

Private Forest Lands: The Recent Bombay High Court Judgment



A recent judgment passed by a two judge bench of the Bombay High Court in *Devkumar Gopaldas Aggarwal and Others v. State of Maharashtra and Others (Devkumar Judgment)*,^[1] deciding a batch of around 176 writ petitions, may prove to be a dampener to private land owners whose lands are categorised as private forests.

Why were these writ petitions filed?

Under the Indian Forest Act, 1927 (**Central Act**), the central government is allowed to issue notifications for the protection of forest lands including lands owned by private individuals, after issuing a show-cause notice to the interested parties and hearing their objections, if any.^[2] Under the Maharashtra Private Forest (Acquisition) Act, 1975 (**Private Forest Act**), any privately owned land in respect of which notice or notification was issued under the Central Act before the Private Forest Act came into force in 1975 would vest in the government of Maharashtra as forest land by virtue of it being deemed a private forest.^[3]

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The writ petitions decided in the Devkumar Judgment were triggered mainly on account of ex-parte mutation entries tagging lands claimed to be privately owned by the petitioners as "Forest" in the revenue records, indicating that these lands vested in the Maharashtra government. Most of the petitioners claimed that their lands were not forest lands because the lands did not have the character of forest and also because the government had merely 'issued' notices under the Central Act but had failed to 'serve' them on the previous owners of the lands. The petitioners also claimed that the government failed to take timely action to notify these lands as forests and take possession of them. The petitioners claimed that merely conducting a *panchnama* and recording revenue entries will not suffice to hold a piece of land as forest land.

Why did the petitioners rely on prior judgments on private forests?

Most of these petitioners heavily relied upon the landmark judgment passed by the Supreme Court of India in 2014 in a batch of 20 appeals filed by Godrej & Boyce Manufacturing Co. Ltd., Oberoi Constructions and a host of other developers and resident bodies (**Godrej Case**).^[4] The petitioners also relied upon subsequent orders passed by the Bombay High Court, which followed the Godrej Case and ruled that the lands in question therein were not forest lands.

In the Godrej Case, the Supreme Court had held that certain lands that were not primarily in the nature of forest (i.e., lands covered with trees, shrubs, bushes or vegetation), in respect of which the central government had merely issued notices way back in 1956-57 under the Central Act and had not served the same or followed the due process of law as laid down under the Central Act, could not be deemed to be "private forests" under the Private Forest Act. These lands did not automatically vest in the government of Maharashtra.

Most of the petitions decided in the Devkumar Judgment sought to prove that their cases were factually similar to the Godrej Case and claimed that the same principles should be applied to their cases. The Supreme Court decision in the Godrej Case was, however, limited only to the specific 20 appeals decided in that case; this position, it appears, was also taken by the Maharashtra government in a 2015 circular directed to state revenue officials.

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What did the High Court hold?

The Bombay High Court brushed aside the claims that the Godrej Case was factually similar to the petitions in the Devkumar Judgment.

Acquisition of land by private individuals after appointed day

The Court observed that in most of the petitions in the Devkumar Judgment, the petitioners had acquired the lands in question subsequent to the appointed day under the Private Forest Act, i.e., 30 August 1975, the date on which all private forests in Maharashtra stood vested in the state free from any encumbrances. As such, any transaction of sale or purchase after such appointed day would not confer any right on the purchasers.

No proof or assertion that no notice or notification issued

The Court also held that the principles laid down in the Godrej Case would not apply to the majority of the writ petitions decided by the Devkumar Judgment because the petitioners had failed to provide any proof or even make any positive assertion that no notification was issued or notice served to the previous owners in respect of the lands they were claiming.

Collector already empowered to decide on issues

The Court reiterated a settled position of law that its writ jurisdiction under the Constitution is extraordinary. The Court observed that if the petitioners are aggrieved by the categorisation of their lands as private forest, then an alternative remedy is already available under the Private Forest Act, under which the Collector is empowered to decide such questions.

Court not to reopen completed proceedings

The Court was clear that it cannot exercise writ jurisdiction to undo what has already been done a long time ago and accepted by the then owners of the affected lands, who did nothing to assert their right to the lands, although being very much on the scene at the relevant time.

Protection of forest cover

The Court held that it would be highly unsafe to allow those petitioners who claimed to have acquired rights in land after the appointed day to argue against the notification of land as private forest land. Such a case, if permitted to be introduced now, would only mean that persons who were out to deprive the state and public of vast forest cover would derive an unfair advantage by invoking the discretionary and equitable writ jurisdiction under the Constitution of India.

Conclusion

In a nutshell, this judgment reflects the Bombay High Court's concern to preserve the forest cover in the state. The Court seems to have taken the view that the principle applied by the Supreme Court in the Godrej Case cannot be applied with a broad brush to all cases involving the declaration of land as private forest land and that each case should be decided on the basis of its peculiar facts and circumstances.

"While purchasing land, purchasers will have to ensure that due diligence is carried out to ascertain that land... has not been previously notified as private forest land, or may have to obtain appropriate undertakings... from the previous owners"

The Court particularly said that a subsequent owner would not ordinarily be able to challenge the notification of land as a private forest, especially where the previous owner of the land (who owned it on the date the land was said to have vested in the state government) has not challenged the notification. This means that while purchasing land, purchasers will have to ensure that due diligence is carried out to ascertain that land they are purchasing has not been previously notified as private forest land, or may have to obtain appropriate undertakings and indemnities to that effect from the previous owners.

Even in a case where the owner of certain land owned it on the date of its notification as a private forest, such owner may be required to challenge this notification before the Collector under the Private Forest Act, rather than invoking the writ jurisdiction of the High Court or Supreme Court directly, depending on the facts of the case.

The Devkumar Judgment remains subject to appeal before the Supreme Court. It remains to be seen whether the Supreme Court will take a view contrary to that of the Bombay High Court and equate the facts in the Devkumar Judgment petitions with those in the Godrej Case.

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[1] Judgment of Justices S. C. Dharmadhikari and P. D. Naik in Writ Petition No. 4814 of 2016, pronounced on 27 September 2018.

[2] See Sections 35(1) and 35(3) of the Central Act.

[3] See Sections 2 and 3 of the Private Forest Act.

[4] See *Godrej and Boyce Manufacturing Company Limited and Another v. State of Maharashtra* ((2014) 3 SCC 430). Our newsletter on the Godrej Case is available at [this link](#).

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