(2008) 03 BOM CK 0115

Bombay High Court

Case No: Writ Petition No. 1957,2937, 2093, 2111, 2930, 2985, 2752, 2060, 2315, 2971, 2418, 1578, 1722, 2032, 2033, 2034 of 2006 and PIL 96 of 2006

Oberoi Constructions Private Limited and Mr. Arunkumar Kotian, Vice President (Corporate Affairs) and Others		APPELLANT
	Vs	
State of Maharashtra and Others Etc. Etc.		RESPONDENT

Date of Decision: March 24, 2008

Acts Referred:

- Bombay Municipal (Further Extension of Limits and Schedule BBA) (Amendment) Act, 1956 - Section 3
- Bombay Municipal Corporation Act, 1888 - Section 354A
- Bombay Town Planning Act, 1954 - Section 10(1), 3(1), 4(1), 9
- Constitution (Forty-Second Amendment) Act, 1976 - Section 57
- Constitution of India, 1950 - Article 14, 141, 21, 226, 227
- Evidence Act, 1872 - Section 114
- Forest Act, 1927 - Section 1, 10, 11, 12, 13
- Land Acquisition Act, 1894 - Section 11A
- Limitation Act, 1963 - Section 10, 11, 12, 14, 15
- Maharashtra Land Revenue Code, 1966 - Section 150, 150(5), 150(6), 3, 73B
- Maharashtra Private Forests (Acquisition) Act, 1975 - Section 10, 11, 12, 13, 14
- Maharashtra Regional and Town Planning Act, 1966 - Section 2(19), 23, 25, 26, 28
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 2(1), 20, 3, 42, 6

Citation: (2008) 3 ALLMR 546 : (2008) 3 BomCR 408 : (2008) 110 BOMLR 951

Hon'ble Judges: Swatanter Kumar, C.J; S.C. Dharmadhikari, J

Bench: Division Bench

Advocate: F.S.Nariman and Aspi Chinoy, instructed by Mahimtura and, Co. in Writ Petition No. 1957, 2196, 2937 of 2006, J.J.Bhatt, Anjali Chandurkar, instructed by Kanga and, Co. in Writ Petition No. 2093 and 2111 of 2006, H.V. Gala, in Writ Petition No. 2930 of 2006, K.N.

Bhandary, instructed by Bhandary and Bhandary and Co. Writ Petition No. 2985 of 2006, V.A.Thorat and V.A. Sugdare, instructed by Dalal and Co. Writ Petition No. 2752 of 2006, P.K. Samdani, H.J.Shah and Yogesh Adhia, in Writ Petition No. 2060 and 2315 of 2006, P.K. Samdani, Mahimtura and instructed by Co. Writ Petition No. 2971 of 2006, Aspi Chinoy, J.P.Sen, instructed by Federal and Rashmikant, in Writ Petition No. 2418 of 2006, Janak Dwarkadas, Mahimtura and instructed by Co. in Writ Petition No. 1578, 1722, 2032, 2033, 2034 of 2006, D.J. Khambatta, Advinstructed by Malvi Ranchhoddas PIL Writ Petition No. 96 of 2006, for the Appellant; Ravi Kadam, General and K.R. Belosey, G.P. K.K. Singhavi, Priti Purandare, with for respondent Municipal Corporation.in Writ Petition Nos. 1957 2937, 2093, 2111, 2930, 2985, 2752, 2060, 2315, 2971, 2418, 1578, 1722, 2032, 2033 and 2034 and Ravi Kadam, General, K.B.Belosey, G.P. and K.K. Singhvi and Priti Purandare, for respondent Municipal Corporation. in PIL Writ Petition No. 96 of 2006, for the Respondent
Final Decision: Dismissed

Judgement

S.C. Dharmadhikari, J.
On 21st March, 2008, we observed world "forest" day. On 23rd March, 2008 in Maharashtra we observed "Tukaram Beej". That is the day on which Saint Tukaram, a Seventeenth Century Poet, regarded by many as the greatest in Marathi language, left for his Nirvana. Eachone of us has forgotten his apt remark and observation regarding a forest, the Trees and the creatures. He says:

Trees, creepers and the creatures of the forest Are my kith and kin And birds that sweetly sing This is bliss! How I love being alone! Here I am beyond good and evil Commit no sin The sky is my canopy, the earth my throne. My mind is free to dwell wherever it will. A piece of cloth, one all purpose bow! Take care of all my bodily needs. The wind tells me the time.

Translated from original Marathi by Dilip Chitre, Penguin Classics, 1991.

Reciting these lines today is like talking of other world. At least, the land owners and all those claiming through them think so. We rest here and say nothing more.

1. Since common question of law and facts arise for determination, these petitions were heard together and are disposed of by common judgment. For the purpose of answering the question and issue involved, it would not be necessary to advert to the facts in each individual case. Hence, we have taken facts of the representative petition and the same are being elaborated hereinafter. Although, lengthy arguments have been advanced touching several aspects of the controversy, the principal and only question involved in these petitions is whether the notices issued by the Revenue Authorities and proceedings in pursuance thereof, can be said to be bad in law and vitiated by any serious legal infirmity.

2. The Revenue Authorities by their notices have directed the petitioners to discontinue the user of the properties which are more particularly described in the

individual petitions. The action proceeds on the basis that once notice u/s 35(3) of the Indian Forest Act, 1927, hereinafter referred to as "1927 Act", is issued, any land in respect of which such notice has been issued, would become a "private forest" within the meaning of Section 2(f)(iii) of the Maharashtra Private Forest (Acquisition) Act, 1975, (for short "Private Forest Act".)

3. Writ Petition No. 1957 of 2006 is filed under Article 226 of the Constitution of India, challenging the communication (Exh.J) dated 20th December, 2005 from the Office of the Forest Conservator (Security), Mumbai to the Tahsildar, Kurla stating therein that a notice u/s 35 of 1927 Act has been issued and the said notice is applicable to Survey number of the villages stipulated therein. A reference is made to this Court''s order in PIL No. 17 of 2002 and it is stated that the area which has been stipulated in the notice against the village and the survey number has been recorded as "forest" in the revenue record and has been directed to be handed over to the Forest Department of the State. In so far as these petitioners are concerned, they are affected by mutation entry Nos. 5079 and 993 (Exhibits K and L to the writ petition), pencil entries in 7/12 extra (Exh.M to Q to the writ petition).

4. The petitioners allege that they are the Real Estate Developers. Between July and September, 2005 they have acquired from Glaxo Smithkline Pharmaceuticals Limited (GSK for short) a piece and parcel of land which is more particularly described in the Writ Petition. It is their case that they have paid for these pieces of land a sum of Rs.13 crores (approximately). They have incurred various expenses such as stamp duty, registration charges, and legal charges. They have obtained loans of Rs.200 crores from U.T.I. Bank Ltd. It is their case that when negotiations for purchase of these lands commenced, the petitioners discovered that the land were already converted to "non agricultural" user in as much as there were factories located on these lands. It is their case that the user was in conformity with the Development Plan of 1967 and revised Development Plan of 1991 which have been prepared under the Maharashtra Regional and Town Planning Act, 1966.

5. It is the case of the petitioners that based on the documents supplied by the said GSK and confirming their ownership of the lands, the said transaction was concluded and the lands were acquired. It is contended that after such transaction was concluded, relying upon the representation of the vendors, the petitioners had made several plans of putting up construction. In other words, the petitioners decided to continue the non agricultural user. However, without any prior notice and behind their back, respondent Nos. 1 to 4 to the writ petition, effected entries in the revenue record and the entries are to the effect that the lands purchased by the petitioners are "private forest". The petitioners thereafter noticed that the mutation entries have resulted in further particulars being inserted in the property register cards pertaining to these lands. Further, they discovered that respondent Nos. 1 to 4 are asserting that these lands are "private forest" on the basis of the some notice issued way back in 1957, under the 1927 Act. The petitioners were further surprised

that on the basis of these entries the fifth respondent has not issued the commencement certificate and that is how the entire plan of putting up construction is not being implemented. Resultantly, crores of Rupees which have been invested for purchasing the land and proposed construction activities are being wasted. The petitioners have challenged the action of respondent Nos. 1 to 4 as wholly illegal and without any jurisdiction. The petitioners have contended that the lands which are the subject matter of the petition abut Lal Bahadur Shashtri Marg, Mulund, Ghatkopar along side which there have been in existence atleast since last 50 years the factories, public buildings and residential area. There are other builders who have put up their construction on such lands and they are also affected and their petitions have also been entertained by this Court.

6. It is the case of the petitioners that respondent No. 4 some time in the year 2005-2006, at the instance of respondent No. 3, purported to make Mutation Entry bearing No. 5079 dated 16th January, 2006 and Mutation Entry No. 993 dated 24th January, 2006 so also some pencil entries in the Revenue record stating that the petitioners'' lands are "private forest" and have been acquired under the Private Forest Act. These entries, according to the petitioners, have been purported to be made for the first time after 31 years of the Private Forest Act coming into force. The entries have been made on the basis that certain show cause notices u/s 35(3) of the 1927 Act have been issued in respect of these lands in 1957. It is their case that these show causes notices never resulted in the final notification u/s 35(1) of 1927 Act. It is their case that the show cause notices, therefore, lapsed and ceased to be in existence/operation after repeal of the 1927 Act. Once these notices are not live notices but abandoned, then, the lands cannot become private forest under the Private Forest Act, 1975. The Mutation and Pencil entries which have been made on the basis of such abandoned and virtually dead notices cannot have any legal effect and they are ex facie without jurisdiction, illegal, null and void.

7. This is the principal contention in all these writ petitions and there are some ancillary contentions and submissions to which reference would be made during the course of this judgment. Thus, the core issue is whether on the basis of the notices under the 1927 Act which were issued as early as in 1956-57 can it be said that the lands of the petitioners become "private forest" within the meaning of Section 2(f)(iii) of the Private Forest Act.

8. In so far as Writ Petition No. 1957 of 2006 is concerned, the petitioners state that the land bearing Survey No. 91(part) of village Nahur which is referable to Notice No. WT/59, the area of 35 Acres and 29 Gunthas which is equivalent to 39,707.80 sq.meters and now numbered as City Survey No. 543 of village Nahur, land bearing Survey No. 149 (part) earlier covered by Notice No. WT/60 admeasuring 5 acres 22 and 1/4 gunthas, now bearing C.T.S.No. 546, 546/1 to 2 of the same village admeasuring 7,560.86 sq.meters so also land bearing Survey No. 156 (part) of the same village traceable to notice No. WT/60 admeasuring 2 acres 29 gunthas and

now covered by city survey No. 545 of the same village admeasuring 2176.37 sq.meters. are the affected lands. There are other lands which are also affected and they are of village Mulund, details of the same are also enlisted in paras 7(a to d) of Writ petition No. 1957 of 2006.

9. It is the case of the petitioners that at the material time i.e. in 1957, Ramchandra Gajanan through his guardian Smt. Kamlabai Vishwanath Acharaya and Gajanan Vishwanath Acharaya, also through the said Kamlabai, were the owners of the said property along with the contiguous lands.

