states that Respondent No. 1 had the land released from acquisition. In reality, Respondent No. 1 did not secure the release of any part of the land. Respondent No. 1 admitted that the entire subject land (Gat. No. 59A/1) was forest land but only requested that 24 acres not be taken into possession, offering to surrender an equivalent area in other gat numbers instead. Of the 193 acres, 168 acres were acquired and are now part of the Sanjay Gandhi National Park, which includes the land claimed by Respondent No. 2. Importantly, Respondent No. 2 never raised any dispute under Section 6 of the Private Forests Act. The inquiry before the SDO Thane pertains only to the remaining24 acres, which does not include the land occupied by Respondent No. 2.(Ground x/Pgs. 28 -29 of WP) c-3 The Tahsildar order mentions that in the 7/12 extracts between 1981 and 1987 the cultivation column shows the name of the Respondent No. 2. This would be of no consequence because the land was already acquired and deemed to be vested in the State Government as on 30.08.1975. Surreptitious insertion of the Respondent No. 2's name in the cultivator's column for the brief period between 1981 and 1987 could not	WP Ground y/Pgs 29-30 WP Ground z-bb/Pgs 30-

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		therefore take the land out of the description of forest land under Section 3(2) of the Private Forests Act. <u>There is no explanation why the name of Respondent No. 2 does not appear in the said column before 1981andafter 1987.The table showing the columns "Year" and "Cultivation"clearly show that from 1966 to 1973 and as well as in 1974 and 1975 the land was uncultivated and quarry land</u>. This table does not support the claim that Respondent No 2 was cultivating the land much prior to 'Tiller's day'asrequiredundertheBTandALAct1948. (**Ground y/Pgs. 29 -30 of WP**). c-4 In the proceedings before the Tahsildar, Respondent No. 1 explicitly denied that Respondent No. 2 was his agricultural tenant. Notably, the Tahsildar's order fails to disclose the date on which it was issued. Furthermore, the order provides an explanation for the absence of rent receipts from Respondent No. 1 to Respondent No. 2, despite Respondent No. 2 not offering any such explanation in his application (**Ground z-bb/Pgs. 30-31 of WP**). d. The criminal proceedings cited by Respondent No.2 in his intervention application before the SDO arose from his prosecution under Section26 of the Indian Forest Act for alleged encroachment on forest property and construction of structures. The criminal court, based on the evidence presented, concluded that the structures were older than the period of the alleged encroachment, leading to Respondent No. 2's acquittal, which was upheld by the Mumbai High Court.	31 WP Ground dd/Pgs 31-32 WP Ground ee-gg/Pgs 32-33 Para 4-6/Pgs.103-106 WP Ground jj/Pg 33

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		However, it is a well-established legal principle that a judgment in one proceeding is neither conclusive nor binding in another. Each case must be decided based on the evidence specific to its proceedings (**Ground dd/Pgs.31- 32 of the WP**).	
		e. Respondent No. 2 failed to provide any evidence proving that he was lawfully cultivating the land as of 30.08.1975. The criminal court orders in both proceedings contain no finding that Respondent No. 2 was in possession of 18A 18g prior to 30.08.1975. The Trial Court's order in Criminal Case No. 5227/82onlymentions4acres, while the High Court's order in Criminal Appeal No. 172/93 does not specify any area. Thus, reliance on these criminal proceedings is misplaced and reflects a lack of application of mind. (**Grounds ee-gg/Pgs. 32-33 of the WP**)	WP Ground kk/Pgs 35 WP Ground ll/Pgs 35-36
		d. That the Deputy Collector was entitled to *suo moto* take cognizance of the village settlement (Konkanipada) (**Paras 4 to 6, Pg 103-106**). (**Note:Petitioner's Reply:** a. No application was made under Section 6 of the Private Forests Act to claim exclusion of the village settlement. The record shows that no such issue was raised by any party. The then SDO did not ask any parties to address the exclusion of the village settlement, and no representative of the settlement appeared or made any submissions supporting this claim. There was no material or justification for the SDO to consider such a claim or order its exclusion, as stated in the impugned order (**Ground jj/Pg. 35 of WP).** b. As the inquiry was remanded for	WP Ground oo/Pgs 35-36 Para 17/Pgs 112-114 WP Ground

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		consideration of the limited aspect of whether the 24 acres approximately was Forest or not, there was no jurisdiction for the then SDO to decide anything else. (Ground kk/Pg. 35 of WP). c. The Petitioner had not been heard whatsoever on the aspect of whether or not the village settlement area (17A 19g) could be legitimately excluded from forest area. The then SDO did not even give the appellant an idea that he was going to decide such an issue (Ground ll/Pgs. 35-36 of WP). d. Following the Bombay High Court's orders in WP 305/95, eviction proceedings are underway for encroachers in the village settlement. Many encroachers have made payments as required by the High Court to qualify for alternative accommodation. Given this, there was no need to consider whether the village settlement fell outside the scope of 'Forest' under the Private Forests Act. The Petitioner could have presented the records of these proceedings to the SDO if the SDO had indicated any intention to consider the village settlement's case (Ground oo/Pgs. 35-36 of WP). (v) That the Notice was also bad as it was addressed to D Dayabhai & Co and not to D Dayabhai & Co Pvt. Ltd. (Para 17, Pgs. 112-114). (**Note: Petitioner's Reply:** e. The MRT ruled that no notice was "issued" or "served" on Respondent No. 1 because the notice was addressed to "D Dayabhai and Co." while the name on the 7/12 extract was "D Dayabhai and Co.	m/Pgs 23

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		Pvt. Ltd." The SDO dismissed this as a clerical error. The MRT's reasoning overlooks the fact that Respondent No. 1 never claimed there was another entity called D Dayabhai and Co. owning the land. Respondent No. 1 requested an inquiry under Section 6 of the Private Forests Act and never argued that the notice was not received by it or that the notice was misleading or that the land in question was not theirs or that the land in question is not a forest. Additionally, Respondent No. 1 offered land from other holdings (gat nos. 59/2, 59/3, and 59/16) for exchange, which they would not have done if they believed their land was not subject to acquisition. (Ground m/Pg. 23 of the WP) Appeal No 165 was dismissed and Appeal 229 was allowed and it was held that the said land was not covered by the Forest Acquisition Act. **Comments by R1,** **In the proceedings before Dy. Collector specific Affidavit was filed by Mr. Chimanlal Shah on 3rd December 1999 stating that he is the accountant of D.Dahyabhai& Co. which is a separate entity and that it is a proprietary concern. He received registered envelop on 04/09/1975 but D.Dahyabhai& Co. is the different entity and not the owner of subject land of said notice. Fact of said statement is concealed in the note by the Petitioner.** **Present matter is fully covered by both judgments of Supreme Court in the case of Godrej & Boyce and Rohan Vijay Nahar. In Godrej & Boyce's case the word "issued" is interpreted to include the service also. In the circumstances the word "issued" mentioned in para 72 of Godrej judgement in respect of**	

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		pipeline notice in close proximity, has to be taken up to mean that pipeline notice meant by the Hon'ble Supreme Court were those notices which were issued and served in the close proximity. Para 72 cannot be interpreted to mean that only issuance of notice is sufficient to rank it as pipeline notice, live notice. To make any notice pipeline or live process what is required is strict compliance of statutory provisions. As well as non-missing of all mandatory links provided under Section 35. The notice which is served before appointed day only could be considered as live notice. Because in Rohan Vijay Nahar's case Hon'ble Supreme Court has specifically stated that only upon receipt of notice by the true land owner right to take objection triggers. In the present matter there is no proof either about issuance of notice prior to appointed day or its service prior to appointed day upon the true owner. Service is admittedly upon wrong addressee. This has been consistent stand of Respondent NO.1 since beginning i.e. before Dy. Collector in the remand enquiry as well as before MRT and in present Writ Petition. In view of what is held in Rohan Vijay Nahar 's case, the issuance of notice cannot co-exist with the final notification. In present matter notice was served on wrong addressee but admittedly on 04/09/1975. Thus it is only on 04/09/1975, right of owner triggered to object. But on 04/09/1975 Section 35 was already repealed. So, service of notice on 04/09/1975 is nothing but a service of a dead notice because on appointed day there was no live process. Process become live only when owner's right to take objection triggers. In present matter such right triggered on 04/09/1975. The facts involved in the present matter are almost similar and identical to the facts	

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		involved with the Godrej Case and Rohan Vijay Nahar's case. In both the cases it is specifically held that service cannot be divorced from issuance. Thus word issue as contemplated under Section 2 (f) (iii) is interpreted to mean serve also. Thus, issuance and service both need to be completed before appointed day. Only those notices which are issued and served before the appointed day can be ranked as pipeline notice because what is meant by pipeline notice by the Hon'ble Supreme Court is a live process. In both the judgements it is already held that the process shall become live only upon service. The process in the present matter also was not live on the appointed day. Even if it is presumed that notice was issued on 29/08/1975 it becomes a dead notice because of its service after appointed day. Treating the present matter differently from those two matters would amount to mis interpreting the law laid down by the Hon'ble Supreme Court in both the judgements. In the respectful submission of Respondent No.1 that would be against the judicial discipline which is underlined by Hon'ble Supreme Court in Rohan Vijay Nahar's case. Writ Petition No. 3205 of 2018 thus deserves to be dismissed and order of MRT needs to be confirmed.	

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ANNEXURE 'E'

PETITIONERS' NOTE IN REJOINDER TO RESPONDENT NO.1'S ARGUMENTS

The Petitioner's rejoinder to the submissions advanced by Respondent No. 1 is set out as follows:

1. Respondent No. 1's Submission: No proof of "*issuance*" of the notice dated 29.08.1975 prior to the appointed day.
Petitioner's Response: 1.1 The entirety of the submission viz, that the Section 35(3) notice was not issued before the appointed day i.e., 30.08.1975, is contrary to the record relied upon by Respondent No.1 itself. 1.2 In support of this submission, Respondent No. 1 has relied up on a Marathi transcript of the cross-examination of Shri. Ramesh Pandurang Pakhare, Assistant Conservator of Forest SGNP recorded before deputy collector on 24.11.1999 (**Pgs. 87-88 of Respondent No. 1's additional compilation of documents**). 1.3 However, Respondent No. 1 has not produced a translation of the same. 1.4 Even an office translation (carried out by the Forest Department) of the relevant proration of the cross-examination reads as follows: "*A registered post receipt is being submitted (xerox copy) as proof that a notice under section 35(3) regarding the said land was sent to D. Dayabhai by registered post on 29/08/1975, and that D. Dayabhai received the said notice on 04/09/1975.*" 1.5 Significantly Respondent No. 1 has not produced the xerox copy of the registered AD postal receipts, a xerox of which appears to have been produced by Shri. Pakhare during his cross-examination.

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1.6 This is borne out by the following answer given in Shri Pakhare cross-examination;

"*A registered post receipt is being submitted (xerox copy) as proof that a notice under section 35(3)…"*

1.7 It is trite law that all answers given by a witness during cross-examination are deemed to be the evidence of the party cross-examining the witness.

1.8 Since there does not appear to be any further cross of Shri Phakre, the cross-examination establishes the following two facts viz

(a) That a xerox copy of the registered post receipt by which a Section 35(3) notice was issued to Respondent No. 1 was produced on the record;

(b) that the registered post receipt established the date of issuance of the Section 35(3) notice as 29.08.1975 and the date of its receipt as 04.09.1975.

1.9 Significantly, the objection that the notice under Section 35(3) was never issued prior to the appointed day has never been raised by Respondent No. 1 in any of the pleadings filed by it, including:

(a) in the affidavit-in-reply filed in the present writ petition;

(b) in the Section 6 proceedings filed by Respondent No. 1 before the SDO on 19.01.1980.

(c) before the MRT in the appeal filed by the Petitioner against the SDO order dated 03.06.1980 wherein the MRT remanded the matter back to the SDO vide order 15.10.1982.

(d) before the SDO in the second round which was concluded by an order dated 27.12.2024.

(e) before the MRT wherein both the Petitioner and Respondent No. 1 filed an appeal against the SDO order dated

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27.12.2024 which culminated into the passing of the impugned order dated 30th June 2017.

1.10 This objection has been raised across the bar without Respondent No. 1 putting his oath to this submission.

1.11 Thus, this fact, that a notice under Section 35(3) was issued prior to appointed day, is a fact admitted Respondent No. 1 by non-traverse.

1.12 It is trite law that a judicial admissions stand on a higher footing than evidentiary admissions (**Para 27**, ***Nagindas Ramdas v. Dalpatram Ichharam, (1974) 1 SCC 242***).

1.13 Given the serious consequences of a Section 35(3) notice being issued before the appointed day, it is impossible to believe that this objection would never have been raised by Respondent. 1 till the present matter.

1.14 Respondent No.1 is therefore estopped from raising this objection before this Hon'ble Court.

2. Respondent No. 1's Submission: The Section 35(3) notice was issued in the name of Dayabhai and Co. and not Dayabhai and Co. Pvt Ltd.