10. The Acharaya family, by a Deed of Conveyance dated 26th March, 1959 conveyed the lands bearing Survey No. 227 (part), 228 (part), and 229d (part) of village Mulund as also land bearing Survey No. 91 (part) and survey No. 149 (part) of village Nahur to Burroughs Welcome. The Acharaya family conveyed the lands bearing Survey No. 91(part) of village Nahur to Ciba of India Limited, who by Deed of Conveyance dated 5th February, 1978 conveyed the same to Burrough Welcome. The lands conveyed by the two conveyances respectively dated 26th March, 1959 and 5 February, 1978 constitute a part of the said property. Furthermore the lands bearing survey No. 156 (part) bearing equivalent City Survey No. 545 of village Nahur was granted by the Collector vide order No. C/LND/SR I dated 19th July, 1963 to Burroughs Welcome. The petitioners further state that for reasons indicated hereafter the lands now vest in GSK.

11. The petitioners state that vide order dated 12th August, 2004 passed by this Hon''ble Court in Company Petition No. 496 of 2004 connected with Company Application No. 155 of 2004 Burroughs Welcome merged and amalgamated in GSK. Thus all assets, including the said property vested in GSK vide order dated 12th August, 2004.

12. Burroughs Welcome, who acquired the lands from its predecessor in 1959 and 1978 respectively, acquired the same on the basis that the lands belonged to the Acharya Family and to Ciba of India Limited, as absolute owners. Burroghs Welcome have constructed factories on the said property by converting the use of the land to Non Agricultural purposes as indicated hereafter.

13. It is the case of the petitioners; that respondent No. 2, Collector (Mumbai Suburban District) vide order bearing No. LND.A 8143 of 1961 dated 23rd March, 1961 has on the application of Burroughs Welcome converted the land bearing Survey No. 91 (part) and Survey No. 149 (part) to Non Agricultural Use.

14. It is the case of the petitioners that respondent No. 2, the Collector (Mumbai Suburban District) Vide Order bearing No. DLN/LND/8-4192 dated 20th August, 1978 has on the application of Burroughs Welcome converted the land bearing Survey No. 91 (part) equivalent to City Survey No. 543 to Non Agricultural Use.

15. The petitioners state that in 1967 the said property, along with all other lands within Mumbai and Mumbai Suburban were subjected to Development Plan 1967 and Development Control Regulations under provisions of the Maharashtra Regional Town Planning Act, 1966. Under the Development Plan, 1967 the said property was designated for Industrial Zone (I-3). It is further case of the petitioners that even under the Revised Development Plan, 1991 the designation as I-3 continued, however, as is permissible under the Development Control Regulations, 1991 the user of the said property is now converted to residential cum commercial use vide Order bearing No. CHE/974/ITOR/TPES dated l22nd August, 2005.

16. These lands have been purchased by the petitioners for the consideration referred to above under the Deeds of Conveyances executed some time in July and September, 2005. Reliance is placed upon the remarks in the Revised Development Plan pertaining to these lands. The case of the petitioners is that under this Revised Plan of 1991, the lands'' designation is "Industrial Zone (I-3)". It is their case that the property falls within the limits of Mumbai Suburban and, therefore, covered by Development Plan of 1967 and the revised Development Plan of 1991. Reliance is also placed on D.C. Regulations 1991 whereunder the user of the property is converted to Residential, cum commercial.

17. It is in such circumstances that the petitioners allege that after investing more than Rs.200 crores and further funds for obtaining approvals and permissions/sanctions from appropriate authorities, they are taken by surprise by the decision of the Government of Maharashtra and Forest Department, in particular, treating the lands as private forest. In such circumstances, they apprehend that no construction activity would be permitted on these lands. Consequently, magnitude of their loss in crores would not only cause prejudice to them but to those who have invested in the project. The investors including the financial institutions have large stakes in the project. Further, those persons who have booked flats and tenements would also suffer enormously. In such circumstances, they allege that the notices which are subject matter of these petitions are incapable of being implemented and given effect to after lapse of several decades.

18. The other facts which need to be noticed are in writ petition No. 2196 of 2006 i.e. filed by M/s Godrej and Boyce Manufacturing Co. Pvt.Ltd. There, the properties of the said petitioners affected by the notices, are those mentioned in para 2 of the petition. They appear to be principally located in village Vikhroli of Mumbai. It is their case that in Government Gazette dated 6th September, 1956 a notice bearing WT/53 was published in pursuance of Section 35(3) of 1927 Act. The Manager of the factory of the first petitioner was called upon to appear before the Divisional Forest Officer (DFO for short), West, Thane to show cause why notification u/s 35(1) of 1927 Act should not be made in respect of the land in village Vikhroli. It is the case of the petitioners that the copy of the said notice was not served on M/s Godrej Boyce.

Therefore, at the relevant point of time, the first petitioner was not even aware of the notice. They became aware of the notice for the first time on 10th June, 2006. It is their specific case that no notification u/s 35(1) of the 1927 Act was published pursuant to the aforesaid notice. In such circumstances and when the lands are falling within the residential zone under the Development Plan of 1967, the petitioners have constructed between 1957 and 1976, 34 buildings containing 268 tenements on the land situated on the West of L.B.S. Marg. These buildings were constructed after obtaining necessary sanctions and approvals. They have been used as staff quarters. All buildings are currently occupied. In such circumstances and when even the revised Development Plan of 1991, continuing the zonal designation, there is no question of giving effect to any of the notices. There is a reference made to the proceedings under the Urban Land Ceiling and Regulation Act, 1976 where under returns were finalized and such of the lands which were declared as surplus vacant lands in this urban agglomeration were made subject matter of exemption under the Exemption Order dated 5th October, 1984 issued u/s 20 of ULC Act. The petitioners have made a detailed reference to the construction carried out pursuant to the Exemption Order and the project/buildings under construction. It is their case that in so far as the buildings under construction are concerned, respondent No. 4 the Municipal Corporation of Brihan Mumbai issued stop work notice u/s 354A of the Bombay Municipal Corporation Act, 1888. These notices made a reference to the same communication from the second respondent i.e. State of Maharashtra/Deputy Conservator of Forest, Thane Forest Division stating the lands were affected by the Private Forest Act as they are "private forests". The petitioners were, therefore, called upon to obtain necessary permissions under the Forest Conservation Act, 1980 from the Central Government for works other than the forests on these lands.

19. It is the case of the petitioners that they replied to the notices and pointed out that the construction on the land was carried out after necessary permissions have been obtained. The construction is not illegal or unauthorised. Therefore, the notices be withdrawn.

20. The petitioners contend that subsequently they obtained copy of the letter dated 8th May, 2006. This is a letter which has been referred to in the 6th Notice addressed to them. The letter of 8th May, 2006 is issued by the Deputy Conservator of Forests, Thane Forest Division and he requested the Municipal Corporation to inform him about the permission granted for the activities other than forest in certain areas. That information is sought in pursuance of the order passed by this Court in P.I.L.No. 17 of 2002. It is the case of the petitioners that their land, in respect of which notices u/s 35(3) of 1927 Act were issued earlier, are referred to in the communication of 8th May, 2006.

21. It is their case that prior to June, 2006, 7/12 extracts of the lands showed only the first petitioner as owner but now entry in "other right column" has been made on

7th June, 2006 showing that parts of the lands are forest covered by Private Forest Acquisition Act.

22. It is in these circumstances that they have claimed a declaration and relief including, quashing and setting aside of the letter dated 8th May, 2006 and notices.

23. Another petition which requires reference is Writ Petition No. 2937 of 2006 which is filed by Nanabhai Jeejeebhoy Private Limited and another.

24. Relevant averments after the details of lands and properties are set out are as under::

a) The petitioners state that the Show Cause Notice No. WT/75 was issued to the then owner, Nanabhoy Byramjee u/s 35(3) of the Indian Forests Act, 1927 and was published in Bombay Government Gazette dated 25th April, 1957. The copy of the said notice is annexed as Exhibit N to the petition.

b) The show cause notice (Exh.N) required the owner, Nanabhoy Byramjee to appear and show cause within two months from the date of receipt of this notice, why the accompanying Notification should not be made by the Government u/s 35(1) of the Indian Forest Act, 1927. Pending the enquiry, the show cause notice imposed temporary restrictions on the cutting and removal of trees or the clearing of vegetation on the said lands "for a period of six months or till the date of making the Notification whichever is earlier.

c) The issuance of the said show cause notice was only a transient/preliminary step for inviting objections and for considering the Government to consider whether a Final Notification should be issued u/s 35(1) in respect of the lands covered by the said show cause notice. As per the said Show Cause Notice, the objections were to be filed/cause shown within two months of receipt of the Notice and even the restrictions imposed by the said Show Cause Notice were to remain in force only for a maximum period of six months. In the present case, pursuant to the said show cause notice (Exh.N) which was issued in 1957, no Notification was ever issued/published by the Government u/s 35(1) of the Indian Forest Act, 1927 in respect of the affected lands. The restrictions imposed by the said Show Cause Notice (Exh.N) on the use of the affected lands also lapsed after expiration of six months from the date of issuance of the notices in 1957. Accordingly, the said Show Cause Notices which were only a preliminary step, necessarily lapsed/became inoperative in 1957 itself.

25. Thus, it is the case of these petitioners that when only a show cause notice was issued to then owners, Nanabhoy Bayramjee u/s 35(3),but the same was not followed up with any notification u/s 35(1) which is a final step, then, all proceedings in pursuance of the show cause notice No. WT/75 have lapsed or became inoperative in 1957 itself.

26. All petitions were placed before this Court and considering the controversy involved they were admitted. Rule was issued and following interim order was passed.

Considering the order passed in Writ Petition No. 1957 of 2006 dated 11th August, 2006, Rule. The petitioners will be entitled for the same relief as granted in the said petition. In the light of that, there should be interim relief in terms of prayer Clause (b)(i)

27. The Interim order of this Court was thereafter challenged in as much as this Court had merely stayed the entries in the revenue record but did not grant any injunction restraining the respondents from interfering with the construction work on the properties/land so also did not grant mandatory directions as prayed with regard to the permissions and approvals.

28. Hence, this limited interim order according to some of the petitioners, did not sufficiently protect them. That is how the matter was carried to the Hon''ble Supreme Court of India and a Bench presided over by the Hon''ble the Chief Justice on 25th April, 2006 passed the following order.

All these special leave petitions have been filed against the interim order(s) passed by the High Court of Judicature at Bombay in a series of writ petitions filed before it. The main matters are still pending before the High Court. Having regard to the nature of issue involved and the urgency, we request the High Court to dispose of the main matters at the earliest, at least within a period of four months from today. Post all these matters in the 2nd week of September, 2007,.

Meanwhile, the writ petitioners before the High Court shall not henceforth create any third party interest.

29. In other words, this Court was directed to dispose of these writ petitions within a time limit set by the Hon''ble Supreme Court. The matters were placed before this Court for directions and after appropriate extension of time was sought from the Hon''ble Supreme Court, they have been heard by us.

30. We will have an occasion to refer to certain orders which we have passed during the course of hearing of these petitions. Suffice to state that after the Hon''ble Supreme Court directions were brought to our notice we directed the parties to complete the pleadings. After they were completed we heard them extensively. Due to urgent admissions and part heard matters, we could not hear these matters day to day but heard them extensively by reserving certain sessions for arguments.

31. On behalf of the petitioners, arguments were led by Mr. F.S. Nariman, the learned Senior Counsel. His arguments were supported by Mr. Chinoy, Mr. Chagla, Mr. Dwarkasdas, Mr. Khambatta and other senior counsel whereas the respondents were represented by the learned Advocate General. We also heard the intervenor (petitioners) in PIL No. 17 of 2002. On behalf of this intervenor submissions were

canvassed by learned Counsel Mr. G.S. Patel. The intervenors are Action Group called Bombay Environmental Action Group (BEAG for short). The State Government and the Forest Department were given opportunity to file their affidavits.

32. Mr. Nairman, learned Senior Counsel, at the out set, contended before us that provisions of Section 2(f)(iii) read with Section 3 of the Maharashtra Private Forests Acquisition Act, 1975 are statutory provisions concerning acquisition of lands and must, therefore, be strictly as also fairly and reasonably construed. In support of this submission, Mr. Nariman relied upon State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, Khub Chand and Others Vs. State of Rajasthan and Others, and Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, . Mr. Nariman then contended that the public notices in all these cases u/s 35(3) of the Forest Act were in respect of "forest" and not "land". Section 2(f)(iii) of the 1975 Act only covers notices issued in respect of "any land" in contradistinction to the term "forest" used in earlier sub-clauses. It is, therefore, submitted that Section 2(f)(iii) of the 1975 Act, the statutory provision relied on by the State to contend that the petitioners lands had automatically vested in the State Government with effect from 30th August, 1975, is not attracted at all. Besides the 1975 Act first defines "forest" (section 2(c-1)) and then defines "private forests" separately in Section 2(f) as meaning "any forest which is not the property of Government". In none of the cases in these petitions, is the land, said to be vested by virtue of falling within the first part of Section 2(f), namely, "private forest means any forest which is not the property of the Government...." The petitioners land in each of these petitions are said to be covered only under the latter part of Section 2(f) viz. Section 2(f)(iii) (the inclusive part of the definition). The statement of objects and reasons of the Act clearly shows that the Act was enacted to take over and protect what were truly private forest as on 30th August, 1975 and the paramount object is also stated in the said Act. He then submitted that inclusive part of the definition in Section 2(f) viz. Section 2(f), (i), (ii) and (iv) clearly relate to a state of events existing on 30th August, 1975 and it is this context that the provision in Section 2(f)(iii) falls for consideration. Mr. Nariman, therefore, submitted that Section 2(f)(iii) is applicable and referable to a valid notice in time i.e. at or about the time of enactment of 1975 Act i.e. 30th August, 1975. Mr. Nariman, then, emphasized that on a true construction of 1975 Act a "private forest" not only means any forest which is not the property of government (as defined in Section 2(c-i) but includes (i) any land declared before 30th August, 1975 to be a forest u/s 34A of the Forest Act (section 2(f)(i);(ii) any forest in respect of which a notification u/s 35(1) of the Forest Act is in force immediately before 30th August, 1975 (section 2(f)(ii) and (iii) any land taken over as forest pursuant to an application by the owner himself u/s 38: (section 2(f)(iii). He then submitted that it is in this context that Section 2(f))(iii) of the 1975 Act read with Section 35(3) of the Forest Act must necessarily be confined to cases where valid and subsisting notices were issued at any time within one year before 30th August, 1975 and in respect of which proceedings had not been completed on

30th August, 1975, the date, when Section 35 was repealed by Section 24 of the 1975 Act. It is in respect of such notices alone that the 1975 Act treated the issue of such notices as effectuating a deemed vesting u/s 3 of the 1975 Act. Mr. Nariman then submitted that the words "a notice has been issued under Sub-section 3 of Section 35 of the Forest Act" in Section 2(f)(iii) of the 1975 Act expressly incorporates the entire Sub-section (3) of Section 35 of the Forest Act and must be read in the context of that provision. He submitted that the issue of notice u/s 35(3) of the Forest Act is for a purpose of eliciting objections from the notice and for the State Govt. duly considering the same which implies that the notice must be brought to the knowledge of the noticees as provided in Section 35(5) of the Forest Act. Mr. Nariman submitted that the notices published in the Bombay Government Gazette in1956 (in case of Godrej), in 1957 (in case of Oberoi constructions) and in 1957 (in the case of Nanbhoy Jeejeebhoy) cannot be relied upon by the State Government as notices falling u/s 2(f)(iii) of the 1975 Act because (i) in the case of Oberoi Constructions they are subsequent transferees and it is not shown that the notices of 1957 in their cases were served on the then owners as required by Section 35(5) and mandated by Section 35(5A) or even if they were served why notification u/s 35(1) of the Forest Act was not issued. The only inference could be that these notices were not pursued as the State Government did not on further consideration treat these lands as forest lands and the lands had to be forest before Section 35(3) or Section 35(1) could be invoked. Secondly, in the case of Godrej for instance although they remained owners after the Notices were published in the Bombay Government Gazette (in the year 1956) it has been brought on record that Godrej were never served with these notices.

33. Mr. Nariman, learned Senior Counsel then argued that the judgment of the Supreme Court reported in Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, hereinafter referred to as "Chintamani") was a case of live notices and pending notices issued u/s 35(3) of the Forest Act but which could not be enquired into or proceeded with since the entire Section 35 of the Forest Act had stood repealed with effect from 30th August, 1975. In those circumstances it was held that Section 2(f)(iii) only contemplated issue of a notice u/s 35(3) of the Forest Act and not service thereof and that there was to be no hearing of any objections.

34. Mr. Nariman, alternatively and treating "Chintamani"s case as holding that notice issued does not include notice served, submitted that an abandoned, lapsed or invalid notice does not fall u/s 2(f)(iii) of the 1975 Act and cannot result in an automatic vesting u/s 3 of the 1975 Act. He submitted that if at all such lands can be acquired they can only be acquired by following the provisions (post 30th August, 1975) laid down in Section 21 of the 1975 Act read with Clause (iii) of Section 2(c-i). Mr. Nariman, then submitted that a conjoint reading of Section 35(3) and (4) of the Forest Act establishes that a notice issued u/s 35(3) would remain valid and operative only for a period of six months (or one year) after the 1961 amendment of Section 35(3). Mr. Nariman submitted that in the instant cases the show cause

notices were of the year 1956 (In the case of Godrej) and 1957 (in the case of Oberoi and Nanabhai Jeejebhoy) and no notification u/s 35(1) was ever issued within six months of the notices or at all nor is there any explanation offered by the State for this in the counter affidavit. It is, therefore, clear that the State Government itself did not pursue the Notices of 1956 band 1957 published in the Bombay Government Gazette and permitted these Notices to lapse. In fact the State Govt. and all organs of the State who were necessarily aware of the Section 35(3) notices did not treat these lands as having vested in the State on 30th August, 1975. On the contrary by positive affirmative acts, the State designated these lands after 1957 in the Development Plans of 1967 and 1991 as industrial/residential lands and permitted development and buildings thereon. He submitted that implicit in the above is that the development plans published under the Town Planning Acts (Act of 1954 and Act of 1966) and the individual permissions for construction and development repeatedly granted and acted upon were all "unauthorised", which would be absurd. He submitted that in the case of Godrej in fact the lands were treated as having vested in the State - not u/s 3 of the 1975 Act but under the Urban Land Ceiling Act, 1976 in respect of which an exemption was granted u/s 20 of the ULC Act vide order dated 5th October, 1984 issued by the State Government recognising that it was Godrej who "held" these lands as owner and express permission was given to the petitioner (Godrej) to develop the lands by building staff quarters and a large part of this project has been completed. Mr. Nariman, alternatively, submitted that it is well settled rule of construction of a statutory power must be exercised within reasonable time, the length of reasonable time being determined by the facts of the case and the statute in questions. In support of this contention Mr. Nariman relied upon the decision reported in 1969(2) SCC 1297 (State of Gujarat v. Patel Raghav Natha and Ors.). He submitted that the decision in State of Gujarat''s case was also followed by the Hon''ble Supreme Court in Mansaram Vs. S.P. Pathak and Others, . Mr. Nariman also relied upon the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, and submitted that even independently of Section 35(4), power u/s 35(1) to issue Notification gets exhausted after the expiry of a reasonable time from the issue of a show cause notice u/s 35(3) and such reasonable time would generally speaking be one year as shown by the provisions of Section 35(4) but certainly it could not extend to 17 years. Mr. Nariman submitted that even independent of the provisions of Section 35(4) following the rule of interpretation that all statutory powers must be exercised within a reasonable time it is submitted that these show cause notices of 1956 and 1957 have lapsed (or have been abandoned) and could never have culminated in a notification u/s 35(1) after 1958 i.e. Long before Section 35 of the Forest Act was repealed by 1975 Acquisition Act with effect from 30th August, 1975. He submitted that none of these show cause notices of 1956 and 1957 could possibly fall within Section 2(f)(iii) of the 1975 Act so as to attract the provision of vesting in Section 3(1) of the Acquisition Act. Mr. Nariman has also referred to the affidavit in reply filed on behalf of the State to contend that Sections 35(1) and 35(3) are independent and exclusive of each other.

Mr. Nariman submitted that it is not the petitioners'' case that the lands would vest under the 1975 Act only if a notification had been actually issued u/s 35(1) of the Forest Act. It is the petitioners case that Section 2(f)(iii) of the 1975 Act only covers show cause notices which are valid within the time frame stipulated in Section 35(3) and (4) of the Forest Act and had not lapsed and become inoperative in law. He submitted that the assertion that the provisions of Section 35(1) and 35(3) of the Forest Act are independent and are exhaustive of one another is patently incorrect. He submitted that it is only when the State Government (Conservator of Forests) would prima facie come to the conclusion that some regulation or prohibition was necessary u/s 35(1) in respect of "any forest" that the officer authorised by the State Government (Conservator of Forest) would issue a notice to the owner of such "forest" calling on him to show cause within a reasonable period to be specified in such notice why such Notification (under Section 35(1) should not be made and no notification u/s 35(1) could be made (under the provisions contained in Section 35(3)) until his objections, if any, and evidence he may produce in support of thereof had been duly heard by an officer appointed by the State Government, and had been considered by the State Government itself. Under the Rules, the officer to hear the objections is the Forest Officer who has to make a report to the State Government which has to take a decision. He submitted that the very opening words of Section 35(3) "no notification shall be made under Sub-section (1)...until after the issue of a notice to the owner of such forest" shows the close interconnection between Section 35(1) and Section 35(3). It is, therefore, erroneous to state that Section 35(1) and 35(3) of the Forest Act are independent and exclusive of each other. They are not. Nor has the Supreme Court in Chintamani''s case said that they are exclusive of one another. Chintamani only states that in respect of a notice issued on 29th August, 1975 a day before the repeal of Section 35 which could not possibly be also served on the owner in this abnormal case, the word "issue" in Section 2(f)(iii) would have to be read as "issued though not served". In support of this contention he relied upon the case of State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, .