Petitioner's Response:

2.1 This submission is contrary to the admission made by Respondent No. 1 in Writ Petition No. 1026 of 1975, filed by Respondent No. 1 before this Hon'ble Court. It is pertinent to note that Respondent No. 1 was the first petitioner in Writ Petition No. 1026 of 1975, and the second petitioner therein was a Director of Respondent No. 1. Respondent No. 1 has categorically admitted as follows:

a. **Para 10/Pg. 21 of Respondent No. 1's additional compilation of documents**:

> "*10. By a notice dated 29th August 1975, the first Respondent purporting to act under the provisions of the said Central Act purported*

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*to issue a notice **to the 1st Petitioner** under the provisions of S.35(3) of the said Central Act, requiring 1st Petitioner to show cause as to why a notification under S.35(1) of the said Central Act should not be issued in respect of the said land. The said notice was served upon the Petitioner on 4th September 1975.*"

(*emphasis supplied*)

b. **Para 12(r)/Pg. 30 of Respondent No. 1's additional compilation of documents**:

"***The** Petitioners submit that the impugned notice dated 29th August 1975 (Exhibit "A" hereto visits the Petitioners with Civil consequences….*"

(*emphasis supplied*)

c. **Exh. D of WP 1026/Pg. 44 of Respondent No. 1's additional compilation of documents:**

"*RE **NOTICE** DATED TWENTY NINTH AUGUST 1975 ISSUED BY CONSERVATOR OF FORESTS THANE RECEIVED ON FOURTH SEPTEMBER 1975 ISSUED BY SUBDIVISIONAL OFFICER FORESTS, BORIVILI, NATIONAL PARK AGAINST OUR **CLIENTS D. DAYABHAI AND CO. PRIVATE LIMITED** IN RESPECT OF LAND BEARING GAT NO. 59/1…"*

(*emphasis supplied*)

d. **Para 2 of Affidavit in support of WP 1026/1975 Pg. 48 Respondent No. 1's additional compilation of documents:**

"*I say that a notice dated 29th August 1975 issued by the Conservator of Forests, Thane was received **by the 1st Petitioner Company***

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only on the 4th September 1975…'

(*emphasis supplied*)

2.2 It may be noted that D. Dayabhai and Co. was not even made a party to WP No. 1026 of 1975.

2.3 If this objection raised that the notice was erved on the wrong entity was correct, Respondent No. 1 would have no locus to filed WP 1026 of 1975.

2.4 As stated herein above judicial admissions stand on a higher footing than evidentiary admissions.

3. Respondent No. 1's Submission: As the letters dated 05.07.1979 and 28.08.1979 were sent to the Petitioner "*without prejudice*", they do not amount to an admission under Section 23 of the Indian Evidence Act.

Petitioner's Response:

3.1 Firstly it maybe noted that it is not the Forest Department or the State Government that has disclosed the letters dated 05.07.1979 and 28.08.1979 which were marked with the words "*without prejudice*" and which have now been produced Respondent No. 1 in his additional compilation of documents.

3.2 Respondent No. 1 has produced/relied on these documents in the current proceedings, Respondent No. 1 has waived the privilege covered by Section. 23 of the Indian Evidence Act.

3.3. Additionally, it is obvious that the offer made by Respondent No. 1 in letter dated 28.08.1975 was not intended to be a privilege communication. This because in the course of the Section 6 proceedings, Respondent No. 1 called upon the SDO to accept his offer of exchanging 24 acres of land belonging to Respondent No. 1, not covered by the Notice under 35(3) in exchange for 24 acres of land covered by the notice.

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3.4 It has never been Respondent No. 1's case in any proceeding so far that 24 acres of the land offered in exchange by Respondent No. 1 was in any form a manner in full and final settlement and or a waiver of the right to challenge to notice under Section 35(3).

3.5 Nor was the offer made for surrender of 24 acres made on a condition that he would withdraw his challenge to the contentions raised in the WP No. 1026 of 1975.

3.6 Furthermore, the contention raised across the bar that WP. 1026 of 1975 was withdrawn on the ground that the judgment of *Waghmare* upheld the constitutional validity of the Maharashtra Private Forest Act is contrary to the stand taken by Respondent No. 1 in its affidavit-in-evidence (Para 7.23/Pg. 131) filed in the present proceedings.

3.7 In the said affidavit, Respondent No. 1 has stated that WP. 1026 of 1975 was withdrawn in light of the order passed by the Sub-Divisional Officer dated 03.06.1980, whereby substitution of 24 acres of land was permitted.

3.8 In fact the Order of this Hon'ble Court dated 17.06.1980 records WP. 1026 of 1975 was withdrawn without liberty and costs were imposed (**Pg. 77 of Respondent No. 1's additional compilation of documents**)

3.9 It is submitted that in light of the decision of the Supreme Court in ***Peacock Plywood (P) Ltd. v. Oriental Insurance Co. Ltd.*, (2006) 12 SCC 673**, these letters will not be protected under Section 23 of the Indian Evidence Act. The relevant paras are produced below:

> "***42. Only because the expression "without prejudice" was mentioned, the same, in our opinion, by itself was not sufficient and would not curtail the right of the insured to which it was otherwise entitled to. The expression "without prejudice" may have to be construed in the context in which it is used. If the purpose for which it is used is accomplished,***

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no legitimate claim can be allowed to be defeated thereby*…*

43… Privilege can be waived at the behest of the party entitled to the privilege. ….”

4. **Respondent No. 1’s Submission: The said land is not a forest and it is being used for non-forest activities.**

Petitioner’s Response:

4.1 In WP 1026 of 1975 Respondent No. 1 has admitted on oath that the land was put to non-forest use only to a limited extent viz:

(a) **Para 5/Pg. 13 of Respondent No. 1’s additional compilation of documents**: Respondent No. 1 has leased 21 acres in favour for three quarry operators.

(b) **Para 6/Pgs. 13/14 of Respondent No. 1’s additional compilation of documents**: approximately 17 acres out of the balance of approx183 acres constitute fruit orchid and a garden operated by Respondent No. 1.

4.2 In the letter dated 05.07.1979 at page 55 of Resppndent No. 1’s additional compilation of documents, Respondent No. 1 admits that the fruit orchard is only 18 acres of which only 10 acres was being acquired as forming Part of Gat No. 59/1.

4.3 In the very same letter dated 05.07.1979 Respondent No. 1 also offered to surrender 128 acres thus admitting that a large part of the land is a forest land. (Pg. 57 of Resppndent No. 1’s additional compilation of documents under the Maharashtra Private Forest Act).

4.4 In the Section 6 application dated 19.01.1980 at Pg. 63 of the Respondent No. 1’s additional compilation of documents, Respondent No. 1 admitted that only 24 acres out of the said land was under cultivation hence he offered to exchange another 24 acres which was not covered by the Section 35(3)

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notice.

4.5 Therefore, as Respondent No. 1, in 1980, had only sought for 24 acres, it does not now lie in Respondent No. 1's mouth to say large parts of the said land is a non-forest area.

4.6 This submission by Respondent No. 1 viz, said land is not a forest and it is being used for non-forest activities is also contrary to the Google Earth Image taken as late as on 5th December 2025 that show the said area as a forest land.

4.7 Furthermore, it is Petitioner's case that the said land falls within the SGNP division not that the said land falls within the SGNP as notified on 16.01.1996.

4.8 In the additional affidavit dated 01.07.2019 filed in the current WP, Mr RB Kumbhar, Divisional Forest Officer wherein he has stated that the entire area (193 acres) of land in survey number 59/A in Chitalsar-Manpada Thane is included in the Village Form-1A maintained by **SGNP Division** as required by the Forest Manual and the Maharashtra Land Revenue Code, 1966.

4.9 In light of the above it is submitted that the said land is in fact a forest.

5. Respondent No. 1's Submission: Re *Godrej & Boyce and Rohan Nahar*

Respondent No. 1 Submitted that the following was held in *Godrej & Boyce* and the same was affirmed in *Rohan Nahar*

(a) A Section 35(3) notice should be issued and served before the appointed day.

(b) The service of the Section 35(3) notice must be in accordance with the rules for service of summons under the CPC and must be published in accordance with the rules.

(c) The savings clause i.e., Section 24 of the Maharashtra Private Forests Act only applies to proceedings for

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restoration of land under Section 22A

Petitioner's Response:

5.1 The Petitioner submits the following with respect to each of the above submissions:

Re: Section 35(3) notice should be issued and served before the appointed day

5.2 This submission is based on the observations of the Hon'ble Supreme Court contained in Paras 59 to 61 of *Godrej & Boyce*.

5.3 The context in which the Supreme Court made this observations was with respect to stale notices that had passed their shelf life i.e. notices issued in the 1950/60s but which have neither been served or acted upon.

5.4 As was already contended by the Petitioners in their opening submissions, the Supreme Court in the same judgement of *Godrej & Boyce* made a clear distinction between "*stale*" and "*live*" notices.

5.5 In para 72 of Supreme Court judgement in *Godrej & Boyce*, the Supreme Court has defined pipeline notices as notices issued in reasonably close proximity to the coming into force of the Maharashtra Private Forests Act were "live" and could be acted upon.

5.6 It is significant that the Supreme Court has not used the expression that Section 2(f)(iii) was intended to apply to notices that had been **issued and served** in close proximity to coming into force of the Maharashtra Private Forests Act.

5.7 Further, as contended by the Petitioners in their opening submissions, the Hon'ble Supreme Court in Para 74 of *Godrej & Boyce* has held that

> "*…Section 2(f)(iii) of the Private Forests Act is in a sense a saving clause for pipeline notices issued under Section 35(3) of the*

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> *Forest Act but which could not, for want of adequate time be either withdrawn or culminate in the issuance of a regulatory or prohibitory final notification under Section 35(1) of the Forest Act, depending on the objections raised by the landowner*"

5.8 Therefore it is submitted that in the case of "*pipeline/live*" notices, issuance of the notice in close proximity of the coming into force of the Maharashtra Private Forest Act would save the notices such that they could be acted upon under the provisions of the Maharashtra Private Forest Act.

Re: The service of the Section 35(3) notice must be in accordance with the rules for service of summons under the CPC and must be published in accordance with the rules

5.9 The observation of the Supreme Court that the service of the Section 35(3) notice must be in accordance with the rules for service of summons under the CPC and must be published in accordance with the rules and must be published was also made in the context of the provisions of the Indian Forest Act and in particular notices which had been issued in the 1950/60s and not served on the noticees.

5.10 The justification given by the Supreme Court for service of the notice is found in para 55 of *Godrej & Boyce* wherein the Supreme Court has observed that:

> (i) A notice under 35(3) is intended is intended to give an opportunity to the owner of a forest to show cause why, inter alia, a regulatory or a prohibitory measure be not made in respect of that forest.
>
> (ii) The owner of the forest is expected to file objections within a reasonable time as specified in the notice and is also given an opportunity to lead evidence in support of the objections.
> (iii) The owner of the forest is entitled to a hearing on the objections.

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(iv) The entire procedure obviously cannot be followed by the State and the owner of the forest unless the owner is served with the notice. Therefore, service of a notice issued under Section 35(3) of the Forest Act is inherent in the very language used in the provision and the very purpose of the provision.

5.11 Further, in para 56 of Godrej & Boyce, the Supreme Court has observed that under the provisions of Section 35(4) the noticee can be obligated obliged to adhere to one or more of the regulatory or prohibitory measures mentioned in Section 35(1) of the Forest Act.

5.12 Further on the failure of the owner of the forest to abide by the aforesaid obligations, the notice is liable is liable to imprisonment for a term up to six months and/or a fine under Section 35(7) of the Forest Act.

5.13 It is also for this reason that in Para 57 of *Godrej & Boyce*, the Supreme Court holds that under Section 35(4) of the Indian Forest Act a direction under 35(4) can be made to prevent damage to or destruction of a forest. The Supreme Court therefore concludes by holding that:

> "…If *the* notice under Section 35(3) of the Forest Act is not served on the owner of the forest, he/she may continue to damage the forest defeating the very purpose of the Forest Act. Such an interpretation cannot be given to Section 35 of the Forest Act nor can a limited interpretation be given to the word "issued" used in the context of Section 35 of the Forest Act in Section 2(*f*)(*iii*) of the Private Forests Act"

5.14 This is the context in which the Supreme Court in Para 58 observes that a Section 35(5) notice mandates that:

> "*not only service of a notice issued under that provision "in the manner provided in the Code of* Civil *Procedure, 1908, for the service of*

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summons" (a manner that we are all familiar with) but also its publication "in the manner prescribed by rules". not only service of the summons"

Re: The savings clause i.e., Section 24 of the Maharashtra Private Forests Act only applies to proceedings for restoration of land under Section 22A.

5.15 Whilst it is true that the savings clause in Section 24 only applies to 22A, by reason of the law laid down in *Godrej & Boyce*, it has been held that 2(f)(iii) is in the nature of savings clause and therefore saves notices issued in close proximity of the appointed day.

5.16 It is retreated that repeats and retiaries that judgements cannot be read as theorems.

6. Respondent No. 1's Submission: The Forest Department is not in possession of the said land

(i) The Forest department has admitted this fact in its letter dated 23rd January 1980

(ii) By virtue of the registered deeds executed between TMC and Respondent No.1, Respondent No. 1 has handed over possession of over 100 acres of the said land to TMC and Respondent No. 1 is now entitled to receive DRCs in exchange for the said land from TMC

Petitioner's Response:

6.1 The Petitioner submits the following with respect to each of the above submissions:

Re: The Forest department has admitted this fact in its letter dated 23rd January 1980

6.2 The statement made in this letter does not seem to be correct in light of the fact that the Petitioner has already pleaded during his opening submission that Forest department has

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constructed boundary walls, an entry gate, a security cabin, a nature interpretation centre, and other structures for protecting the said land.

Re: By virtue of the registered deeds executed between TMC and Respondent No.1, Respondent No. 1 has handed over possession of over 100 acres of the said land to TMC and Respondent No. 1 is now entitled to receive DRCs in exchange for the said land from TMC

6.3 As stated herein above, the Forest Department continues to remain in physical possession of the said land.

6.4 However, the legal possession may have remained with Respondent No. 1 on account of Impugned MRT Order dated 30th June 2017 deciding the appeal under Section 6 in favour of Respondent No. 1.

6.5 In other words, the land would have legally vested in the State Government only if the Section 6 application was decided in favour of the State Government.

6.6 The Impugned Order of the MRT was passed on 30th June 2017 and the current writ petition viz. WP 3205 of 2018 was filed in 2018.

6.7 Admittedly Respondent No. 1 has attempted to create rights in favour of TMC vide two registered deeds of transfer dated April and May of 2019 i.e., after becoming aware of the pendency of the current writ petition which was served on Respondent No. 1 in January 2018.

6.8 Since the land was in the physical possession of the Forest Department, Respondent No. 1 could not have validly transferred physical possession to TMC.

6.9 In fact TMC has issued a possession receipt to Respondent No. 1 on 23rd April 2019 (**Exh.K/Pg 274 of Respondent No. 1's affidavit-in-reply**) in respect to a portion of the said land, wherein the possession receipt states as under:

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"*This possession receipt does not mean that Thane Municipal Corporation has taken physical possession of the said land* categiorically stating that they are not in physical possession.

6.10 It is trite law that if the order passed by the tribunal was to set aside by this Hon'ble Court by virtue of Section 144 of the CPC, Respondent No. 1 maybe ordered to restitute all benefits that it may have derived pursuant to the orders of MRT.

6.11 This has been held by the Hon'ble Supreme Court in Padanathil Rugmini Ama Vs. P.K. Abdulla (1996) 7 SCC 668 as under:

> "*10…Section 144 of the Civil Procedure Code where and insofar as a decree or an order is varied or reversed or is set aside, the court which passed the decree or order, shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order. For this purpose, the court may make such orders including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.*"

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ANNEXURE 'F'

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1 TO PETITIONER'S REJOINDER:

A. Suppression and Misrepresentation by the Petitioner (Re: Para 1.4)

1. The Petitioner, while relying upon paragraph 1.4 of its Note in rejoinder which read as under:

> *1.4 Even an office translation (carried out by the Forest Department) of the relevant proration of the cross-examination reads as follows:*
>
> *"A registered post receipt is being submitted (xerox copy) as proof that a notice under section 35(3) regarding the said land was sent to D. Dayabhai by registered post on 29/08/1975, and that D. Dayabhai received the said notice on 04/09/1975."*

The petitioner has deliberately and wilfully has once again tried to mislead the Hon'ble Court by suppressing material facts, thereby misleading this Hon'ble Court.

a. The Petitioner has consciously stated that the alleged notice was served upon "D. Dayabhai", while suppressing the crucial fact that:

i. The alleged notice was not served upon the original owner, namely D. Dayabhai Co. Pvt. Ltd.;

ii. The alleged notice was instead addressed to an incorrect and non-juristic entity, rendering the entire service void ab initio.

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b. It is further an admitted position of the Petitioner itself that the said notice was received only on 4th September 1975, i.e. after the repeal of the relevant Act.

c. Once the statute itself stood repealed, no proceedings, rights, obligations or consequences could survive, much less be resurrected on the basis of an invalid and belated notice.

B. Illegal Reliance on Inadmissible Evidence

a. The Petitioner has heavily relied upon a xerox/photocopy of a registered post receipt, which is:

i. Inadmissible in evidence under the Indian Evidence Act;

ii. Neither primary evidence nor proved in accordance with law;

iii. Rejected during trial itself for want of proof.

b. It is a settled principle of law that mere photocopies do not constitute admissible evidence unless foundational requirements are satisfied.

The Petitioner's reliance on such inadmissible material vitiates the entire case and exposes the mala fide attempt to create a false record.

C. Testimony of Interested Witness

a. The Petitioner has relied upon the statement of Shri Pakhre, who is:

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i. An employee of the Forest Department;

ii. An interested and partisan witness;

iii. The very person whose conduct has created unnecessary litigation, confusion, and grave hardship to the Respondent.

b. Reliance on such a witness, without independent corroboration, cannot override statutory lapses, legal repeal, and absence of lawful service.

D. Clear Case of Suppression of Material Facts

a. The Petitioner has deliberately suppressed the following material facts:

i. That the alleged notice was served on the wrong person;

ii. That the alleged service is sought to be proved only by a xerox copy;

iii. That the notice was admittedly received after repeal of the Act;

iv. That there is no legally valid service upon the lawful owner.

v. That the Petitioner does not have any proof about actual dispatch of notice prior to appointed day.

b. Such suppression strikes at the very root of the Petitioner's case and disentitles the Petitioner from any equitable or discretionary relief.

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E. MRTP Act – Lapse of Reservation and Collusive Conduct

a. The Respondent no.1's land in question falls under the development plan passed and published vide notification dated 1986 approved by the State of Maharashtra in the year 1991 for City of Thane after considering all objections and suggestions as per the statutory provisions of MRTP ACT 1966. This unequivocally establishes that the reference land is situated outside the notified boundary of Sanjay Gandhi National Park (SGNP), and that the Thane Municipal Corporation is the competent planning and implementation authority for the said land.

b. In view of the Development Plan reservation designating the land as a park, the Respondent has at all times refrained from carrying out any non-forest activities and, for the overall welfare and betterment of Thane City, has remained committed to preserving and maintaining its status as a park.

c. A valid notice under Section 127(2) of the MRTP Act was served; the copy of the said notice is enclosed for ready reference.

d. The Planning Authority failed to take steps within the statutory period;

e. The Respondent respectfully submits that, acknowledging the Petitioner's contention that a park is an essential amenity for the citizens of Thane and respecting public sentiment and necessity, even though a notice under Section 127(2) of the MRTP Act was served and the reservation had lapsed due to inaction, the Respondent nonetheless accepted Transferable Development Rights (TDR) in lieu of monetary compensation for the development of the park. Accordingly, with the intention of enabling the Thane Municipal Corporation to develop and maintain the park reservation and preserve its natural character, the Respondent accepted the TDR for the overall betterment of the citizens of Thane.

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f. The letter dated 8.1.2020 (**Exh.H page 120 of WP No.10024/2023**) issued by TMC to the forest department clearly established the fact and willingness to Develop the park reservation for which last three paragraphs are reproduced as below:

> विषयांकित मिळकतीबाबत व त्यावर असलेले पार्क आरक्षणमहापालिकेने सदर क्षेत्र संपादित केल्यानंतर त्याचा वनेत्तरकामाकरीता वापर होणार नसुन, विकास नियंत्रणनियमावलीतील तरतुदीनुसार पार्क आरक्षणाकरीताअस्तित्वातील निसर्ग संपत्ती अबाधित ठेऊन वापर होणार आहे.
>
> त्यानुसार भुखंडधारक यांना सदर भुखंडावरील पार्क आरक्षणक्र.४ ने बाधितक्षेत्र हस्तांतरीत केलेले असल्याने सदर क्षेत्राचामोबदला भूखंडधारकास देणे महानगरपालिकेस कायद्यानेबंधनकारक आहे. यदाकदाचित ठाणे महानगरपालिकेनेभुखंडधारकास मोबदला न दिल्यास भुखंडधारक कायदेशीरकार्यवाही करण्याची शक्यता आहे.
>
> सबब,उपरोक्त प्रकरणी ग.नं.५९अ, हि.नं.१/१वर नमुद मंजुरविकास आराखड्यातील पार्क आरक्षण क्र.४ चे अस्तित्वातीलनिसर्ग संपत्ती अबाधित ठेवुन नैसर्गिक सौंदयाचे जतन करुनमहापालिका सामाजिक वनीकरण करणार आहे. तसेच सदरभुखंड वन विभागास आवश्यक असल्यास,ठाणेमहानगरपालिका सर्वसधारण सभेची मान्यता प्राप्तकरुन वनविभागास देता येईल. तरी सदर भुखंडाबर महापालिकेनेप्रस्तावित केलेल्या बाबीचा विचार होऊन आपल्या विभागाचाअभिप्राय त्वरीत मिळणेसविनंती आहे.
>
> **मा. आयुक्त साो. यांचे मान्यतेने,**

g. It is further pertinent to note thatLand is acquired, 7/12 extract is mutated in the name of Corporation and further pursuant to the order dated 12th July, 2023 passed in Special Civil Suit No 35 of

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2020, measurement was carried physically whereby the boundary and line possessed by D Dayabhai and Company Pvt Ltd is earmarked in blue dotted linescolor.The copy of the said Measurement is enclosed for ready reference.

h. Further, there is a Minutes of 112th meeting of Regional Empowered Committee (REC) of Regional office, Ministry of Environment, Forest and climate Change, Nagpur, held on 6th February, 2024 whereby the Agenda of the said Meeting was to discuss diversion of Forest land in favor of MMRDA Thane for construction of Twin Tunnel 2 Lanes each side. In the said proposal the petitioners land was also considered and forest consented MMRDA to construct said twin tunnels on our land.

The above facts clearly establish that our land is been already acquired and possessed by various state govt. Authorities and falls outside the boundary of SGNP.

F. Conclusion

(1) The Petitioner's case is built on:
(2) Suppression of material facts;
(3) Inadmissible evidence;
(4) Invalid service of notice;
(5) Proceedings post repeal of statute;
(6) Collusive conduct between statutory authorities.
(7) The Petitioner has therefore approbated and reprobated, abused the process of law, and is not entitled to any relief whatsoever.

DETAILED COMMENTS ON POINTERS ON BEHALF OF RESPONDENT NO.1 TO PETITIONER'S REJOINDER

A. R1 comment on submissions of Petitioner in Para 1.1 to 1.15 of Rejoinder :

i. The Petitioner's reply on R1's contention about no proof of issuance of notice dated 29/08/1975 itself demonstrates that Petitioner is raising hyper technical issue that R1 has taken this

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stand for the first time after 50 years. Said contention is not correct. Kindly see WP No.1026 of 1975 **(Page 297-338 of R1 Affidavit-in-Reply particularly Page 308-309 i.e. grounds and Page 320 i.e. Prayers)** filed by R1 after issuance of notice dated 29/08/1975. In said writ petition validity of the notice dated 29/08/1975 was specifically challenged. When validity of the notice itself is challenged, there is no need to put challenge to every aspect of validity such as issuance, service, contents, annexures, etc. It is sufficient if the validity of notice itself is challenged. Otherwise also after the judgements in the Godrej case and Rohan Nahar case it has become absolutely clear that law declared by the Supreme Court indicate that notice issued under section 35 (3) of IFA has to be a valid notice. It is always open to the R1 to use the judgments of the Hon'ble Supreme Court in Godrej and Rohan Nahar as the Hon'ble Supreme Court has not resorted to prospective overruling. (Please see C. B. Gautam para 43 & 46) and C Golakhnath para 45, 50, 51, 52). The burden to prove the validity of the notice is naturally on the Petitioner because Petitioner claims land with the contention that its notice is valid. R1 need not have to prove or take objection from inception about issuance. If at all according to Petitioner objection about issuance is taken for the first time after 50 years then in rebuttal Petitioner could have produced on record along with its rejoinder, proof about actual issuance and dispatch of the concerned notice prior to appointed day by submitting outward register, copy of postal receipt showing date of dispatch of notice, etc. Apart from mention of a number on the notice, there was deliberate failure to produce the outward register by the Forest Department. Thus Petitioner has failed to produce any such documents even after raising the doubt by R1 about issuance of notice before appointed day. The reliance placed on evidence of the Petitioner's witness Mr. Pakhare is half hearted. Instead of relying upon what Pakhare has said, Petitioner could have produced directly the document of dispatch showing dispatch of notice prior to appointed day. Non production of any such document itself demonstrates that Petitioner till date has no documentary proof to establish the issuance and dispatch of the notice prior to appointed day. Kindly read para 13.3, 13.4 and 13.5 of Rohan Nahar Judgment **(Page 59-60 of Citations filed by R1). In said paragraphs Hon'ble Supreme Court has clearly held that ex-proprietary legislation must be construed strictly and Article 300A of the Constitution requires that no person is deprived of the property save by authority of law. When the statute**

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prescribed a manner of doing the thing it must be done in that manner or not at all. In para 13.5 it is held that after the passage of nearly half a century exercise of enquiry under Section 6 is largely academic and would not cure the absence of mandatory pre conditions of served notice under Section 35 (3) of IFA and lawful progression towards the notification under Section 35 (1) of IFA.

ii. In view of declaration of law by the Hon'ble Supreme Court in the above judgment and in the Godrej Case it becomes primary duty of the Petitioner to prove beyond doubt the issuance/dispatch of notice prior to appointed day regardless whether objection about date of actual issuance is taken at what stage?

iii. The Forest Department has in a substantial number of cases not taken any action from 1927 till 29/08/1975 (Chintamani Velkar and present case). Godrej has in para 69 specifically observed that directions were issued to Collector with a draft copy of the MPFA annexed thereto on 27/08/1975 with instructions to take possession. But possession could not be taken over by Petitioner, which fact is proved from their own letter dated 23/01/1986 (**Page 448 of additional affidavit in reply of R1).**

B. R1 comment on submissions of Petitioner in Para 2.1 to 2.5 of Rejoinder :

i. It is incorrect to state that by virtue of pleadings in WP No.1026 of 1975 any judicious admissions are given by R1 about receipt of notice by R1 itself. Kindly read order dated 27/12/2004 of Deputy Collector passed after remand **(Page 73-86 of WP). Particularly Page 75-76 of the said order clearly demonstrate that it has been consistent stand of R1 that notice was addressed to wrong person viz. D. Dahyabhai & Co. And not to R1, which is private limited company who is actual owner of subject land. One Chimanlal Shah was examined in that regard, who stated that he is accountant of D. Dahyabhai & Co. which is different entity. Even Deputy Collector has accepted this fact but discarded it by ranking it as clerical error.** Then kindly see impugned common judgment dated 30/06/2017 of MRT **(Page 87-115 of WP)**. Kindly read Page 112-113, para 17. MRT has accepted the fact that notice was addressed to and received by D. Dahyabhai & Co. which is entirely different entity and held that this shows that the company who was real owner of the land

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(R1) was never served with the notice under Section 35 (3) of IFA. MRT further held that Deputy Collector was wrong in ranking the said mistake to be clerical and further held that notice was not served upon land owner (R1) prior to appointed day as contemplated by Hon'ble Supreme Court in Godrej Judgment. Hence, said notice ceased to exist or ceased to have its effect after repeal.

ii. In spite of above stated specific holding by MRT/Petitioner in the present WP had not demonstrated by way of any document that notice was served on actual owner i.e. R1.

iii. R1 has filed WP No.1026 of 1975 because it came to know from Chimanlal Shah the Accountant of said separate entity viz. D Dahaybhai & Co. because notice was in respect of R1's land and R1 was the affected party. Just because R1 has admitted in the said WP that notice dated 29/08/1975 was received by it does not amount to automatic curing of inherent defect in addressing the notice.

iv. Godrej and Rohan Nahar both stipulate issuance of valid notice to the real land owner and in the manner prescribed under CPC so also its publication.

v. The Petitioner neither in the WP nor in the rejoinder demonstrated compliance of these pre conditions of valid notice.