35. Mr. Nariman submitted that one can only assume that the show cause notices of 1956 and 1957 were not pursued because they were not preceded by Gazette notification u/s 34A of the Forests Act. Mr. Nariman submitted that the lands could only be treated as "forest land" if the relevant notification u/s 34A of the Forest Act 1927 had been issued and gazetted not otherwise. He submitted that the new interpretation clause was added by Bombay Amendment Act 62 of 1948 and Section 34A was amended. By the said amending Act 62 of 1948 Section 35(3) was also amended and the words "or land" occurring after the words "the notice to the owner of such forests..."were expressly deleted. Section 2(f)(iii) of the 1975 speaks only of any land (to be contrasted with the immediately preceding and following sub-clauses which speak of "forests"). The Notices in question (published in the Bombay Government Gazette)l in the year 1956 and 1957 were expressly in respect

of "forest" (not "lands"); it is submitted that after the insertion of Section 34A (interpretation Clause in Chapter V by the Bombay Act 62 of 1948) - by which Act the expression "or land" were also expressly deleted in Section 35(3), the clear intention of the State Legislature was that lands had first to be declared as "forests" under the provisions of Section 34A (by Gazette Notification) before protective orders by Notification u/s 35(1) were passed. Even in Sub-section (2) of Section 35 which provides that the State Government may, for any such purpose, construct at its own expenses in or upon any forest or waste land such works as it thinks fit" the wording was changed by the same Bombay Amendment Act 62 of 1948 to read: "2: The State Government may, for any such purpose, construct at its own expenses in any forest such works as it thinks fit." Mr. Nariman submitted that the conspectus of the amendments effectuated by Bombay Act 62 of 1948 viz. (i) addition of the "interpretation "clause Section 34A (ii) deletion of the words "waste lands" in Section 35(2) and (iii) deletion of the words "or land" in Section 35(3) clearly show that the true intent of the Legislature in Maharashtra was that the State Government had first to declare any land containing trees and shrubs, pasture lands and any other lands whatsoever to be a forest by Notification in the Official Gazette before action u/s 35(1). Mr. Nariman submitted that since the Notices of 1956 and 1957 in these petitions had not been preceded by any such declaration u/s 34A that appears to be the reason why these notices were not further pursued. In absence of any other rational explanation (and no explanation has been offered by the State) this could be the only reason why no further steps (of service hearing of objections etc.) were pursued in respect of the show cause notices published in the Bombay Gazette of 1956/57. Mr. Nariman then submitted that the interpretation clause (section 34A) defines "forest" as including any land containing trees and shrubs, pasture lands and any other lands whatsoever which the State Government may by Notification in the official Gazette declare to be a forest" is not necessarily indicative of an extended meaning, "including" could also signify "means and includes". In support of this submission Mr. Nariman relied upon G.P. Singh''s Principles of Statutory Interpretation 10th Edition (2006) and the case laws in (i) The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, ; (ii) Dadaji alias Dina Vs. Sukhdeobabu and Others, ; and (iii) Reserve Bank of India v. Peerless General Finance and Investment Co.Ltd. Reported in A.I.R.1987 S.C.1023. Mr. Nariman submitted that the notices of 1956 and 1957 in these cases as published in the Government Gazette are notices to show cause u/s 35(3) in respect of "forest" not land. The words "any land..." in Section 2(f)(iii) of the 1975 Act when read with Section 35(3) of the Forest Act (notice to the owner of such forest) must accordingly mean "any land" in respect of which a notification u/s 34A has been gazetted declaring it to be a forest.

36. Mr. Nariman submitted that construing Section 2(f)(iii) of the 1975 Act to be applicable even to notices issued almost two decades prior thereto (and have in fact ceased to be valid or operative) would also result in hardship, inconvenience and

absurdity and would also be a premium on inaction/default/negligence on the part of the State Government. He submitted that it is a settled principle of construction of statute that they must be so read as to avoid hardship, inconvenience or absurdity. In support of this submission he placed reliance upon a two Judges decisions in (i) Tirath Singh Vs. Bachittar Singh and Others, ; (ii) Bhudan Singh and Another Vs. Nabi Bux and Another, ; (iii) a Constitution Bench decision in M. Pentiah and Others Vs. Muddala Veeramallappa and Others, and (iv) passages from G.P. Singh''s Text book on interpretation.

37. Mr.Nariman then submitted that apart from the principle of estoppel there is another well settled principle in all administrative law. It is the rule of fairness. It precludes public bodies especially the Government Departments from reopening matters which were taken to be settled due to its action. In support of this contention he relied upon the decision in Rathi Alloys and Steel Ltd., Alwar Vs. Collector, Central Excise, Jaipur, Mr. Nariman submits that in the case of Oberoi constructions the facts and circumstances clearly show that the State Government never treated the petitioners'' lands as being "private forests" vested in the State under the Maharashtra Acquisition of Forest Act, 1975. Mr. Nariman pointed out that the facts and circumstances show that respondent No. 1 had never treated the said property as allegedly being private forests which had vested in 1st respondent under the Forest Act, 1975. He submitted that in 1967 the said property was zoned/demarcated for industrial user in the statutory development plan prepared by the Planning Authority and sanctioned by respondent No. 1. Moreover in response to the statutory public notices issued prior to sanctioning of the Development Plan, no officer of respondent No. 1''s Forest Department had preferred any objections, or contended that the same could not be so zoned as they constituted private forest which had vested in respondent No. 1. Mr. Nariman submitted that even after the Forest Act, 1975 came into force on 30th August, 1975 no officer of the Forest Department had contended that the said property was private forests or had stood acquired under the Forest Act, 1975. He submitted that for the next 30 years no entries regarding such alleged acquisition/vesting were made in the Revenue Records. He submitted that in 1991 the Revised Development Plan was prepared by respondent No. 5 and sanctioned by respondent No. 1. The 1991 Plan constituted the original zoning of the said lands but added reservation for school and playgrounds. In response to the statutory public notices issued prior to sanctioning of the Development Plan, no officer of respondent No. 1''s Forest Department had preferred any objections or contended that the said property could not be so zoned as they allegedly constituted acquired private forests which had allegedly vested in respondent No. 1. Mr. Nariman submitted that respondent No. 2 has also issued orders converting the said lands to Non Agricultural (N.A.) use as far back as 1961 and 1978 as evidenced by the N.A. orders. In 2005 respondent No. 5; has issued IOD for the construction of the said property. Mr. Nariman submitted that though the Forest Act 1975 provides that on acquisition for private forest the

holder shall be paid compensation in terms of a procedure set out in Section 7 of the Forest Act, 1975 no compensation has been paid to the holder of the said property nor have any proceedings taken place under the Forest Act, 1975. He submitted that similar show cause notices had been issued in 1950''s in respect of other lands lying on either side of the old Bombay Agra Road, stretching from Ghatkoper up to Mulund. These too had not resulted in the issuance of any Notification u/s 35(1) of the Indian Forests Act, 1927 and such notices have been abandoned/lapsed. The area plan of the lands along the Bombay Agra Road indicate that several of such properties including those owned by Johnson and Johnson, Rallies and Ralli Wolf, Hoechst, Schinder as also several properties owned by Government, Semi Government or Autonomous bodies such as ESIS etc. have been developed/built upon.

38. In so far as the petition filed by Mr. Godrej and Boys is concerned, Mr. Nariman submitted that respondent No. 1 brought into force the Development Plan for Greater Bombay by virtue of Notification No. TPB/4366/641-W dated 7th January, 1967 and in the said Development Plan the lands bearing survey Nos. 117, 118 and 120 were shown as falling within the residential zone. The said Development Plan demonstrates that respondent No. 1 had statutorily recognised that the said lands bearing Old Survey Nos. 117, 118 and 120 fell within the residential zone and were not to be treated as forest. Mr. Nariman submitted that between 1957 and 1976 petitioner No. 1 constructed 34 buildings containing 268 tenements, on lands situated west of LBS Marg, which were and are owned by the 1st petitioner. These buildings were constructed after obtaining the necessary IOD and CC from respondent No. 4. The buildings were constructed for the purpose of being used as staff quarters for the petitioner''s staff and employees. Out of the said 34 buildings, 6 buildings having 32 tenements were constructed on the said Survey No. 120 of village Vikhroli. All the said buildings are currently fully occupied. Mr. Nariman submitted that Maharashtra Private Forests (Acquisition) Act, 1975 came into force on 30th August, 1975 and by virtue of Section 3 of the said Act, all private forests in the State of Maharashtra stood vested in respondent No. 1. Section 2(f) of the said Act defines a private forest. By virtue of Section 2(f)(ii) a private forest included lands in respect of which a notice had been issued under Sub-section (3) of Section 35 of India Forest Act, 1927 but excluded areas exceeding 2 hectares in extent as the Collector may specify in that behalf. Mr. Nariman submitted that on 17th February, 1976 the Urban Land (Ceiling and Regulation) Act, 1976 was passed. Under the Urban Land (Ceiling and Regulation) Act, 1976 the said Old Survey Nos. 117, 118 and 120 fell within the definition of "urban land". He submitted that since the said lands bearing Old Survey Nos. 117, 118 and 120 fell within the definition of "urban land" under the Urban Land (Ceiling and Regulation) Act, 1976 the said lands could not be considered as forest lands. In this context, Mr. Nariman submits that by virtue of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 the said Act has the effect of over riding all other laws, including the Maharashtra Private Forests

(Acquisition) Act, 1975 and, therefore, by virtue of the provisions of the Urban Land (Ceiling and Regulation)Act, 1976 the said lands bearing Old Survey Nos. 117, 118 and 120 could not be considered as forest lands at all. Mr. Nariman submitted that respondent No. 1 issued an Exemption order dated 5th October, 1984 u/s 20 of the Urban Land Ceiling Act, 1976 permitting the first petitioner to construct residential quarters for the employees of the first petitioner inter alia on the lands bearing new survey Nos. 36(part) and 37. Mr. Nariman submitted that in 1991 respondent No. 1 sanctioned and brought into force another Development Plan for Greater Bombay. The said Development Plan has statutory force. Under this Development Plan also the said lands bearing (New) Survey Nos. 36 (part) and 37 and 38 (corresponding to old survey Nos. 117, 118 and 120) were shown as within the residential zone. Therefore, by the said Development Plan also respondent No. 1 reconfirmed that the said lands fell within the residential zone and were not forest lands and pursuant to the exemption order dated 5th October, 1984 petitioner has constructed the buildings on the said lands bearing New Survey Nos. 36(part), 37 and 38 and some buildings are under construction.