C. R1 comment on submissions of Petitioner in Para 3, 4 , 5, 6 & 7 of Rejoinder :

i. The submissions made in the said para 3.1 and the reliance placed upon the judgment of Supreme Court in peacock Plywood Case or upon Philson on evidence is wholly irrelevant and misleading. It was Petitioner who in first place suppressed the fact that said letters were issued without prejudice and now stating that those letters are no longer without prejudice because they waived their without prejudice privilege. There is no question in the present matter of Petitioner waiving any privilege because it was R1 who issued the letters without prejudice. In peacock case the Insurance Company was not allowed to resile from the representation made by it on account of waiver of privilege and in order to advance a beneficial

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legislation in favour of the beneficiary. In Nahar's case the Hon'ble Supreme Court has held that MPFA is an ex-proprietary legislation so Peacock case is not applicable to the present case.

ii. Kindly appreciate that admittedly said letters dated 05/07/1979 and 28/08/1979 so also the application dated 19/01/1980 **(Page 63 of R1 compilation)** all were issued without prejudice to the pending writ. By filing appeal against Deputy Collector's acceptance order dated 03/06/1980 before MRT by the Petitioner, **Petitioner itself rejected the without prejudice offer given by R1.** This fact is evident from the whole reading of MRT order dated 15/10/1982 **(Page 48-56 of WP)**.

iii. From said remand order dated 15/12/1982 particularly **para 8, 13, 15, 16, 17 and 22** as well as the **operative part** it is evident that matter was remanded for fresh enquiry in respect of entire land admeasuring 204 acres. Accordingly, Deputy Collector framed issues **(Page 75 of WP)**. The Petitioner never raised objection about framing of said issues before Deputy Collector; in fact, Petitioner participated in the trial upon said issues by leading evidence. It is only in the appeal no.165 of 2005 before MRT Petitioner has taken stand that enquiry was restricted to 24 acres and R1 has concealed that 168 acres is forest. From **para 8, Page 108 of WP** of the MRT order it is evident that MRT discarded contention of Forest Department that enquiry was restricted to only 24 acres. In **para 10 of MRT order**, MRT framed specific questions for determination on the basis of rival contentions of parties. Those issues/questions are as under:-

> **1. Whether the land in dispute can be said to be private forest as contemplated under Section 2 (f) (iii) of MPFA?**
>
> **2. Whether the proceedings conducted by Deputy Collector was vitiated by the non service of notice on or before appointed day?**
>
> **3. What order?**

iv. Para 11 of the MRT order demonstrate that negative findings was given on issue no.1 and accordingly the entire land was held as non forest. Affirmative finding was given on issue no.2 by holding that proceeding conducted by Deputy Collector stands vitiated because

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of non service of notice under Section 35 (3) of IFA upon the real land owner (R1).

v. **The Petitioner neither in the WP nor in the rejoinder has demonstrated that there was valid service upon true owner and/or the subject land comes within the definition of private forest.** The Petitioner has not even filed on record the alleged notice dated 29/08/1975. Without showing a single document from the record and without satisfying the Hon'ble Court about actual issuance and service upon real land owner i.e. R1, attempt has been made by Petitioner to create confusion by way of misleading this Hon'ble Court by misinterpreting the binding ratio of Godrej and Rohan Nahar judgments by pointing out immaterial facts and without demonstrating strict compliance of statutory pre conditions for vesting the land in the Forest Department.

vi. It is incorrect to state that in WP No.1026/1975 R1 has admitted on oath that the land was put to non forest use only to a limited extent. It is not R1 who has to prove that subject land is not forest but it is for the Petitioner to prove that subject land comes within the definition of forest. In fact, since 1975 it had been consistent stand of R1 that subject land does not come within the definition of forest. The remand order dated 15/10/1982 was to make enquiry in that regard. In enquiry panchanama was carried out by the Petitioner's own officers in which it is recorded that more than 107 acres of land was under non agricultural user. **Kindly read page 65-67 of compilation of R1.** In para 4.8 misleading reference of village form -1A maintained by SGNP Division is given but same is neither produced on record nor from form-1A it could be construed as land is vested in State under Section 3 of MPFA.

vii. The Petitioner has attempted to misinterpret para 72 of Godrej Judgement by contending that Supreme Court has not used the word served in close proximity and therefore for any notice to become pipeline notice what is required is only issuance in close proximity and not service before appointed day. Said interpretation is incorrect because in the earlier paragraphs of the Godrej Judgement the word issued used in Section 2 (f) (iii) of MPFA is interpreted as issued and served and it is specifically held that service is inherent in the word 'issued'. Supreme Court therefore never intended in para 72 to exclude service. As per Godrej Judgement pipeline notice means

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issued and served in the close proximity before appointed day. Godrej Judgement therefore overrules its previous judgement in Chintamani Velkar to that extent because in that matter also service was after appointed day.

viii. It is incorrect to say that in view of Godrej Judgement notices issued in closed proximity but served after repeal are saved by Section 2 (f) (iii) of MPFA.

ix. Petitioner in the rejoinder and/or in the rejoinder argument unnecessarily attempted to point out certain orders passed in PIL No.305 of 1995. On the basis of said orders, Petitioner tried to urge that even the subject land of the present petition being included in SGNP Division, becomes forest land and vest with the State Government. Said argument is misleading. It is respectfully submitted that orders passed in said PIL are passed in different context and not related to the subject land. In any case subject land i.e. Survey No.59/1 was not the subject matter of said PIL. Admittedly, R1 who is the owner of Survey No.59/1 was not party to the said PIL. In fact, present petition is a dispute between private land owner and forest department and this dispute has nothing to do with the said PIL or orders passed therein or in any other matter. The issue involved in the present petition is that whether by merely saying that forest has issued notice dated 29/08/1975 under Section 35 (3) of IFA (to the wrong addressee and not to R1) whether land of R1, which it has purchased from High Court Receiver in 1960, would vest with the State under Section 3 of MPFA and that too without complying with other statutory pre requisites such as issuance of notification under Section 35 (1) of IFA, giving opportunity of hearing to the owners, etc. For the facts involved in the present matter relevant judgments are the judgment passed by the Supreme Court in Godrej Case and Rohan Nahar Case. Petitioner by citing irrelevant orders passed in the PIL, is trying to create confusion. Rohan Nahar Case clearly helds that for vesting of land in the State strict compliance is mandatory and even one missing statutory step would amount to “not vesting” the land in the State. On this backdrop, at this point of time, stating that Government has included the land bearing Survey No.59/1 in SGNP forest division is malafide contention and such inclusion without giving opportunity of hearing to the land owner viz. R1 would be otherwise violative of fundamental rights of the R1 under Article 14

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of the Constitution. In any case such alleged inclusion in SGNP division does not amount to automatic vesting of the subject land under Section 3 of MPFA as well as such inclusion in SGNP division is violative of Article 300A of the Constitution. It is otherwise clear from notification dated 16/01/1996 **(Page 445-447 i.e. Exh.A of Additional Affidavit of R1)** that Survey No.59/1 is not within the notified area of SGNP. Petitioner's own letter dated 23/01/1986 **(Page 448 i.e. Exh.D of Additional Affidavit of R1)** clearly shows that possession of Survey No.59/1 could not be taken over by Forest Department. There are no other documents such as Panchanama, Possession receipt, etc. filed on record to demonstrate that Petitioner ever took legal and physical possession of subject land from R1. Admittedly, from 2019 about 104 acres of land out of subject land is in possession of TMC. About 18 acres of land is under cultivation of R2. Upon 17 acres 19 gunthas of land there is village settlement by name Kokanipada. Rest of the land is under cultivation of R1 and/or under N A user, quarrying operations, horticulture, construction of godown, roads, etc. In the circumstances, it is fanciful to state that subject land admeasuring 193 acres 7 gunthas and 4 annas is within SGNP forest division. The TILR report recently carried out also demonstrate that subject land is not in possession of SGNP or within SGNP forest division.

x. Petitioner's reliance on Section 144 of CPC whereby principle of restitution is stipulated is improper, irrelevant and not applicable to the facts involved in the present matter. It is evident that subject land never vested in Forest Department under Section 3 of MPFA because for such vesting all statutory pre conditions mentioned in Section 35 (1), 34 (A), and 38 of IFA have not been complied with. Unless there is a vesting, there is no question of restitution.

xi. The entire rejoinder including submissions made in para 4, 5, 6 & 7 of the rejoinder are misleading and a definite attempt to wrongly distinguish binding effect of judicial precedent of Godrej Case and Nahar Case on the basis of immaterial facts.

xii. It will be appropriate to point out para 14.5 & 14.6 of Rohan Nahar Judgment, which are reproduced hereunder:

> ***14.5. When a judgment minimises a binding ratio, ignores missing statutory steps, and seeks to distinguish on immaterial facts, it creates an***

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> *appearance of a reluctance to accept precedent. Such an approach conveys a major of pettiness that is inconsistent with the detachment that judicial reasoning demands. In our view this is an unfortunate departure from the discipline of stare decisis.*
> *14.6. We accordingly hold that the present appeals are indistinguishable in principle from Godrej and Boyce (Supra). The record discloses the same jurisdictional defects of non-service of a notice under section 35 (3) of IFA, the same absence of a final notification under Section 35 (1) of IFA, and the same want of contemporaneous steps under Section 4,5,6 and 7 of the MPFA Act. In such circumstances the High Court could not consistently with Article 141 of the Constitution avoid the binding ratio by treating immaterial differences as determinative. In our opinion fidelity to binding precedent and to the statutory scheme admits of no other conclusion than that the impugned order must be set aside.*

D. Kindly also appreciate other citations filed by R1 particularly regarding effect of repeal, saving clause, retrospective application of judgment of Supreme Court, etc. Submissions in short in that regard are as under:

i. **1967 SCC (Online) SC 14 C Golakhnath and Others V/s. State of Punjab (Para 45. 50, 51, 52)** and**1993 (1) Supreme Court Cases 78 C.B. Gautam V/s. Union of India (Para 43, 46):-**These 2 judgments were cited to demonstrate that judgment interpreting the legal principles or provisions have retrospective effect. Whenever Supreme Court intends to give prospective effect then it is specifically stated so in the concerned judgment.

ii. Godrej and Boyce and Vijay Nahar's judgments are retrospective in nature. Interpretation of provisions made therein of MPFA, IFA, etc. has retrospective effect and hence those two judgments are applicable to the facts involved in the present case.

iii. In fact, even Petitioner in their note have admitted that Godrej and Boyce and Vijay Nahar's judgments are relevant for the present

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matter but Petitioner made incorrect attempt to distinguish them with the present facts.

iv. Judgment of the Supreme Court in the case of **Chintamani Gajanan Velkar (2000) 3 Supreme Court Cases 143** has also been referred to demonstrate that even in that case 35 (3) notice was dated 29/08/1975 but served on 12/09/1975 i.e. after repeal of Section 35 of IFA. Thus, said notice was also issued in closed proximity but not served before appointed day. The same therefore did not qualify as a pipeline notice. In that matter Deputy Collector held that subject land did not vest in the State as the notice issued under Section 35 (3) was not served on the land holder before appointed day viz. 30/08/1975. In said matter Deputy Collector held that for the purpose of definition of private forest under Section 2 (f) of MPFA it was necessary that notice be not only issued under Section 35 (3) of IFA but should have also be served on the land holder before the appointed day i.e. 30/08/1975. however, Hon'ble Supreme Court in the said case of Chintamani Velkar held that notice issued under Section 35 (3) would itself is sufficient if such notice is issued before the appointed day and there is no need for any service of such notice before 30/08/1975. Said view of the Supreme Court in Chintamani Velkar is overruled in Godrej and Boyce **(Para 62)** by holding that mere issuance of notice is not sufficient but issuance include service as well as mandatory compliance of all pre-conditions of served notice under Section 35 (5) of IFA. Thus, the view taken by Deputy Collector in Chintamani Velkar's case in a sense is upheld and confirmed in Godrej Case by the Supreme Court. Even in the present matter notice is dated 29/08/1975 and served on 04/09/1975 (that too on wrong addressee) i.e. after appointed day viz. 30/08/1975. Thus, the judgment of Godrej and Boyce has to be made applicable to the present facts by holding that notice was served on 04/09/1975 i.e. after appointed day and that too on the wrong addressee and hence, is void and not enforceable at law.

v. **2024 (8) SCC 742 in the case of Pernod Richord India Pvt. Ltd. V/s. State of Mdyapradesh & Ano**.:- **Para 13** states that repealed provision will cease to operate from the date of repeal and the substituted provision will commence to operate from the date of its substitution).

vi. **2025 DGLS (Bom) 2724 in the case of Hikal Ltd. V/s Union of**

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India:- The aspect of repeal of enactment and its enforceability after repeal is discussed at length by referring to constitution bench. Kindly read **Para 78** of said judgment in which **Para 36 to 40** of Constitution Bench judgements are reproduced.

vii. **(2000) 2 Supreme Court Cases 536 in the case of Kolhapur Cane Sugar Works Ltd. V/s. Union of India:-**

> In **Para 37** it is held that "*The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6 (1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards."* **(In the case of MPFA, Section 24 (2) is a limited saving clause applicable only in respect of land restored under Section 22 (A) of MPFA. Said saving clause is not applicable in respect of Section 2 (f) (iii) where issuance of notice under Section 35 (3) is stipulated. No doubt Godrej Case states that Section 2 (f) (iii) itself in a sense is a saving clause but same can be made applicable only to those notices issued and served before appointed day).**

E. It is respectfully submitted that as demonstrated in the short note and by way of comments in red made by R1 in modified dates and events, R1 has beyond doubt substantiated that in the present matter on appointed day there was no live process in existence and hence, the notice in the present matter of which issuance is doubtful before appointed day and service is admittedly on wrong owner, cannot be ranked as live or pipeline notice, as sought to be contended by the Petitioner.