39. Mr. Chinoy, learned Senior Counsel while supplementing the arguments advanced by Mr. Nariman submitted that an invalid notice is not a notice that can come within Section 2(f)(iii) of the 1975 Act. The notice published on 6th September, 1956 in Bombay Government Gazette was an invalid notice which could not be acted on because even if Section 2(f)(iii) of the 1975 Act is to be read as confined to Notices issued and not notices issued and served (as held in Chintamani''s case). In Chintamani''s case the Court did not go into the question of how and in what manner such notices could be said to have been duly "issued", obviously because in Chintamani''s case the notices were in fact served a few days after the 1975 Act came into force. But the question as to when and in what manner notices u/s 35(3) of the Forest Act could be said to be validly issued is no longer res integra. It is governed by another decision of the Hon''ble Supreme Court of India in State of Karnataka Vs. State of A.P. and Others, . The said 3 Judges decision reversed the judgment of learned single Judge of this Court in Ankush Keshav v. State of Maharashtra reported in 1998(3) Mh.L.J. 778. In Ankush Keshav''s case the arguments of the petitioners in this Court was that the notices were undated, did not bear any seal and were not in conformity with the provisions of Order 5 of the CPC as required by Section 35(5) of the Forest Act and, therefore, such notice could not in law be said to have been issued u/s 35(3) of the Forest Act before the appointed date of the coming into force of the Private Forest Act, 1975. Mr. Chinoy pointed out para 3 of the judgment of this Court. The contention was rejected by the learned Single Judge of this Court in paras 11 and 12 of the said judgment. While over ruling the judgment of the learned single Judge, the Supreme Court held as under:

2. It is unnecessary to go in great detail in this matter. The High Court based its order on a notice which, as it has itself found, was neither signed nor dated nor bore

the requisite seal. The rules required that the notices must be issued as provided in the Code of Civil Procedure. Clearly that was not done. No notice of such a kind can at all be considered valid. On the ground, therefore, that the learned single Judge dismissed the writ petition, we are of the view that he was in error.

Then he submitted that in the case of petitioners in W.P.No. 2196 of 2006 the notice published on 6th September, 1956 in the gazette clearly shows that it was undated, unsigned and did not bear the requisite seal. He, therefore, submitted that even assuming that Chintamani''s case has to be followed the notice relied on by the State for vesting (notices of 6.9.1956) was not valid notices because it was neither dated nor signed nor sealed. Mr. Chinoy submitted that since the Supreme Court decision in Ankush Keshav Bowlekar''s case was rendered prior to the decision in Chintamani''s case which was handed down on 1st February, 2000 it must be regarded as binding law that notices though issued (in the sense of despatched) but which are neither signed nor dated nor bear the requisite seal cannot be considered as "valid" notices u/s 35(3) of the forest Act and that Section 2(f)(iii) of the 1975 Act could not possibly contemplate notices that were not valid when issued. Mr. Chinoy submitted that on this ground alone notwithstanding that Chintamani''as case would be binding on the High Court, the submission is that even assuming without admitting that Section 2(f)(iii) only envisages the prior issue of a show cause notice u/s 35(3) and not subsequent service on the owner of the land, such a Notice must be shown not only to have been issued in the sense of dispatched) but must also be a notice which is signed, dated and bears the requisite seal. Mr. Chinoy submitted that the stand of the State on page 102 of the counter affidavit to the effect that "in so far as the said lands are concerned, the petitioners admit that notices u/s 35(3) have been issued" is incorrect and Mr. Chinoy pointed out the relevant facts in the petition filed by Godrej. None of these statements or assertions have been controverted or denied by the State. Thus, it is clear that there is no admission at all that notices u/s 35(3) of the Forest Act have been issued. He submitted that the notice in this case was neither dated, nor signed nor sealed and it is the admitted position. Mr. Chinoy submitted that Article 300A says that "no person shall be deprived of his property save by authority of law. He submitted that the authority of law relied on by the State in the present group of cases is Section 2(f) (iii) of the 1975 Act as interpreted in the Supreme Court decision in Chintamani''s case read with Section 3, but, Section 2(f)(iii) must also be interpreted in the light of the earlier three Judge Bench decision in AIR 2000 SC 3511 namely that even if Section 2(f)(iii) contemplates only the issue of a notice, such notice must be validly issued and a notice u/s 35(3) which is not dated, not signed, not sealed is not a valid notice. Mr. Chinoy submitted that the present matter is governed not by any alleged admission but by the law laid down by the Supreme Court in State of Karnataka Vs. State of A.P. and Others, . The said notice of 1956 is not even shown as having been dispatched and even it was dispatched (as to which there is no averment) it is plainly invalid and cannot be relied upon by the State as resulting in the lands of Godrej having vested

in the State Government u/s 3 of the 1975 Act. The notice of 1956 published in the Bombay Gazette was neither dated nor signed nor sealed. He submitted that these were the mandatory requirements of a notice issued u/s 2(f)(iii) of the 1975 Act as per the Hon''ble Supreme Court. He then submitted that besides in the case of Godrej in fact the lands were treated as having vested in the "State" - not u/s 3 of the 1975 Act but under the Urban Land Ceiling Act 1976 in respect of which an exemption was granted u/s 20 of the ULC Act vide order dated 5th October, 1984 issued by the State Govt. where express permission was given to the petitioner to develop the land by building staff quarters and a large part of this project has been completed. He submitted that the exemption order is denied by the State Govt. Mr. Chinoy then placed reliance on paras 2(d) to 2(j) of the Writ Petition No. 2196 of 2006 (petition by Godrej).

40. Mr. Chinoy submitted that none of these allegations have been dealt with nor denied by the State in its affidavit in reply and they must be treated as having been admitted. He then relied upon a judgment of the Supreme Court in Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, . He submitted that the observations of the Supreme Court in paras 13, 19 and 20 in the said case are extremely pertinent in the present case since in the present case also in the background of the facts viz. The State''s repeated assertions through development plans published under planning laws, that the petitioner''s land were not forest lands but were residential and industrial lands capable of development, that the petitioners sought and received permission from agencies of the State to build on these lands. There is no explanation whatever why the State Government continued to treat the petitioners lands as non forest land as shown in the list of dates and events, why if they were forest no action was taken u/s 5 (to enter and take possession) for 30 long years after 30th August, 1975. On the contrary the State Govt. continued to recognise and treat these lands as non forest lands. It is only in the year 2005 that the State Government for the first time asserted that these lands had vested in the State since 30th August, 1975 and directed the entries to be made in the Revenue Records.

41. An affidavit has been filed by the Assistant Conservator of Forest, (LRP) Thane, Bharat Nimbaji Rathod and the statements therein proceed on the basis that the petitions are not maintainable. However, it is further stated that in paras 4, 5 and 6 of the affidavit as under:

4. Without prejudice to the foregoing, I respectfully say and submit as under:

I say that PIL Writ Petition No. 17 of 2002 came to be filed by the Bombay Environmental Action Group inter alia, praying for the reliefs that the lands acquired under the Maharashtra Private Forest Acquisition Act, 1975 have not been recorded in the Record of Rights in the State of Maharashtra. I say that the said petition also sought the updating of the revenue record by the State authorities. I say that the said writ petition came to be disposed of by a Division Bench comprising of Their

Lordships the Hon''ble the then Chief Justice Mr. Dalveer C. Bhandari and the Hon''ble Mr. Justice S.J.Vazifdar by their order dated 22nd June, 2005. I say that by the said order the Division Bench had issued a direction in paragraph which for convenience sake is quoted herein under.

The Chief Secretary of the State is directed to issue circulars within three weeks to the District Collector and Magistrate and other concerned officials directing them to complete the entire proceedings as expeditiously as possible and, in any event, on or before 31st May, 2006.

I say that in terms of the said paragraph 4 the said proceedings of carrying out the amendments to the Record of Rights was to be completed by 31st May, 2006.

5. I say that pursuant to the orders passed by this Hon''ble Court the Chief Secretary of the State had issued a Circular dated 14th July, 2005 directing the Divisional Commissioners as also all the Collectors of various District of Maharashtra to carry out the work of updating the Record of Rights as per the directions given by this Hon''ble Court vide its order dated 22nd June, 2005 as per the Schedule mentioned in the said Circular. A copy of the said Circular is annexed to the petition as Exhibit G. I say that prior to this, the Revenue and Forest department had issued Circulars dated 16th December, 2004 and 1st January, 2005 in consonance with the Orders passed by this Hon''ble Court in the said Writ Petition No. 17 of 2002. Copies of the said Circulars are annexed to the petition. I say that in terms of the said directions issued by this Hon''ble Court the State authorities have completed updating of the Record of Rights in the State. However, the present petition concerns the amendment made in the mutation entries relating to the lands in the Mumbai Suburban District, a list of which is annexed to the petition. I say that by the said amendments the name of the Forest Department is entered in the "other Rights Column" I say that this was on the basis that the said lands vest in the State under the Maharashtra Private Forests Acquisition Act, 1975.

6. I say that in so far as the said lands are concerned, the petitioners accept the position that notices u/s 35(3) have been issued in respect of each of the said lands and in respect of lands bearing CTS No. 232 of village Mulund. Notification u/s 35(1) of the Indian Forest Act has also been issued. I say that since the mutation entries have been made on the basis of vesting of the said land under the Maharashtra Private Forest Acquisition Act, 1975, it would be relevant to reproduce the definition of "private forest" as defined u/s 2(f) of the said Act. Section 2(f)...(definition reproduced but omitted as it is reproduced later)

I say that under the Forest Conservation Act, 1980 from 25.10.1980 no forest land shall be used for non forest purposes without the permission of the Government of India. I say even full Bench of this Hon''ble Court upheld the constitutional validity of the Maharashtra Private Forest (Acquisition) Act, 1975.

Thus, it is their contention that the provisions of Section 35(1) and 35(3) of 1927 Act are independent and exclusive of each other. The petitioners are not right in their contention that since the notification u/s 35(5)(1) has not been issued, the proceedings lapse. It is their specific case that such a contention has not found favour with this Court and the Hon''ble Supreme Court in the case of Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, . In substance their contention is that the matter is fully covered by the judgment of the Hon''ble Supreme Court in Chintamani''s case so also the authorities are acting in pursuance of the directions in the above P.I.L.

42. The above affidavit was filed on 7th August, 2006 and there are some corrections in para 6 of the same which have been placed on record by supplementary affidavit of the Asstt. Conservator affirmed on 9th August, 2006.

43. There is further affidavit filed by, Bhaskar Pandurang Walimbe, working as Deputy Conservator of Forest, Thane Forest Division and that affidavit is in writ petition No. 1957 of 2006. In this affidavit the deponent states that in 1956-57 notices u/s 35(3) of the Indian Forest Act, 1927 were issued in respect of all the lands in question. The procedure was followed in regular and ordinary course of official business and that procedure was to issue notices as soon as they were ready and serve them upon the concerned parties. Simultaneously in all cases, a copy of the notice sent to the Government Printing Press for the purpose of being gazetted. However, due to long lapse of time between 1957 and the present day the efforts are ongoing to collect evidence of service in all cases covered by the writ petition. However, in some cases evidence of notice is available with the department. In paras 3 to 6 of this affidavit affirmed on 4th July, 2007 this is what is stated:

3. In this respect, it must be pointed out that an official register was maintained by the Forest Department at Thane which records:

i) Serial Number

ii) Name of Land Holder

iii) Village and survey Number and area

iv)Notice Number and date of issuance of notices v) Date of service (where proof of service was received back by the Department) vi)Date on which the notice was gazetted.