F. Hence, present petition deserves to be dismissed.

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ANNEXURE 'G'

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2.1,2.3 TO 2.12'

1. Declaration of Respondent No. 2's tenancy under section 70(b) of the Bombay Tenancy Agricultural Lands Act, 1948 has attained finality

(a) Since the year 1960, Respondent No. 2 has been a tenant of Respondent No. 1 and in actual occupation, possession and cultivation of the land admeasuring 18 acres 18 gunthas bearing Gat No. 59/1 at Manpada village, Thane (**"Smaller Land"**). *[Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 155, paras 3 and 4]*

(b) On 29th August 1975, alleged Notice claimed to be issued by the Deputy Conservator of Forests under section 35(3) of the Indian Forest Act, 1927 ("**Forest Act**") in respect of the land admeasuring 204 acres, 8 gunthas and 8 annas and bearing Gat No. 59/1 at Manpada village, Thane ("**Larger Land**").

Note:

1. The Smaller Land forms a part of the Larger Land.

2. Respondent No. 1 has failed to produce any proof of issuance of the alleged notice on 29th August 1975

(c) Criminal Case No.5227 of 1982 was filed by the Maharashtra Forest Department against Respondent No. 2 under section 26 of the Forest Act for the offence of trespassing on forest land, which was dismissed by the Hon'ble Judicial Magistrate Fist Class Thane vide Order dated 30th September 1992. *[Exhibit A to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 160 at pg. 168]*

Note:

i. The said Order records the following admissions made by the Maharashtra Forest Department personnel (viz. PW-1 and PW-4) during their cross-examination as witnesses in the criminal proceedings filed against Respondent No. 2:

   a. The Smaller Land was private land of Respondent No. 2 prior to it being declared as a forest in the year 1975. *[para 10 at Pg 164]*

   b. Respondent No. 2 was in possession of the Smaller Land prior

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to the year 1975. *[para 10 at Pg 165]*

c. Smaller Land originally belonged to Respondent No. 1 and Respondent No. 2 has been cultivating the said land as a tenant. *[para 10 at Pg 163]*

d. Nothing has come on record to show that the Forest Department has taken possession of the Smaller Land. *[para 10 at Pg 165]*

[Exhibit A to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, para 10 at pgs. 164 and 165 and para 13 at pg.166]

ii. An admission made by a party in a previous criminal proceeding, is admissible in subsequent civil proceedings. *[Seth Ramdayal Jat vs. Laxmi Prasad, (2009) 11 SCC 545, at paras 20 and 21]*

(d) The Petitioner's Criminal Appeal No. 172 of 1993 against the Hon'ble Judicial Magistrate First Class Thane's Order was dismissed by Judgment dated 14th June 1993 of this Hon'ble Court, which held:

i. Respondent No. 2 is in possession as a tenant of Respondent No.1 prior to the land being declared as forest land.*[Pg No.171]*

ii. The construction found on the land is 9 years old and hence no fresh construction or clearing of forest is proved against Respondent No. 2. *[Pg No.171]*

iii. No appeal was filed by the Petitioner against the Hon'ble High Court's judgment, and therefore the findings of the Hon'ble High Court in the said judgment have attained finality.

[Exhibit B to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 169 at pg. 170]

(e)In March 1991, Respondent No.1 attempted to interfere with Respondent No.2's possession of the Smaller Land, which led Respondent No. 2 to file Application No.16 of 1991 before the Tahsildar ALT Thane under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("**BTAL Act**") for declaration of his tenancy in respect of the Smaller Land. *[Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 155, para 6 and Exhibit C, at pg. 171]*

(f) By the Tahsildar's Order dated 23rd February 2004, Respondent No. 2 has been declared as a tenant of the Smaller Land since the year 1960.

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[Exhibit D to Respondent No.2's LRs Affidavit in Reply dated 11th December 2019, pg. 174 at pg. 179 (English translation at pg.186)]

Note:

i. An Order passed under section 70(b) is appealable under section 74(1)(a) of the BTAL Act and the Petitioner could have challenged the Tahsildar's Order even though the Petitioner was not a party to those proceedings; yet no appeal was filed by the Petitioner. *[Ebrahim Yusuf Lambe vs. Abdul Razak Abdul Rahiman Mulla, AIR 1977 Bom 22, at para 9; Nookala Setharamaiah vs. Kotaiah Naidum, (1970) 2 SCC 13, at para 24 and State of Kerala vs. Mohammed Basheer, (2019) 4 SCC 260, at paras 19 to 20]*

ii. Respondent No. 1 filed Tenancy Appeal No. 109 of 2015 before the Sub-Divisional Officer challenging the Tahsildar's Order, and the delay of 11 years in filing the said appeal was condoned by the Sub-Divisional Officer's Order dated 23rd February 2017. *[Exhibit E to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 187 at pg. 195.]*

iii. By Order dated 4th May 2017, the Maharashtra Revenue Tribunal allowed Respondent No. 2's Revision Application No. 150 of 2017 against the Sub-Divisional Officer's Order and dismissed Respondent No. 1's Tenancy Appeal. *[Exhibit F to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 197 at pg. 207]*

iv. Respondent No. 1's Civil Writ Petition No. 6351 of 2017 filed to challenge the Maharashtra Revenue Tribunal's Order, was dismissed by this Hon'ble Court's Judgment dated 23rd January 2019. *[Exhibit G to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 208 at pg. 225, para 25]*

v. Respondent No. 1's Special Leave Petition (C) No. 9998 of 2017 filed to challenge this Hon'ble High Court' Judgment, was dismissed by the Hon'ble Supreme Court's Order dated 29th April 2019. *[Exhibit H to Affidavit in Reply dated 11th December 2019 of Respondent No. 2's LRs, pg. 226]*

vi. Respondent No.1's Review Petition No. 366 of 2020 filed against the dismissal of its Special Leave Petition, was dismissed by the Hon'ble Supreme Court's Order dated 6th February 2020. *[Page 7*

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& 8 of List of dates Tendered in Court]

vii. The Tahsildar's Order declaring Respondent No. 2 as a tenant of the Smaller Land has therefore attained finality. It therefore stands established that the Respondent No.2 was the tenant in respect of the smaller land, at least since the year 1960. *[Ashalata Anand Dabholkar vs. Vrindevati Tukaram Bhaire, (2005) 1 Mah LJ 418, at para 9 and Gulabrao Laxman Kolhe vs. Tahsildar, W.P. No. 2759 of 2018 dated 24.07.2025, at para 8]*

viii. The Tahsildar's Order cannot be reopened in collateral proceedings. *[Union of India vs. S.P. Sharma, (2014) 6 SCC 351, at para 76 and Pankaj Bhargava vs. Mohinder Nath, (1991) 1 SCC 556, at para 20].* Therefore it is clear that the attempt on the part of the Petitioner to raise factual controversies with respect to the tenancy and possession of Respondent No.2 in respect of the smaller land is in inapposite and impermissible without prejudice to the same, it is submitted that this Hon'ble Court ought not to enter into factual controversies/ disputed questions of facts in exercise of its writ jurisdiction *[Gunwant Kaur vs Municipal Committee (1969) 3 SCC 769]*

2. The Larger Land (which includes the Smaller Land) has been exempted under Section 3(2) of the MPFA Act

(a) The smaller land thus being held by Respondent No.2 as a tenant and lawfully being under his cultivation on 30th August 1975 *(the appointed day on which the Private Forest came into force),* the same is exempted from being declared as private forest under section 3 (2) of the Private Forest Act, 1975 *[State of Kerala vs. Mohammed Basheer, (2019) 4 SCC 260, para 17 to 21*]

(b) Deputy Collector (Private Forests) passed an Order dated 3rd June 1980 under section 6 of the MPFA Act, directing that out of the land bearing Gat No. 59/1 at Manpada:

i. An area of 168 acres 15 gunthas 4 annas would be vested in the Petitioner as private forest.

ii. An area of 24 acres 32 gunthas would be retained by Respondent No.1 and in lieu thereof, an area of 24 acres 32 gunthas out of Respondent No.1's properties in Survey nos. 59/2, 59/3 and 59/16

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would vest in the Petitioner as reserved forest.

[Writ Petition, para 3(i) at pg.8]

(c) The Petitioner's appeal against the Deputy Collector's Order was allowed by Judgment dated 15th October 1982 of the Maharashtra Revenue Tribunal, which remanded the case back to the Deputy Collector for holding a further inquiry. *[Exhibit A to Writ Petition, pg. 48 at pg. 56]*

(d) Respondent No. 2 filed an Intervention Application before the Deputy Collector in Remand Case No. 53 of 1999 for being added as a party in the inquiry under section 6 of the MPFA Act on the ground that Respondent No. 2 has been in actual and physical possession of land admeasuring 7 hectares and 37 ares (equivalent to 18 acres and 18 gunthas) out of Gat No. 59/1 as a tenant. The said Intervention Application was opposed by the Petitioner. *[Writ Petition, paras 3(m) and 3(n), at pgs.10 and 11, Exhibit B, at pg.57 and Exhibit C, at pg.64]*

(e) In Remand Case No. 53 of 1999, after hearing the Petitioner and Respondent Nos. 1 and 2 respectively, the Deputy Collector by Order dated 27th December 2004 held:

i. An area of 132 acres and 18 gunthas is declared as private forest under the MPFA Act and the Forest Department shall pay compensation at the specified rate to its owner (viz. Respondent No. 1).

ii. An area of 24 acres and 32 gunthas is exempt under section 3(2) of the MPFA Act as it is not a forest / private forest and it should be restored to the original owner or consequent lawful owner.

iii. An area of 18 acres and 18 gunthas is exempt as forest/private forest and the said land be restored to the Intervenor (viz. Respondent No. 2) who is a tenant over the said land.

[Exhibit D to Writ Petition, pg.73 at pg.86]

(f) By Order dated 30th June 2017, the Maharashtra Revenue Tribunal quashed and set aside the Deputy Collector's said Order and declared that the land bearing Gat No. 59/1 is not a 'private forest' under section 2(f)(iii) of the MPFA Act and is therefore entirely excluded from acquisition under the MPFA Act and the village records may therefore be corrected. Forest Appeal No. 229 of 2009 filed by the Respondent

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No. 1 (viz.) against the Deputy Collector's said Order was allowed and the Petitioner's Forest Appeal No. 165 of 2005 was dismissed. *[Exhibit E to Writ Petition, pg.87 at pg.115]*

Note: The definition of the term 'private forest' under section 2(f)(iii) of the MPFA Act must be strictly construed. *[Godrej & Boyce Manufacturing Co. Ltd. vs. State of Maharashtra, (2014) 3 SCC 430, at para 73] [HPC vs Darius Shapur Chenai 2005 (7) SCC 627 para 29]*

(g) The Revenue Department mutated Respondent No. 1's name in respect of the Larger Land in the revenue records under Mutation Entry No. 1056, which was subsequently confirmed by the Sub-Divisional Officer's Order dated 31st January 2019 in the Petitioner' Revision Application No. 182/2018 which was filed to challenge the said Mutation Entry. *[Respondent No. 1's Additional Affidavit dated 9th April 2021, Exhibit D at pg. 490 and Exhibit E, pg. 492 at pg. 499]*

Note: The Sub-Divisional Officer's said Order dated 31st January 2019 has not been challenged by the Petitioner and has therefore attained finality. *[Respondent No. 1's Additional Affidavit dated 9th April 2021, at pg. 438, para 8]*

3. Manpada Village does not fall within boundaries of Sanjay Gandhi National Park:

(a) The Maharashtra Forest Department's Notification dated 16th January 1996 under section 35(4) of the Wildlife (Protection) Act, 1972 specifying the boundaries of the Sanjay Gandhi National Park, does not include the Larger Land (which includes the Smaller Land) within the said boundaries. *[Exhibit N to Respondent No.1 Affidavit in Reply dated 25th November 2019, pg. 427.* Having not included the Larger land in the aforesaid notification, it is now not open for the Petitioner to contend that the same is a part of SNGP. It is well settled that a party cannot be permitted appropriate and reprobate *[Rajasthan State Industrial Development and Investment Corporation. vs. Diamond & Gem Development Corporation Ltd.,(2013) 5 SCC 470 para 15 & 16]*

(b) Respondent No. 1 has also admitted that the Larger Land (which includes the Smaller Land) does not form part of the Sanjay Gandhi National Park. *[Respondent No.1 Affidavit in Reply dated 25th November 2019, para 24 at pg. 275]*

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4. Respondent No. 2's name has been mutated in respect of the Smaller Land in the revenue records

(a) By a common Judgment and Order dated 24th March 2008, the Hon'ble Bombay High Court dismissed the Writ Petitions filed by Godrej & Boyce Manufacturing Co. Ltd. ("**Godrej**") and others challenging the notices issued by the Forest Department under section 35(3) of the Forest Act.

(b) In Special Leave Petition (C) No. 11509 of 2008 filed against the Hon'ble High Court's said Judgment, Respondent No. 2 filed Interim Application No. 18 of 2010 for impleadment therein and Interim Application No. 19 of 2010 praying for a direction that Respondent No. 2's Smaller Land is non-forest land and should be free to be developed under Development Control Regulations and municipal bye laws. *[Exhibit D to Additional Affidavit dated 21st September 2023 of Respondent No. 2's LRs, pg. 512 at pg. 524.]*

(c) By Judgment dated 30th January 2014, the Hon'ble Supreme Court allowed the appeals filed by Godrej and others against the Hon'ble High Court's said Judgment and quashed and set aside the impugned notices issued under section 35(3) of the Forest Act. *[Exhibit C to Respondent No. 1's Additional Affidavit dated 9th April 2021, pg. 450 at pgs. 488 and 489, paras 87 to 91]*

Note: The Hon'ble Supreme Court's Order also allowed Respondent No. 2's impleadment application and consequently the Smaller Land was exempted from being declared as forest land. *[Exhibit C to Respondent No. 1's Additional Affidavit dated 9th April 2021, pg. 450 at pg. 488, para 90]*

(d) By Order dated 16th March 2015, the Sub-Divisional Officer Thane exempted the Smaller Land from reservation as a 'private forest' under section 3(2) of the MPFA Act and directed mutation of Respondent No. 2's name in respect of the Smaller Land in the revenue records. *[Exhibit H to Additional Affidavit dated 21st September 2023 of Respondent No. 2's LRs, pg. 565 at pg. 567]*

Note:

i. By Order dated 27th March 2015, the District Collector, Thane stayed the said Order of the Thane Sub-Divisional Officer. *[Exhibit I to Additional Affidavit of Respondent No.2 LR's dated 21st*

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September 2023, pg. 568 at pg. 571]

ii. By letter dated 9th July 2015, the Divisional Commissioner (Konkan Division) directed the District Collector to vacate the stay on the said Order of the Sub-Divisional Officer. *[Exhibit J to Additional Affidavit of Respondent No.2 LR's dated 21st September 2023, pg. 572]*

LIST OF DATES AND EVENTS OF RESPONDENT NO. 2.1, 2.3 TO 2.12

The Respondent No.2.1 to 2.12 are the legal heirs of late Narayan Ganu Tangadi who during his lifetime was cultivating the land admeasuring 7H 38R (equivalent to 18 acres and 18 gunthas) from land bearing Gat No.59/1, Village Chitalsar, Manpada Taluka, District Thane as an agricultural tenant (hereinafter referred to as the '**said tangadi land**') out of said larger land i.e. land admeasuring 207 acres, 8 gunthas and 8 annas situated in Gat No. 59/A/1, Manpada, Chitalsar, Thane (hereinafter referred to as the '**said larger land**') which is owned by Respondent No.1 i.e. D. Dahyabhai & Co. Pvt. Ltd.

Sr. No.	Date	Particulars	Page No.
1.	1960	The late Narayan Ganu Tangadi (predecessor of Respondent No. 2.1 to 2.12) was cultivating the said tangadi land as an agricultural tenant prior to 1960.	154 *Para 4 of Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12*
2.	29th August 1975	Alleged notice under section 35(3) of the Indian Forest Act 1927 ("**Forest Act**") was claimed to be issued to D. Dahyabhai and Company (which is an affiliate of the owner of the said larger land).	277 *Affidavit in Reply of Respondent No.1*

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3.	1982	Maharashtra Forest Department filed Criminal Case No. 5227 of 1982 against Shri. Narayan Ganu Tangadi before the Judicial Magistrate First Class (Thane) ("**JMFC**") under section 26 of the Forest Act for the offence of trespassing on forest property.	154 *Para 5 of Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12*
4.	25th January 1991	The landowner tried to interfere with the possession of Shri. Narayan Ganu Tangadi and therefore he filed an Application No. 16 of 1991 under section 70B of the Bombay Tenancy Agricultural Lands Act, 1956 ("**BTAL Act**") for declaration of tenancy over said land.	155 *Para 6 of Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12*
5.	30th September 1992	Criminal Case No. 5227 of 1982 was dismissed by the JMFC holding that the said Shri. Narayan Ganu Tangadi is in possession of the said tangadi land prior to 1975 as an agricultural tenant and he was found in possession prior to alleged declaration of private forest. **Note:** JMFC's Order records: (a) Admitted position that the said Shri Narayan Tangadi is in possession of land at Gut No. 59/1 at Manpada. [Ex. A at pg. 161 – Para 6] (b) The Maharashtra Forest Department's employee and witness (PW-1) admissions during his cross-examination: [Ex. A at pg. 165 – Para 10] A. Land was the private land of the said Shri Narayan Tangadi before it was declared as a forest in 1975. B. Prior to 1975, the said Shri	160 - 168 *Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12 dated 11.12.2019*

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		Narayan Tangadi was in possession of the land. C. Land originally belonged to Respondent No. 1 and is being cultivated by the said Shri Narayan Tangadi as a tenant. D. Nothing has come on record to show that the Forest Department has taken possession of the land. (c) Forest Range Officer (PW-4) of the Maharashtra Forest Department, during his cross-examination, also could not depose as to the date on which the Forest Department took actual possession of the land. [Ex. A at pg. 166 – Para 13]	
6.	1993	Maharashtra Forest Department filed appeal before Bombay High Court bearing Criminal Appeal No. 172 of 1993 thereby challenging order dated 30th September 1992 in Criminal Case No. 5227 of 1982.	-
7.	14th June 1993	Bombay High Court dismissed the said Criminal Appeal No. 172 of 1993 by inter alia holding that: e) Accused (Narayan Tangadi) is in possession of said tangadi land as tenant of Respondent No. 1 prior to the land being declared as a forest. f) Construction found on the said tangadi land is 9 years old g) No fresh construction or	169 - 170 *Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12 dated 11.12.2019.*

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		clearing of forest proved.	
8.	16th January 1996	Notification published by the Maharashtra Forest Department under the Wildlife Protection Act 1972 itself shows that Chitalsar village has not been included within the limits of the area forming part of the Sanjay Gandhi National Park ("**SGNP**").	427 *Ex. N of Additional Affidavit in reply of Respondent No.1 dated 09.04.2021*
9.	23rd February 2004	Tahsildar ALT Thane passed an order in Application No. 16 of 1991 declaring that the said Shri. Narayan Ganu Tangadi as an agricultural tenant of said tangadi land from the year 1960.	171 - 179 *Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12*
10.	13th December, 2004	Shri. Narayan Ganu Tangadi filed an application for intervention in the proceedings before the Deputy Collector bearing Case No. 53 of 1999, inter alia, stating that he has been declared to be a tenant in respect of said tangadi land and in physical possession and cultivating the said tangadi land as an agricultural tenant.	57 - 63 *Memo of Writ Petition*
11.	18th December 2004	The Petitioner filed its Reply to the Intervention Application of Shri. Narayan Ganu Tangadi	64 -72 *Memo of Writ Petition*
12.	27th December, 2004	Deputy Collector Shri G. N. Jagtap passed an order in Appeal No.53 of 1999 thereby *inter alia* holding: (iv) Intervention Application of Shri. Narayan Ganu Tangadi was allowed	73 - 86 *Exhibit D*

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		and held that that he was cultivating the said tangadi Property prior to the appointed day for commencement of the Maharashtra Private Forest Acquisition Act 1975; and (v) An area admeasuring 18 acres 18 gunthas was exempted under Section 3(2) of the Acquisition Act and restored to Shri. Narayan Ganu Tangadi.	*of Writ Petition*
13.	15th April, 2005 & 2009	The State of Maharashtra filed Forest Appeal No. 165 of 2005 before the MRT challenging the Order dated 27th December 2004 passed by Deputy Collector in Appeal No.53 of 1999. D. Dayabhai also filed Forest Appeal No. 229 of 2009 challenging the Order dated 27th December 2004 passed by Deputy Collector in Appeal No.53 of 1999.	-
14.	24th March 2008	This Hon'ble Court dismissed the Writ Petition No. 2196 of 2006 and connected writ petitions (Godrej and Boyce Mfg. Comp. Ltd.).	-
15.	2008	Godrej and others challenged the common Order in WP. 2196 of 2006 before Hon'ble Supreme Court in SLP (Civil) No. 10677/ 2008.	-
16.	2008	The State of Maharashtra filed I.A. Nos. 2352–2353 of 2008 in SLP (Civil) No. 10677 of 2008 seeking the constitution of a Central Empowered Committee ("CEC") to submit a detailed report on whether the lands in state are forest land or not.	453 *Additional Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
17.	29th August 2008	The Hon'ble Supreme Court pleased to pass an order in I.A. No. 2352 – 2353/2008 in SLP (Civil) No. 10677/ 2008 thereby directed CEC to file its	459 *Additional Aff. in Reply of R.*

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		Report.	*No. 2.1, 2.3 to 2.12.*
18.	13th July 2009	Shri. Narayan Ganu Tangadi filed an application before CEC, however the same was not considered in its report.	453 *Additional Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
19.	23rd March 2010	Narayan Ganu Tangadi filed I.A. No.18 of 2010 in SLP (C) No. 11509 of 2008 for impleadment as party Respondent and I.A. No. 19 of 2010 in SLP (C) No. 11509 of 2008 for seeking inter alia directions qua the said Tangadi land is free to be developed in accordance with the development regulations and Municipal by laws being non-forest land and for other reliefs	506 - 527 *Exhibit C of Additional Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12 dated 21.09.2023*
20.	30th January 2014	Hon'ble Supreme Court allowed the said SLP (C) No. 11509 of 2008 and I.A. No.18 of 2010 and I.A. No. 19 of 2010 filed by the i.e. Narayan Ganu Tangadi were also allowed and therefore said Tangadi land declared as non-forest and removed from the clutches of forest reservation and became freehold land.	528 - 547 *Exhibit E of Additional Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12 dated 21.09.2023*
21.	25th May 2014	Zonal Forest Officer Yeoor issued its Report bearing No. 18-19/2010 dated 25.05.2014 in respect of the said Tangadi land whereby it was stated there are temples and Samadhi /memorial commemorating the dead / tomb lying in	556 -561 *Additional Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*

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		the said smaller land since last more than 65-67 years.	
22.	11th Februar y 2015	Narayan Ganu Tangadi through his legal heirs filed an Application before Sub-Divisional Officer Thane thereby seeking *inter alia* cancelation of Mutation Entry No. 727 qua said Tangadi land.	562 - 564 *Additional Affidavit in Reply of R. No. 2.1, 2.3 to 2.12.*
23.	16th March 2015	Sub-Divisional Officer Thane pleased to pass an order dated 16.03.2015 whereby said Mutation Entry No. 727 qua said Tangadi land was cancelled and name of Tangadi was directed to be restored.	565 - 567 *Additional Affidavit in Reply of R. No. 2.1, 2.3 to 2.12.*
24.	27th March 2015	District Collector Thane passed an order dated 27.03.2015 thereby the order dated 16.03.2015 passed by the SDO Thane was stayed on the sole ground to minimize the multiplicity of litigation till further directions / orders received from the State of Government.	568 - 571 *Additional Affidavit in Reply of R. No. 2.1, 2.3 to 2.12 dated 21.09.2023*
25.	9th July 2015	Divisional Commissioner Kokan Division, State of Maharashtra Revenue and Forest Department issued a letter whereby directions were issued to the District Collector Thane to vacate the stay upon the order dated 16.03.2015 passed by the SDO Thane and implement the directions of the Hon'ble Supreme Court in its judgement dated 30th January 2014 in Special Leave Petition (C) No. 11509 of 2008. The Divisional Commissioner also reiterated in the said letter dated 09.07.2015 that the said Narayan Tangadi filed I.A. No. 18 and 19 in Special Leave Petition (C) No. 11509 of 2008 for seeking directions against the State and these I.A.'s were allowed by the Hon'ble Supreme Court vide its judgment dated 30.01.2014.	572 - 575 *Exhibit J of Additional Affidavit in Reply of Respondent No. 2.1, 2.3 to 2.12 dated 21.09.2023*

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26.	2015	Respondent No.1 (D. Dayabhai filed Tenancy Appeal No. 109 of 2015 before SDO Thane, challenging the order dated 23rd February, 2004 of the Tahsildar.	156 *Para 9 of Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
27.	23rd February, 2017	Order passed by the SDO Thane, in Tenancy Appeal No. 109 of 2015 condoning the delay of 11 years on for challenging order dated 23rd February, 2004.	187 - 196 *Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
28.	2017	Shri. Narayan Ganu Tangadi and others filed Revision Application No. 150 of 2017 before the MRT challenging the order dated 23rd February, 2017 passed by the SDO	156 *Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
29.	4th May, 2017	MRT Allowed the Revision No. 150 of 2017 by setting aside impugned order dated 23rd February 2017 and consequently dismissing Appeal No. 109 of 2015.	197 - 207 *Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
30.	8th June, 2017	D. Dayabhai filed Writ Petition No. 6351 of 2017 challenging the order dated 4th May, 2017 passed by the MRT.	-
31.	30th June, 2017	The MRT dismissed Forest Appeal No. 165 of 2005 preferred by the Forest Department and allowed Forest Appeal No. 229 of 2009 preferred by D. Dayabhai. It was declared that the Subject Land was not a private forest as per Section 2(f)(iii) of the Acquisition Act (Impugned order in present Writ Petition)	87 - 115 *Writ Petition*
32.	16th January, 2018	State of Maharshtra filed present Writ Petition (Writ Petition No. 3205 of 2018) challenging the order of dated 30th June 2017 passed by MRT.	-
33.	23rd January, 2019	Bombay High Court dismissed Writ Petition No. 6351 of 2017 filed by D.Dayabhai and upholding the order dated 4th May, 2017 passed by the MRT.	208 - 225 *Affidavit in Reply of R. No.*