However, the concerned pages of the register, which would contain the record of the notices impugned in the present petitions are not part in the register.

4. A perusal of the remaining pages of the register show and establish not only the factum of issuance of those notices, but also service thereof upon the persons who owned the land at the relevant time. I submit that efforts will be made to reconstruct and trace the pages of the register relating to the impugned orders.

However, the fact that the remaining pages of the register reflect that those notices were issued, served and gazetted in cases it must lead to the presumption that the impugned notices were also duly served upon the concerned owners at the relevant time.

5. What is also pertinent is that the present petitioners before this Hon''ble Court except for two (Godrej and Nanabhai Behramji) are all second or third derivative owners and are not the original noticees. It is clearly not open to them to contend that the notices were not duly served. The presumption u/s 114 of the Evidence Act that official acts have been duly performed must apply and cannot be said to have been rebutted by persons who were not served the notices at the concerned time. Further, office copies of 11 of the 20 notices which are impugned in the present set of writ petitions have now been traced and I crave leave to refer to and rely upon the same as and when produced. It is respectfully submitted that this Hon''ble Court ought to have proceeded on the basis that the notices u/s 35(3) were duly issued and served....

6. In any event and without prejudice to the aforesaid, it is submitted that on a true and proper construction of the provisions of the Maharashtra Private Forest (Acquisition) Act, 1975, the very issuance of notices is sufficient and enough for the lands mentioned therein to vest in the State Government under the provisions of the Maharashtra Private Forest (Acquisition) Act, 1975. The factum of issuance of notice is admitted by the petitioner in the petition itself.

44. After this affidavit was placed on record, it appears that Advocates on record, in some writ petitions inspected the record in the Government Pleaders'' Office and filed an affidavit stating therein that the Thane Forest Division does not have the office copies of the following notices:

i) WT/53 (Godrej Boyce)

ii) WT/68 (Subject matter of writ petition No. 1722 of 2006)

iii)WT/69 (W.P.No. 1957 of 2006)

iv)WT/67 (W.P.No. 2032 of 2006)

Further, it is urged that Thane Forest Division was able to point out the purported acknowledgment of the notice by noticee on the reverse of the notice showing the service in case of notice No. WT./64 and no other. The contents of this affidavit and annexures thereto would show that the emphasis is on the absence of acknowledgment with regard to the notice u/s 35(3) of the 1927 act. Thus, the petitioners'' case is that if there is no proof of even issuance of such notice, then, action in pursuance thereof cannot be sustained.

45. In these state of affairs and when the Advocate''s affidavit dated 18th July, 2007 was placed before us we permitted the State to rejoinder/reply and on 10th October,

2007 Joint Secretary in the Government of Maharashtra, Forest Department filed the affidavit and urged that the data from Thane Division shows that the notices have been issued by the then Officer of Conservator of Forest, Western Circle, Nashik and Conservator of Forest, Thane. The details thereof are thus:

2. I further say that yearwise break up of notices issued by the then Officer of Conservator of Forests, Western Circle, Nashik is as follows:

Year	Notices issued from	No. of notices.
1955	WT-1 to WT -2	2
1956	WT-3 to WT 313	311
1957	WT-314 to WT1223	910
1958	WT 1224 to WT 1419	196
1959	WT 1420 to WT 1633	214
1960	WT 1634 to WT 1674	41
1961	--	--
1962	WT 1675 to WT 1699	25
1963	WT1700 to WT 1802	103
1964	WT 1803 to WT 1970	168
1965	WT 1971 to WT 2053	83
1966	WT 2054 to WT 2062	2063

3. The notices issued by the then Conservator of Forest, Thane are as under:

---	To	
Year	Notices issued from	to No. of notices
1975	TH-1 to	TH 197 197

There is a further rejoinder affidavit filed by the petitioners on 11th October, 2007 firstly objecting to the above affidavit being taken on record and secondly that affidavit does give any explanation with regard to the issuance of the notices notification u/s 35(1) of 1927 Act. In other words, wherever notices u/s 35(3) of the 1927 Act were issued, there is no explanation as to why the same were not followed up with the final notification u/s 35(1) thereof. There is no explanation with regard to 1141 notices u/s 35(3) pursuant to which no final notification has been issued.

There is no explanation about outcome of these notices and hence affidavit of the Joint Secretary is misleading.

46. Further, in para 3 of the affidavit in rejoinder filed on 11th October, 2007, this is what is stated:

3. It is denied that all lands that were the subject matter of the notices u/s 35(3) were outstanding on 30th August, 1975 this is alleged for the first time and the allegation it is submitted is incorrect and Mr. Rajendra Mangrulkar (the deponent) ought to be required to make the necessary full disclosure before this Affidavit is taken on record. Besides prima facie overnight it has now been ascertained that almost two third of the area covered by the notices of 1956/57 relating to the Bombay Suburban District have in fact been covered by fresh notices issued in 1975 indicating clearly that the notices of 1956/1957 were not treated as outstanding or subsisting by the Government itself.

47. It is in such circumstances that we were required to pass the order on 11th October 2007. The order reads thus:

Another important facet of the case is that 1141 notices are stated to be outstanding as on 30th August, 1975. It is essential for this Court to know as to out of these notices in how many cases, if at all, the Government has taken decision to drop the proceedings and in how many cases actually or otherwise decision was taken to continue the proceedings either under the Indian Forest Act, 1927 or the Maharashtra Private Forest (Acquisition) Act of 1975. For the above reasons we direct the Joint Secretary, Forest Department, Maharashtra State to file an affidavit in terms above by 19th October, 2007. Except to the specific directions contained in this order, parties will not file any further affidavits, written submissions or statements. Adjourned to 22nd October, 2007 at 4 p.m.

The matter was adjourned for want of complete compliance with directions issued on 11th October, 2007 to 22nd November, 2007. We had ultimately directed in our orders passed on the aforesaid dates that the affidavit of the Secretary in the Department of Forest should be filed.

48. The affidavit is filed on 16th November, 2007 by Jagannath Pandharinath Dange, Principal Secretary (Forests), Revenue and Forest Department, Mantralaya, Mumbai to which also a further rejoinder is placed by the petitioners on 19th November, 2007.

49. This completes the affidavits which are filed by the parties before us. It is not necessary to refer to the affidavits filed in individual petitions because the stand taken with regard to legal issues by the parties in all these matters is identical.

50. The arguments of Mr. Nariman have been supported by other Senior Counsel. Suffice it to refer to the other argument of Mr. Chinoy appearing in writ petition No. 2418 of 2006, Mr. Chinoy submits that the notices in this case are of 1956-57. There

are three notices. He submits that non agricultural order is passed in this case on 19th June, 1962. In 1965, a factory was made operational. Thus, in 1965 and thereafter there is a factory/industrial plant which is at site. Mutation Entry is made on 24th January, 2006. He submits that in writ petition No. 2936 of 2006 of M/s Nanabhoy Jeejeebhoy, land admeasuring 307acres Kandivli, Mumbai has been developed and 60 buildings have been constructed. 176 acres of land has been affected by notice. It is clear that after reservation, one of the land has also been developed by the petitioners in this writ petition. This is a clear case where the notices are old and Government''s inaction is writ large.

The intention in the Private Forest Act is apparent in as much as those notices which were issued and could not be pursued just prior to enactments are permitted to be pursued and taken ahead further. This was the Government''s stand all through out. However, after the order passed by this Court in the P.I.L. the Government suddenly changed its stand and purports to insert the entry as "private forest". He submits that the concept under the Act is not of a natural forest alone but that of a private forest. He submits that in so far as interpretation is concerned, Section 2(f)(iii) has been interpreted by Full Bench of this Court in the case of Janu Chandra Waghmare and Others Vs. The State of Maharashtra and Others, . The interpretation placed by the Bench is that Private Forest Acquisition Act comes within the competence of the State Legislature. He submits that the Legislature has intentionally used the words "has been" that is "present perfect tense". It necessarily contemplates continuous action. Therefore, a live notice is contemplated and not the one which is historic and stale. In such circumstances, all notices cannot be now given effect to by the State.

51. Mr. Khambatta who appeared in Writ Petition (PIL) No. 96 of 2006 while adopting the submissions of Mr. Nariman and Mr. Chinoy, additionally submitted that the Private Forest Act may have been promulgated and brought into force in 1975 and more precisely with effect from 30th August, 1975, yet, the notices referred to therein and more particularly those covered by Section 35(1) of the 1927 Act have no existence. He submits that this writ petition is filed by Hillside Residents Welfare Association and others. He submits that the list of material dates and events which have been submitted by these petitioners is undisputed.

52. Mr. Khambatta with regard to notices u/s 35(3) submits, that any notification u/s 35(1) had stood repealed by the doctrine of desuetude. He further points out that the undisputed facts pertaining to development and construction in the area (as set out in the petitioners'' list of material and dates and events) establish that the Government of Maharashtra had acted contrary to the various notices u/s 35(3) of the Indian Forest Act, 1927 (in respect of an aggregate of 195 acres) as also any Notification u/s 35

(1) of the Forest Act, 1927 (in respect of Survey No. 380, Mulund admeasuring approximately 8 acres and allegedly in respect of survey No. 232, Mulund admeasuring approximately 17 acres) and had allowed these notices/notifications to

fall into disuse and obsolescence. For the purposes of these submissions, it is assumed that Section 35(1) notification was issued in respect of survey No. 232 though this is not admitted. These contrary actions were in existence for a considerable period of time. The following undisputed actions establish that prior to 30th August, 1975, the Government of Maharashtra had in fact acted in defeasance of and contrary to these notices/notifications rendering them dead letters.

i) Building and development permissions have been granted (both prior to 30th August, 1975 and thereafter) for construction/development of several industrial commercial developments as well as extensive residential colonies. There was considerable development in "T" Ward even prior to 30th August, 1975. This included construction of (a) Mulund Colony, Nimbkar Society, Model Town and Mandakini Society being large residential colonies covering approximately d40 acres (survey Nos. 155, 156,232, 233 and 251); (b) Lok Angan, Lok Rachna, Tulip, Jai Shastri Nagar, New Shastri Nagar and Mulund Darshan residential complexes covering an area of about 32.3 acres started to come up (c) Government colony for housing in Veena Nagar (Survey No. 151A) started to come up.

ii) A permission dated 1st June, 1965 under Land Revenue laws was granted in respect of about 6 acres 29 1/2 gunthas of Plot Survey No. 232 for Non agricultural user.