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			2.1, 2.3 to 2.12.
34.	29th April, 2019	Special Leave Petition (C) No. 9998 of 2019 filed by the Respondent No.1, challenging the order dated 23.02.2017 passed in this Hon'ble Court in Writ Petition No. 6351 of 2017 was dismissed.	226 *Affidavit in Reply of R. No. 2.1, 2.3 to 2.12*
35.	6th February 2020	Review petition No. 366 of 2020 thereby seeking review of order dated 29.04.2019 in SLP (C) No. 9998 of 2019 was dismissed.	7-8 *List of dates*
36.	26th June 2020	Tahsildar and ALT Thane pleased to pass an order thereby deciding the purchase price of the said Tangadi land under section 32-O of Maharashtra Tenancy and Agricultural Lands Act 1948.	-
37.	2020	Respondent No.1 filed Tenancy Appeal No. 70 of 2020 before SDO challenging the order dated 26.06.2020 passed by Hon'ble Tahsildar ALT.	-
38.	5th July 2024	SDO dismissed the said Tenancy Appeal No. 70 of 2020.	-
39.	2025	Respondent No.1 filed appeal before MRT bearing Appeal No. TNC/REV/THN/L- 336/2024 thereby challenging order dated 26.06.2020.	-
40.	1st April 2025	MRT dismissed the said in TNC/REV/THN/L- 336/2024.	9 *List of dates*
41.	8th April 2025	Order passed under section 32(M) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 whereby the Tahsildar ALT Thane issued Purchase certificate in favour of the Legal Heirs of Shri. Narayan Ganu Tangadi.	10 *List of dates*
42.	15th April 2025	Said Purchase Certificate was duly registered under document No. 7798/2025.	11 *List of dates*

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43.	May 2025	Name of Legal Heirs of Narayan Tangadi mutated in 7/12 extract of the said Tangadi land.	12-13 *List of dates*

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ANNEXURE 'H'

SHORT NOTE ON BEHALF OF PETITIONERS:

MAY IT PLEASE YOUR HONOUR: -

1. D. Dahyabhai & Co. Pvt. Ltd. and its Director Mr. Nitesh Kothari (Petitioner) have filed the present Petition, inter-alia, seeking directions to Respondent No.2 Corporation to issue DRC in favour of Petitioners against acquisition of Park Reservation No.4 (said reservation area is admeasuring 404721.02 sq. meters) which has been acquired by Respondent Corporation under registered Deed of Transfer dated 24/05/2019 registered under serial no.TNN5- 8450-2019 **(Exh.E, Page 92-115 of WP)**.

2. Respondent Corporation filed reply, inter-alia, admitting the execution of said Transfer Deed and acquisition of said reservation.

3. Admittedly, there is an order dated **25/11/2022** **(Exh.F, Page No.116 to 118 of WP)** read with an order dated 07/12/2022 **(Exh.G, Page No.119 of WP)** passed by the Single Bench of Hon'ble High Court, inter- alia, directing Respondent Corporation to issue and allot the said DRC. In spite of such an order passed by the Hon'ble Court, Respondent Corporation has arbitrarily withheld the issuance of DRC and hence petition has been filed.

4. Forest department has filed Intervention Application, inter-alia, claiming that concerned reservation is affected by the claim of Forest Department which it has raised long back vide notice dated 29/08/1975.

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5. Admitted position is that vide order dated 30/06/2017 **(Exh.A, Page No.35 to 63 of WP)** passed in MRT Appeal No.165 of 2005 and Appeal No.229 of 2009, MRT has already declared said reservation and other lands which were subject matter of said notice dated 29/08/1975 as non-forest land.

6. The Forest Department, no doubt has filed Writ Petition No.3205 of 2018 in the Hon'ble High Court against rejection of their Appeal No.165 of 2005 but till date **there is no stay sought to the said order of MRT dated 30/06/2017.** In said Writ Petition No.3205/2018 Petitioner herein who is Respondent No.1 therein has already submitted written notes, inter-alia, demonstrating the falsity and futility of the contentions of forest department that subject land is forest. Said written notes may kindly be read along with these written notes.

7. The said reservation is sanctioned by the State Government and is forming part of sanctioned D.P. Plan of Thane 1994-1999 (Thane D.P.).

8. Till date Forest Department neither challenged the Thane D.P. nor the act of State Government putting the said reservation.

9. Forest Department during the process of acquisition of said reservation have never raised any objection in respect of Respondent Corporation acquiring the said reservation. Admittedly, concerned registered Deed of Transfer dated 24/05/2019 is also not challenged. Concerned Deed of Transfer **clearly state that land is acquired and handed over in possession of**

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planning authority. (Exh.E, Page No.92 to 115 relevant Page No.100 may kindly be read). The said Deed of Transfer being registered instrument ought to have been challenged by way of filing suit for cancellation within 3 years, from the date of registration of the said Deed. Admittedly no such challenge is set up by Forest Department and any such challenge is now barred by limitation.

10. It is only after acquisition of Park Reservation No.4 Forest Department lodged its claim or objection with Thane Municipal Corporation for allotting TDR to D. Dahyabhai & Co. Pvt. Ltd. i.e. Petitioner against said acquisition. The fact needs to be appreciated is that Forest Department without challenging sanctioned Thane D.P. and without challenging the acquisition of land is objecting for granting compensation to the land owner. Said objection has no base under law.

11. Otherwise also Respondent Corporation vide its letter dated 08/01/2020 **(Exh.H, Page No.120 to 126 of WP)** addressed to Conservator of Forest, Sanjay Gandhi National Udyan clearly stated that they are not going to change the user of the said reservation and in fact are going to maintain it as a park by keeping the natural greenery as it is and shall be doing social foresting there upon. Respondent Corporation has also agreed to handover the said reservation if required by forest department by obtaining permission of General Body. Admittedly, Forest Department has not responded to the said letter either positively or negatively till date. It is thus clear that it is for TMC and forest department to decide between them as to who will hold the said acquired land. Just because they

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are not deciding between them, issuance of compensation by way of DRC to the petitioner can not be withheld. It would be unjust and unfair and against the constitutional rights of petitioner guaranteed under article 300 A of Constitution.

12. The present petition needs to be allowed because there is no dispute that 100 acres of land is acquired under registered instruments by planning authority viz. Respondent Corporation for the public purpose under sanctioned D.P. Such sanctioned D.P. was sanctioned by State Government (Respondent No.1) itself under MRTP Act long back in the year 1994. Act of the state of subjecting the land under public reservation such as park, road, TMT bus depot, Primary School, HCMTR, etc. has never been objected by Forest Department, by saying that subject land is forest land. The act of acquisition under registered instrument has also not been objected by Forest Department. Forest department is objecting the grant of statutory compensation to the private owner, which objection is frivolous. Article 300A needs to be invoked in the present matter to protect the interest of private owner. It cannot be deprived from statutory compensation. Already three orders are passed by this Hon'ble Court **out of which two orders dated 28/04/2025 and 27/06/2025 were passed after hearing forest and in the presence of their counsel. Land is acquired, 7/12 extract is mutated in the name of Corporation (Exh.M, Page 469 of Affidavit-in-Reply of Respondent No.2 Corporation). From May 2019, land is in possession of Corporation (Page 100 of WP).** Forest department even though is claiming to be in physical possession their own letter dated 23/01/1986 **(Page No.448, of additional affidavit of R1 of WP**

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No.3205/2018) demonstrates that they could not take possession of the land prior to 1986. There is no documentary proof placed on record to show that possession was taken by the forest department physically thereafter till date.

13. No documentary proof about compliance of Section 5 of MPFA is produced in this petition or in another Writ Petition No.3205/2018 by the forest department. The subject land is not vested in state/forest under Section 3 of the MPFA on the appointed day because on appointed day i.e. 30/08/1975 admittedly notice under Section 35 (3) of IFA was not served. Even Forest Department could not produce any documentary proof to show that alleged notice dated 29/08/1975 was actually dispatched/issued from the office of Forest Department. Admittedly, Section 35 of IFA stood repealed on and from 30/08/1975. There is no proof on record to demonstrate that there was any live process in existence under Section 35 of IFA on or before appointed day. No notifications under Section 35 (1), 34 (A) or 38 of IFA have been published till date. Strict compliance of statutory pre conditions is not there which is must for vesting as per Rohan Nahar and Godrej judgements of Supreme Court. Subject land continued to be in possession with the Petitioner. As per registered acquisition instrument from 24/05/2019, 100 acres park reservation and additional 18100 sq. meter of subject land is also in possession of Respondent Corporation and on some portion twin tunnel project is being implemented for which Forest Department has given NOC so what remains is only providing statutory compensation to the Petitioner in the form of DRC as per the provisions of law and as per the said 3 orders of this Hon'ble Court.

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14. In order to make show of compliance of orders dated 22/11/2022 and 28/04/2025 Respondent No.2 TMC filed affidavit dated 27/11/2025 in this WP **(Page 412-510)**. Kindly see its annexures such as letter bearing no.1025, dated 10/07/2025 **(Exh.F, Page 438-439 of Affidavit dated 27/11/2025)**, reply dated **14/07/2025** given thereto by Petitioner through Advocate Sanjay Borkar **(Exh.G, Page 440 to 447 of Affidavit dated 27/11/2025**), Petitioner's letter dated 06/102025 **(Exh.L, Page 463-468 of Affidavit dated 27/11/2025**) coupled with 7/12 Extract **(Exh.M, Page 469 of Affidavit dated 27/11/2025**), Mutation Entry No.1274 **(Exh.M, Page 470-472 of Affidavit dated 27/11/2025**), Order of Tahasildar dated 23/09/2025 **(Exh.N, Page 473-482 of Affidavit dated 27/11/2025)**. From the reading of those annexures and from plain reading of **Regulation No.11.2.4** of UDCPR it is evident that Petitioner/D Dahyabhai Co. Pvt. Ltd. has complied with all compliances under said regulation. In fact, it is Respondent TMC vide letter dated 10/07/2025 illegally called upon Petitioner/D Dahyabhai Co Pvt. Ltd. to obtain NOC from Forest Department even though orders of this Hon'ble Court dated 28/04/2025 and 27/06/2025 do not put such condition. In fact, those 2 orders were passed after hearing the Forest Department and in the presence of counsel of Forest Department. The Annexure 'O' i.e. letter dated 08/10/2025 **(Page 483-492 of Affidavit-in- Reply of Respondent No.2 Corporation)** of and from Conservator of Forest, Sanjay Gandhi National Park clearly shows how TMC and Forest Department are acting in collusion with each other to deprive Petitioner/D. Dahyabhai Co. Pvt. Ltd. from statutory compensation in violation of Article 300A of Constitution. As per regulation no.11.2.4 of UDCPR construction of boundary wall is not

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mandatory. Instead of carrying out construction Petitioner can deposit with Corporation cost of construction of compound wall/fencing provided Corporation issues DRC. Petitioner specifically state that it shall deposit the construction cost of fencing with Corporation provided Corporation issues full DRC to the Petitioner as per said regulation. All other requirements of Corporation about TILR survey, mutating name of Corporation in 7/12 extract, certification of mutation entry in that regard, all are already complied with (kindly read Petitioner's Advocate reply dated 14/07/2025 and Petitioner's letter dated 06/10/2025**, Page 440-447 and 463-468 of Respondent No.2's own affidavit dated 27/11/2025.)**

15. It is pertinent to note that while acquiring the land and getting executed registered instrument for acquisition in may 2019,TMC did not find it necessary to seek prior opinion from Forest Department or TD department of state government . In the same way before giving consent for passing the order dated 25/11/2022 directing TMC to allot DRC, TMC did not seek in advance opinion of state government. When order dated 28/04/2025 was passed, at that time also TMC did not make submission that they need to consult state government. Even in the IA filed for seeking modification to order dated 28/04/2025 TMC did not take up this stand but after order dated 27/06/2025 TMC started taking opinion of forest department and TDD for implementation of orders of this Hon'ble Court. **This is evident from their said affidavit and it's annexures. This is contemptuous. This clearly demonstrates collusion between TMC and forest to avoid allotment of DRC and to**

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commit contempt of the orders of this court.

16. The Petitioners have under cover of their letter dated 14/07/2025 addressed to TMC enclosed a copy of the TILR Report. The said letter dated 14/07/2025 has been annexed at page nos.440-447 of the affidavit dated 27/11/2025 filed by TMC and has not enclosed the said report and hence copy of the same is annexed herewith and marked as EXHIBIT A hereto.

17. Hence, present petition needs to be allowed.

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ANNEXURE 'I'

NOTE ON BEHALF OF THE RESPONDENT NO.2 to 5 (TMC)

1. The Petitioner submitted the proposal dated 03.07.2018, through its architect for grant of DRC in lieu of the above-mentioned land, as per the provisions under Regulation No. Appendix N.N.1.5 (a) read with Appendix W of the Development Control Regulations, 1994, for grant of T.D.R. to the Thane Municipal Corporation (***page No. 90 of the Petition***).

2. Pursuant to the said proposal Transfer Deed dated 24.05.2019 was executed between the Petitioner and the Corporation. Recitals therein clearly indicate that the Petitioner shall be entitled to be awarded Development Rights and/or TDR in accordance with the provisions of the said Development Control Regulations, 1994, and also as per Government Notification dated 29.01.2016 and the amended order dated 02.05.2016 for surrender of the said reserved land (***page 99 of the Petition***).

3. Regulation 4.1.2 of the Notification dated 29.01.2016 reads as under:

> "*4.1.2 – DRC shall be issued only after the land is surrendered to the Municipal Corporation free of cost and free from encumbrances, and after levelling the land to the surrounding ground level, and after constructing/erecting a 1.5 m high compound wall/fencing, i.e. brick/stone wall up to 0.60 m above ground level and fencing above that up to the remaining height with a gate, at the cost of the owner and to the satisfaction of the Municipal Commissioner. Provided that, if on*

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> *certain lands such construction/erection of compound wall/fencing is prohibited or restricted by any regulation, then the quantum of Transferable Development Rights (TDR) shall be reduced as prescribed in the proviso to Clause 4.1.1.*"

It is mandatory for the Petitioner to comply with the above regulation before issuance/ grant of TDR/DRC.

4. Regulation 7.1 of the Notification dated 29.01.2016 reads as under:

> "*7.1 – The Commissioner, before issuing DRC, shall verify and satisfy himself that the ownership and title of the land proposed for surrender is with the applicant, and get the Record of Rights corrected in the name of the Planning Authority.*"

It is incumbent upon the Petitioner to get the Record of Rights mutated in the name of the Planning Authority.

5. The recitals in the Transfer Deed dated 24.05.2019 also indicate that the Petitioner had all along represented that they have clear and marketable title, free from all encumbrances (***Page 100, Unnumbered Para 1***).

6. It is to be noted that the Petitioner was aware of the filing of Writ Petition No. 3205 of 2018 by the Forest Department of State of Maharashtra, impugning the order dated 30.06.2017 passed by the MRT, Mumbai. This fact can be ascertained from ***paragraph 17 of the present Petition***.In view of pendency of the petition NOC of the

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forest was required form the petitioner.

7. By order dated 25.11.2022 passed in Appeal from Order No. 1051 of 2019, the order dated 10.10.2019 passed by the learned Civil Judge, Senior Division, Thane, was modified, and the Respondent Corporation was directed to allot TDR/DRC in favour of the Petitioners.

8. It is to be noted that the Corporation is and was always ready and willing to allot TDR/DRC in favour of the Petitioner, subject to compliance as contemplated under the Development Control Regulations. The Respondents, in their affidavit dated 27.11.2025, especially in paragraph 19, have clearly averred that the Corporation is ready and willing to grant TDR, and that a letter dated 10.07.2025, which is in tune with the Development Control Regulations, has been issued to the Petitioners, thereby directing them to comply with the requisitions raised therein (***page 438 of the affidavit in reply filed by the Corporation***).

9. It is to be noted that in response to the letter dated 10.07.2025, the Petitioners responded by reply dated 15.07.2025, and as per paragraph 4 of the said reply, the Petitioners agreed to erect fencing in the form of metal sheets and stated that they would initiate the said work in the near future (***page 442, para 4 of the affidavit in reply***). Further, by letter dated 06.10.2025 issued by the Petitioners in response to the Corporation's letter dated 10.07.2025, the Petitioners have clearly admitted in clause (f) that the work of erecting the compound wall around the park reservation has already

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been initiated under the supervision of a security guard, which can be verified by the Corporation. Clause (j) of the letter dated 06.10.2025 also records that the Petitioners assured that they would erect the compound wall within six months and hand it over to the Thane Municipal Corporation. (***Page no. 465 and 466 of the Affidavit in reply 27.11.2025 of corporation***).

10. The Forest Department, being an authority entrusted with environmental protection, has raised objections that have placed TMC in a dilemma as to whether Development Rights Certificates (DRC) can be granted against the reservation in question. Further, the Petitioner has failed to comply with several mandatory conditions prescribed under the Unified Development Control and Promotion Regulations, 2020 (UDCPR-2020). These include :

Measurement of the reserved land by the TILR in the presence of all concerned parties, namely the Forest Department, TMC, and the Petitioner;

Mutation and reflection of the reserved land in the name of Thane Municipal Corporation by way of an independent and separate 7/12 extract or Property Card, clearly and unambiguously recording TMC as the owner; and

Handover of vacant, unencumbered physical possession of the reserved land to TMC in terms of Regulation 11.2 of the UDCPR-2020.

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It is submitted that TMC has never been handed over physical possession of the writ land. Consequently, the further process for issuance of the DRC has remained incomplete, along with other mandatory prerequisites under the UDCPR-2020.

11. In respect of the compliances sought by the Corporation from the Petitioners in its letter dated 10.07.2025, all such compliances are in consonance with the Development Control Regulations and are required to be complied with.

12. The Respondent Corporation issued a letter dated 06.08.2025 to the Deputy Superintendent of Land Records, thereby requesting measurement of the land under park reservation and handing over the measurement plan to the Corporation (***pages 450 to 452***).

13. The Respondent Corporation also issued a letter dated 06.08.2025 to the Tahsildar, Thane, thereby requesting him to take steps to change the Record of Rights in favour of the Thane Municipal Corporation (***pages 453 to 455***).

14. In other similar matter, TMC had issued three DRCs to the Petitioner after following due procedure; however, the transfer and utilization of the said DRCs were subsequently prohibited after objections raised by Forest Department. Aggrieved by such prohibition, the Petitioner approached this Hon'ble Court by filing Writ Petition No. 6603 of 2023, which is presently sub-judice. In the said proceedings, this Hon'ble Court, by order dated 15.12.2023, observed that considering the complexion of the issue, it would be

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appropriate to defer the hearing of the present proceedings as a third judge matter until the adjudication of Writ Petition No. 10024 of 2023. Thus, the Forest Department has, from time to time, raised objections to the issuance of the said three DRCs and has also objected to the issuance of any further DRCs.

15. Appendix W read with Appendix N.N.1.5 (a) spells out the regulations for grant of Transferable Development Rights. Regulation 7 of Appendix W reads as under:

> "*A DRC will be issued only on satisfactory compliance with the conditions prescribed in the Appendix.*"

16. Regulation 15 of the Development Control Regulations, 1999 reads as under:

> "*Development Rights will be granted and DRCs issued only after the reserved land is surrendered to the Corporation, where it is the Appropriate Authority, or otherwise to the State Government, as the case may be, free of cost and free from encumbrances, after the owner or lessee has levelled the land to the surrounding ground level and after he has constructed a 1.5 m high compound wall (or at a height stipulated by the Commissioner) with a gate at the cost of the owner, and to the satisfaction of the Commissioner, or the State Government (where the Corporation is not the Appropriate Authority). The cost of any transaction involved shall be borne by the owner or lessee.*"

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17. Regulation 11.2.4(b) of the UDCPR, 2020 is pari materia with Appendix W. It is therefore necessary for the Petitioner to comply with the Development Control Regulations for grant of TDR. Compliance of Law (DCR) in is inherent in an order passed by the Hon'ble Court.

18. Clause 11.2.4(b) read as under:

> "(b) DRC shall be issued only after the land is surrendered to the Authority free of cost and free from encumbrances and after levelling the land to the surrounding ground level and after constructing/erecting a 1.5 m. high compound wall/fencing i.e. brick/stone wall up to 0.60m. above ground level and fencing above that upto remaining height with a gate, at the cost of the owner and to the satisfaction of the Authority."

19. It is clear that the land is required to be surrendered free from all encumbrances. The Petitioner, in the present Writ Petition No. 10024 of 2023, in ***(paragraphs 10 to 17)***, has averred in detail about the claim of the Forest Department, which ultimately culminated in Writ Petition No. 3205 of 2018. In these circumstances, the Corporation has rightly demanded submission of an NOC from the Forest Department in order to comply with the requirement under the Development Control Regulations of surrendering the land "free from all encumbrances."

20. It is settled law that one cannot transfer a better title than what one has. It is thus clear that if the Forest Department succeeds in Writ Petition No. 3205 of 2018, the Petitioner will not have title to

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the suit lands and will not be entitled to any TDR in lieu thereof. It is pertinent to note that the Petitioner was well aware of the claim of the Forest Department for all these years prior to submitting the proposal dated 03.07.2018 for grant of TDR. The said proposal also states that the Petitioner is entitled to grant of DRC "as per the provisions under Regulation No. Appendix N.1.5 and Appendix W of the DCR, 1994 of TMC, and amendments thereto."

21. It is also pertinent to note that the Corporation was earlier prevented from granting TDR in view of the injunctions granted in two civil suits, namely Special Civil Suit No. 440 of 2019 and Special Civil Suit No. 36 of 2019, till 25.11.2022, when the order came to be passed in Appeal from Order No. 1050 of 2019.

22. The Petitioner, in their communication dated 15.09.2020 (page 168 of Writ Petition No. 10024 of 2023), the relevant portion of which appears at page 132, reiterated that the TMC is also under a statutory obligation under the MRTP Act, 1966, read with the Development Control Rules and Regulations.

23. It is to be noted that the Petitioners, in their letter dated 21.03.2023 addressed to the Corporation, have categorically stated that they are entitled to be awarded development rights and TDR in accordance with the provisions of the Development Control Regulations (***pages 139–140 of the petition***).

24. It is also pertinent to note that the Forest Department, in its affidavit in reply dated 04.01.2015, has categorically averred that

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the land in question is deemed reserved forest, vested in the State Government, and is in the possession of the Sanjay Gandhi National Park.

25. The Corporation has taken consistent, timely, and necessary steps to comply with Court orders and statutory obligations.

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ANNEXURE 'J'

SUBMISSIONS OF THE RESPONDENT CORPORATION

1. The Respondent Corporation submits that although the registered Transfer Deed dated 24.05.2019 was executed in favour of the Petitioners, Writ Petition No. 3205 of 2018 filed by the Forest Department was pending, wherein the Department was also claiming the land as private forest.

2. The Respondent Corporation further submits that during the pendency of the said Writ Petition and before the passing of the interim order dated 28.04.2025, the Corporation was unable to process the TDR proposal as two civil suits were filed against the Petitioners before the then Civil Courts.

3. The details of the said suits are as under:

a. Special Civil Suit No. 440 of 2019 filed by Rajyaddyaksh Mahendra Sharam and two others against Petitioner No. 1.

b. Special Civil Suit No. 36 of 2019 filed by Oriental Floriculture Private Limited against the Petitioners.

4. The Respondents submit that in both the above-mentioned suits, injunctions were granted, due to which the TDR could not be processed or granted.

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5. The Respondents further submit that during the pendency of the Forest Department's writ petition, an interim order dated 28.04.2025 was passed in writ Petition No. 10024 of 2023, directing the Corporation to comply with the order dated 25.11.2022 passed in Appeal from Order No. 1051 of 2019.

6. Pursuant to the order dated 28.04.2025 in W.P. No. 10024/2023, the Corporation promptly addressed a letter dated 14.05.2025 to the Additional Chief Secretary (UD) seeking guidance regarding grant of TDR (Exh. A is annexed to the Affidavit in reply dated 27.11.2025).

7. The State Government, by communication dated 15.05.2025, clearly informed that TDR cannot be granted due to restrictions under Reg. 11.2.3 (vii) of UDCPR 2020 (Exh. B is annexed to the Affidavit in reply dated 27.11.2025).

8. A coordination meeting was scheduled with UD Department and Forest Department officials on 12.06.2025, communicated through the Corporation's letter dated 10.06.2025 (Exh. C is annexed to the Affidavit in reply dated 27.11.2025).

9. The Corporation filed Interim Application No. 9043/2025 on 25.06.2025, explaining that the subject land falls within a Forest Zone and therefore TDR could not be issued in view of Reg. 11.2.3(vii).

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10. The said Interim Application was heard and dismissed by the Hon'ble Court on 27.06.2025 (Exh. D is annexed to the Affidavit in reply dated 27.11.2025).

11. The Commissioner again wrote on 10.07.2025 to the Additional Secretary (UD-1), informing about the Court's orders and seeking further guidance on the grant of TDR (Exh. E is annexed to the Affidavit in reply dated 27.11.2025).

12. Meanwhile, the ADTP issued a requisition letter dated 10.07.2025 to the Petitioner, calling for compliance with mandatory conditions under Reg. 11.2.4 of UDCPR (Exh. F is annexed to the Affidavit in reply dated 27.11.2025).

13. The Petitioner replied on 14.07.2025, but failed to comply with the requisitions (Exh. G is annexed to the Affidavit in reply dated 27.11.2025).

14. At the Petitioner's request dated 23.07.2025, the Corporation initiated steps for survey and mutation and issued a letter dated 06.08.2025 to DSLR and Tahsildar (Exh. I is annexed to the Affidavit in reply dated 27.11.2025).

15. Draft Development Plan (Revised) was submitted by the Commissioner on 03.09.2025 for final sanction (Exh. J is annexed to the Affidavit in reply dated 27.11.2025).

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16. Further guidance was sought once again from UD Department on 03.10.2025 (Exh. K is annexed to the Affidavit in reply dated 27.11.2025).

17. Petitioner again requested to issuing DRC on 06.10.2025 (Exh. L is annexed to the Affidavit in reply dated 27.11.2025), despite not fulfilling earlier requisitions.

18. The consolidated 7/12 extract submitted by Petitioner includes several names; an independent 7/12 extract /Property card in the name of TMC was a mandatory requirement as per UDCPR Regulation no 11.2.12 (Exh. M is annexed to the Affidavit in reply dated 27.11.2025).

19. Objections raised to mutation entry were rejected on 23.09.2025, confirming Mutation Entry No. 1244 (Exh. N is annexed to the Affidavit in reply dated 27.11.2025).

20. The Deputy Director, SGNP, by letter dated 08.10.2025. stated that the land is in Forest Department's possession and that W.P. No. 3205/2018 is pending (Exh. O is annexed to the Affidavit in reply dated 27.11.2025).

21. The Respondent submits that the Petitioner failed to comply with the essential conditions listed in the letter dated 10.07.2025, including :

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i. Submission of an independent 7/12 extract /Property card solely in the name of TMC.

ii. Non-submission of measurement plan of reserved 2. area.

iii. Failure to construct compound wall around reserved area.

iv. Non-completion of physical unencumbered possession of reserved area.

v. Failure to procure NOC from Forest Department.

22. The requisitions made in the Corporation's letter dated 10.07.2025 are fully aligned with UDCPR.

23. TDR cannot be granted unless all conditions are satisfied, which the Petitioner has failed to do (Exh. P is annexed to the Affidavit in reply dated 27.11.2025).

24. The Corporation has taken consistent, timely, and necessary steps to comply with Court orders and statutory obligations.

25. The Respondent submits that the only reason TDR could not be issued is due to: Statutory restrictions under UDCPR, Claims of the Forest Department, and non-compliance by the Petitioner with mandatory requirements.

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26. Therefore, the Corporation submits that appropriate orders in accordance with law may be passed.

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