(iii) Military barracks were constructed by the Government in the 1940s and 1950s on Plot Survey Nos. 146, 155, 156, 232 and Survey No. 232 for Non agricultural user.

(iv) Military Barracks were constructed by the Government in the 1940s and 1950s on Plot Survey Nos. 146, 155, 156, 232 and Survey No. 380 which were used to house refugees from Pakistan.

(v) A draft Development Plan was published on 9th January, 1964 by the B.M.C. For suggestions from the public. A final Development Plan was sanctioned by the Government of Maharashtra by a Notification dated 19th November, 1965 with effect from 20th December, 1965. Both were under the provisions of the Bombay Town Planning Act, 1954. The 1965 Development Plan only reserved two relatively small areas as "forest forest" and the rest of "T" Ward was demarcated for users such as industrial, commercial, housing, industrial, establishments etc.; This was clearly contrary to any intent to issue Section 34A declaration or to issue/continue Section 35(1) notifications. He submits that the development in the area is not disputed by the respondents which is clear from the affidavit of respondents dated 11th June, 2007 particularly paragraph 1(h) of the said affidavit.

53. Mr. Khambata submits that in Municipal Corporation for City of Pune and another Vs. Bharat Forge Co. Ltd. and others, , the Hon''ble Supreme Court of India has applied the doctrine of desuetude in respect of Notifications issued and gazetted in 1918 by the Government of India in exercise of powers under the Cantonment Act, 1910. It was held that the 1918 Notifications had not been

implemented, that in fact what had been done for a considerable period of time amounted to a practice or usage contrary to these 1918 Notifications and that consequently these 1918 Notifications had stood repealed. Mr. Khambatta submits that this doctrine of desuetude applies squarely to the present case. In the present case, the undisputed record indicates that the case is not one merely of obsolescence or disuse of Section 35(3) Notices and the Section 35(1) Notifications but there has also been a substantial contrary practice and usage for a considerable period of time to establish a quasi repeal of the said Notices and the notifications and hence on 30th August, 1975, the appointed day, on which the Maharashtra Private Forest (Acquisition), Act, 1975 came into force, the said Notices and Notifications had lapsed or were quasi repealed and were not operative. Mr. Khambata submits that Section 35(3) Notice issued in the case of Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, had not lapsed, abandoned or repealed notice nor one that had fallen into desuetude. It was a notice issued as recently as on 29th August, 1975 but which could be served on the landholder only on 12th September, 1975. It was, therefore, very much a live notice in the pipeline in respect of which further proceedings were cut off only by the intervention of the Maharashtra Private Forest (Acquisition) Act, 1975. Section 24(1), which repealed amongst other Section 34A and Section 35 of the Indian Forest Act, 1927 on and from the appointed day viz. 30th August, 1975. The observations in this judgment, therefore, have no bearing in respect of notices u/s 35(3) or even a notification u/s 35(1) which have been abandoned or have fallen into desuetude. Mr. Khambatta relies upon the judgment of this Court delivered on 13th August, 2001 in Writ Petition No. 1132 of 1990 (Konkan Krishi Phalodyan Vikas Sahakari Sanstha v. State of Maharashtra and Ors.). In the said case, he submits, that although a Section 35(3) notice was issued on10th May, 1958, the Hon''ble Division Bench did not consider any submission that this notice had been abandoned or had lapsed or stood repealed by desuetude. In fact, it appears that in that case proceedings were conducted u/s 22A of the Maharashtra Private Forest (Acquisition) Act, 1975 under which an application appears to have been made for restoration of the land. Section 22A applies where an application is made "by any owner of private forest" and this would mean that by virtue of Section 22A application the private owner had accepted that the land in question was a private forest.

54. The Section 35(3) Notices and Section 35(1) Notification stood abrogated and repealed by the sanctioned 1965 Development Plan for T ward is concerned, Mr. Khambatta submits that even assuming whilst denying that the notices u/s 35(3) remained operative for a period beyond one year after their gazetting and any notification u/s 35(1) remained operative even upto 1965, the notices/notification stood repealed and superseded by operation of law upon the notification and sanction of the final development plan for T ward with effect from 20th December, 1965 ("the 1965 Development Plan").

55. Mr. Khambata submits that by 1956, Mulund and Nahur areas had become part of Greater Bombay being added in Part IV to Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. Consequently, the Bombay Town Planning Act, 1954 also came into force for these areas. By the Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Bombay Municipal Further Extension of Limits and Schedule BBA (Amendment) Act, 1956 Section 3 of the Bombay Municipal Corporation Act 1888 was amended to include the areas specified in the aforesaid Part IV of Schedule A to the said Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. The Bombay Municipal Corporation, therefore, became the local authority under the Bombay Town Planning Act, 1954 in respect of the Mulund and Nahur areas.

56. Mr. Khambatta submits that u/s 3(1) of the Bombay Town Planning Act, 1954 every local authority was bound to carry out a survey of the area within its jurisdiction, not later than four years from the date of coming into force of the Act, prepare and publish the development plan and submit it to the State Government for sanction. Mr. Khambata submitted that (i) The Bombay Municipal Corporation by its Resolution No. 409 in July, 1958 made a declaration u/s 4(1) of the Bombay Town Planning Act, 1954 of its intention to prepare a development plan for "T" Ward comprising of Mulund and Nahur; (ii) on 9th January, 1964 the Bombay Municipal Corporation after carrying out the survey of areas within its jurisdiction prepared and published the Development Plan for "T" Ward in accordance with Section 3(1) of the Bombay Town Planning Act, 1954; (iii) after receiving and considering suggestions from members of the public u/s 9 and after modifying the said Development Plan, the Bombay Municipal Corporation submitted the said Development Plan to the Government of Maharashtra u/s 3(1) and (iv) by a notification dated 19th November, 1965, the Government of Maharashtra as the Planning Authority, under the Bombay Town Planning Act, 1954 sanctioned the said Development Plan u/s 10(1) with some modifications in respect of "T" Ward with effect from 20th December, 1965.

57. Mr. Khambata submits that the 1965 Development Plan as sanctioned by the Government of Maharashtra showed only two relatively small areas in T ward as being demarcated as "Forest Reserve". The rest of the area covered under the Development Plan for "T" ward was demarcated for various purposes other than forest, including industrial, housing, commercial, industrial establishments, etc. Some part of survey No. 380 was reserved for a Dhobi Ghat. Survey No. 232 was demarcated for residential user.

58. Mr. Khambatta submits that a conscious decision was taken (after following all the prescribed procedures including a survey) to permit urbanization of "T" Ward. There is nothing to show that there was any forest in the area apart from the areas demarcated as "Forest Reserve". There was no declaration u/s 34A of the Indian Forest Act, 1927 in respect of any lands covered by the present petition. Even today

the State Government is not able to assert that the lands in question are forest. Mr. Khambata submits that in the affidavit dated 12th June, 2007 made by respondent No. 4 (Deputy Conservator of Forests) the following is stated:

6.(c) Whether the particular land is forest or not will have to be decided by the competent authority under the said Act of 1975, after examining the evidence and, therefore, staying the stop work order was not warranted and may amount to violation of the provisions of the Forest Conservation Act, 1980.

6(g) It is brought to the notice of the Hon''ble High Court that the status of the Private Forest Lands in question is still undecided i.e to say that it is still not certain whether the suit lands fall in the category of finally acquired private forest lands, restored lands or non forest lands. Depending on the outcome of the enquiry they shall be treated likewise. Until then these lands are presumed to be deemed reserved forests.

59. Mr. Khambatta submits that in law the provisions as to the user of land and the reservations contained in a development plan are binding upon all persons and upon the State Government and the local authority. These provisions would abrogate and override any executive action in the form of notices or notification of the State Government under the Indian Forest Act, 1927. The Government is estopped from acting contrary to the provisions of the Development Plan (including contending that the said Notices and the Notification were operative on 30th August, 1975). Any such contrary action would not have the authority of law and indeed would be contrary to law. Moreover a development plan and the development regulations which form a part thereof constitute delegated legislation. In this context he relied upon the case of Pune Municipal Corporation and Another Vs. Promoters and Builders Association and Another, and on the case of Vidarbha Heritage Society and Others Vs. State of Maharashtra and Others, (Division Bench judgment) paras 26 and 30).

60. Mr. Khambata submits that the 1965 Development Plan was sanctioned in exercise of powers delegated by the Maharashtra State Legislature. When it sanctioned and notified the Development Plan for "T" Ward by Notification dated 19th November, 1965 the Government of Maharashtra was acting as a delegate of the State Legislature u/s 10(1) of the Bombay Town Planning Act, 1954. The 1965 Development Plan, therefore, has the force of law.

61. Mr. Khambata submits that by virtue of Article 372(1) of the constitution of India, the Indian Forest Act, 1927 was subject to any alteration, repeal or amendment by a competent legislature or other competent authority. Since forest was a subject placed at Entry 19 in List II of Section VII to the Constitution of India (State list), the competent legislature in respect of Indian Forest Act 1927 were the respective State Legislature or their delegates. In the case of Maharashtra this was the Maharashtra State Legislature. The Maharashtra State Legislature was thus the competent

legislative authority both in respect of Forest as well as in respect of Town Planning and development.

62. Mr. Khambatta submits that even assuming (without admitting) that the issue of a Section 35(1) Notification amounts to any form of subordinate legislation, such Notifications would also stand repealed and abrogated by later delegated or subordinate legislation by the same or superior legislating authority or its delegate if the later legislation was inconsistent with or repugnant to the earlier Notification.

63. Mr. Khambata submits that in the present case the Notices/Notification are repugnant to and completely inconsistent with the sanctioned 1965 Development Plan which designates the same land in "T" ward for several users such as Industrial, Commercial, Residential etc. and only two areas (not covered by the said Notices/Notification) as "Forest Reserve". The two cannot exist together. Mr. Khambata submits that by legislative act of sanction to the 1965 Development Plan, the State Legislature of Maharashtra (through its delegate, the Government of Maharashtra) has abrogated, superseded and repealed the said Notices/Notifications which were contrary thereto. Under the 1965 Development Plan only a relatively small part of T ward was demarcated for "Forest Reserve" and the balance of "T" Ward was in fact demarcated for users and purposes other than forest. This was the later and legislative intent of the State of Maharashtra and will prevail over any previous executive or other action of issuing Section 35(3) Notices or Section 35(1) notifications, if consistent or repugnant.

64. Since the notices/notifications stood repealed/abrogated as on 30th August, 1975 (Section 2(f)(ii) and (iii) of the Maharashtra Private Forest (Acquisition) Act, 1975 cannot operate. Mr. Khambata submitted that once the notices/notifications stood repealed/abrogated as stated above, they could not, in law, be revived. They were on repeal in the eyes of the law completely obliterated and extinguished. There is nothing on record that even suggests that post 20th December 1965 or at any time prior to 30th August, 1975 that the Notices/Notifications were re-issued. The Maharashtra Private Forest (Acquisition) Act, 1975 cannot in law (and does not purport to) "revive" repealed/abrogated Notices/Notifications. The Government of Maharashtra is estopped from advancing contentions that are contrary to its own Development Plan. It cannot, therefore, contend that the Notices/Notifications had any life after the 1965 Development Plan took effect. Hence, Section 2(f)(ii) and (iii) of the Maharashtra Private Forest (Acquisition) Act, 1975 can have no operation in the present case.

65. Mr. Khambata submits that the entries made in the records of rights for individual plots are illegal, ultra vires the Maharashtra Land Revenue Code, 1966 void and non est. Mr. Khambata submits that the amendment to the record of rights in respect of individual plots by inserting name of the Forest Department in the column "Ittar Hak" (other rights) is also illegal and without the authority of law and should be cancelled by issue of an appropriate writ by this Court. Mr. Khambata

submits that (i) Section 150 of the Maharashtra Land Revenue Code, 1966 sets out a detailed and mandatory procedure by which mutations or amendments to the Record of Rights can be effected. This procedure requires a particular sequence to be followed. An entry is first to be made by the Talathi in a Register of Mutations. This entry in the Register of Mutations is then posted at a conspicuous place and written intimation has to be given to all persons who appear from the Record of Rights or Register of Mutation to be interested in the mutations and to any other person whom the talathi has reason to believe is interested therein (Section 150(2)). It is only after receiving and disposing of the objections from such interested persons that the entry in the Register of Mutations can be duly certified as provided by Section 150(5) and (6). It is only after such certification that the entry in the Register of Mutations can be transferred to the Record of Rights (Section 150(5); (ii) The Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 ("the 1971 Rules") prescribe the exact procedure and forms to be followed for deciding disputes with regard to the proposed certification of mutation entries and transfer of such entries to the Record of Rights; (iii) this mandatory ;procedure has been violated in the present matter. No notice was given to any interested persons of any entry in the Register of Mutations inviting objections. Consequently no hearing was given on objections nor presumably could the Mutation Entry have been certified. Instead, the individual Records of Rights were directed to be amended without giving such notice, inviting objections and certifying the mutation entry. The petitioners came to know of this only through the Newspaper reports; (iv) the order of this Court dated 22nd June, 2005 did not authorize such a process. There was only a direction to the State of Maharashtra to complete the entire land records in the State of Maharashtra up to 31st May, 2006. Even the Circular dated 14th July, 2005 does not authorize or contemplate amendments to the Record of Rights without following the mandatory and statutory procedure prescribed u/s 150 of the Maharashtra Land Revenue Code, 1956 and (v) in these circumstances, the amendments to the Record of Rights in the case of each individual plot are vitiated, ultra vires the provisions of Section 150 of the Maharashtra Land Revenue Code, 1956 and void abinitio. Lastly, Mr. Khambata submits that the petition be made absolute.

66. Mr. Khambata has tendered a note on the survey numbers in Mulund and other areas. He has also tendered the list of material dates and events. Mr. Khambata has relied upon the following decisions in support of the above contentions.

i) Pune Municipal Corporation and Another Vs. Promoters and Builders Association and Another, ;

ii) Vidarbha Heritage Society and Others Vs. State of Maharashtra and Others, ;

iii) Municipal Corporation for City of Pune and another Vs. Bharat Forge Co. Ltd. and others,

67. Thus, Mr. Khambata has raised additional submission with regard to repeal of the notification and notices upon development plan under the Town Planning Act coming into force. His submission is that the Town Planning Act 1966 would supersede and override the 1927 Act. The Town Planning Act deals with the Town Planning and Regional Plan. It is complete code in as much as it is planning statute. It is applicable to the lands within the limits of Bombay Municipal Corporation as well. After the Bombay Municipal Corporation limits have been extended from time to time and today Mulund and Dahisar respectively are parts of the Corporation limits and being covered by the development plan, so also the considering proposals and designations therein, the notices would not survive. Once the notice u/s 35(3), even if issued does not survive in the manner indicated above, then, there is no question of Private Forest Acquisition Act (for short Private Forest Act) being applicable to the lands in question. Therefore, the petitioners deserve to be protected is the submission.

68. The other learned Senior counsel, as indicated above, have adopted these submissions. It is urged by Mr. I.M. Chagla, learned Senior Counsel appearing in Writ Petition No. 2032-34 of 2006, additionally, that the interpretation on the provisions of the Private Forest Act must be such as would not result in absurdity and redundancy. He submits that the words in "section 2(f)(iii) need to be read as not a notice issued but "live and subsisting notice". He submits that the words "which has not resulted in notification u/s 35(1)" must be read into Section 2(f)(iii). Further, the interpretation by which Sub-clause (ii) of the said section is not rendered completely redundant must be placed on Section 2(f)(iii). The notice must have reasonable life and there is necessity to record such a requirement. He has invited our attention to paragraphs 15 and 18 of the writ petition and contended that the facts disclose completely abnormal case. He submits that if a literal construction is leading to absurdity, then, it is the duty of the Court to supply words and avoid any contradiction and interpretation leading to anomalous and absurd result.

69. Mr. P.K. Samdani appearing for the petitioners in Writ Petition No. 1722 of 2006 has also adopted the arguments of earlier Senior Counsel. He has pointed out the distinguishing features by relying upon the averments in writ petition and the affidavit (page 214). He submits that there is a clear distinction in as much as there are four notices which are subject matter of the writ petition, out of which 3 notices cover the land regarding which there is a mutation entry, however, pertaining to one land there is no entry in the revenue records. In other words there is no mutation entry.

70. In Writ Petition No. 2930 of 2006, Mr. H.V. Gala appearing for the petitioners points out that there are two survey numbers. These are Survey No. 88 and survey No. 81(part). He submits that these are adjoining lands and according to the respondents one is private forest. There is one non forest land. He submits that

amalgamation of these lands has been done by the petitioners pursuant to the permissions granted by the authorities. He relies upon para 12 of the writ petition and annexure A thereof in support of this contention. In these circumstances, according to him, if the notice u/s 35(3) of the 1927 Act is perused, the same results in absurdity. One construction is on non forest land and another on forest land allegedly. Therefore, in the peculiar facts of this case, this writ petition deserves to succeed.

71. We have separated writ petition Nos. 3941 of 2001 and Writ Petition No. 3983 of 2006 which were filed on the Appellate Side as they are directed against the order of the Maharashtra Revenue Tribunal. Therefore, it will be proper for the learned single Judge to deal with the same on the Appellate Side, more so, when they invoke the powers of this Court under Article 227 of the Constitution of India as well.

72. Lastly, writ petition No. 4838 of 2007 has been directed by us to be listed separately as it is challenging the constitutional validity of the Private Forest Act and Indian Forest Act which has been included in IX Schedule of the Constitution of India. After the decision of the Supreme Court in Coelho''s case, the validity of the Act has been challenged. That aspect would be dealt with separately by another Division Bench.

73. Mr. R.M. Kadam, the learned Advocate General appeared for the State and Forest Authorities. He contended as under:

74. In all these 19 writ petitions, the Forest Department has issued notices u/s 35(3) of the Indian Forests Act, 1927 to the land owners much before the Maharashtra Private Forests Act came into effect. Therefore, as per Section 2(f)(iii) of the Maharashtra Private Forests Act, 1975, these lands are private forests. By its order dated 22nd June, 2005 in P.I.L. No. 17 of 2002 this Court directed the State Govt. to update the revenue records of all forest lands in Maharashtraa. It is updating of the revenue records that has given rise to the present batch of petitions. Except in cases of Godrej and Nanabai, rest of the petitioners were not the owners of the land at the time when notices u/s 35(3) were issued. All of them have derived their title either from the original land owners or subsequent purchasers and are as derivative owners. The chart tendered by the State crystalises the factual position of all the lands involved in all 18 writ petitions. It is pertinent to note that in all these writ petitions, notices u/s 35(3) of the Indian Forests Act, 1927 have been issued. It is the case of the petitioners; that these notices were not served upon the owners of the land. In this regard, it is important to bear in mind that except Godrej and Nanabhai, the title of the land owners is derivative. Therefore, they are not the persons who have the personal knowledge about receipt or otherwise of the notice. Even in the case of Godrej, the person affirming the writ petition is too young to have any personal knowledge of service of the notice. In fact none of the affiants can depose on oath whether the notices were or were not served. The notices u/s 35(3) have been "issued" to the land owners. More over, the notices are gazetted. Therefore, it

must be presumed that the petitioners had knowledge about issuance of these notices. In any event looking to the purpose of the 1975 Act the reference to notice "issued" is to identify the lands which are to vest in the Government.

75. The evolution of Forest Laws and their increasing importance in the light of threat to the environment at the global level can be traced out from the various legislations passed and the way the judiciary has interpreted them. The Constitution has placed these laws on the highest pedestal by imposing a fundamental duty upon citizens to protect the environment and also by treating this as fundamental in the governance of the nation by inserting it in Chapter IV, containing the Directive Principles of State Policy. Changes in the laws pertaining to environment and forest and their interpretation were made on the basis of the saying "Never does nature say one thing and wisdom another". This dynamics is reflected in the laws and their interpretations. This is a class of legislation for which, to say the least, it is merely in public interest would be too narrow a description. Their aim is the well being of all mankind.

76. In the earlier times, the regulation of people''s use of forest was through local customs. These customarily regulated practices were regularised by an express enactment for the first time by the then Government through the Forest Act, 1865. This Act did not cover private forest. Governmental control on the private forest was then felt necessary. The Forest Act of 1878 was the beginning of Government Control over private forests. This legislation did make certain provisions for private forests also. This legislation made certain activities as forest offences. It provided for punishment for such offences.

77. Then came a comprehensive legislation in the form of the Indian Forest Act, 1927. This enactment regulated all the activities of the Forest Department and prescribed the manner and limits within which the Forest resources could be exposed to exploitation. Then began the Pre-constitutional era after framing of the Government of India Act 1935. It placed the subject of forest in the Provincial list. That paved the way for the State Governments to have their own laws within the framework of the 1927 Federal Act to deal with specific situations. These Acts were found to be inadequate with the passage of time as wasteful denudation of forests increased multifold.

78. The 42th Amendment to our constitution in 1976 brought "forest" to the concurrent list and thus the power of the Central Government over the forest increased. This major change reflected the concern of the Central Government for natural resources. The Forest (Conservation) Act, 1980 provided for effectively preventing diversion of any forest land for non-forestry purpose.

79. By the 42th amendment, Article 48A was introduced in the Constitution where under the State is under a constitutional obligation to endeavor to protect and improve the environment and to safeguard forests and the wild life of the country.

Similarly under Article 51A(g), it is the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. These two articles are not only fundamental in the governance of the country but it is solemn duty of the State to apply these principles in making laws. State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others, . The environment concerns have to be placed on the same pedestal as human rights concerns both being traceable to Article 21 of the Constitution. The Court is duty bound to render justice by taking all aspects into consideration and with a view to ensure that there is neither danger to the environment nor to the ecology and at the same time ensuring sustainable development. There is an imperative constitutional duty to take adequate measures to promote, protect and improve the man made environment and natural environment. In Research Foundation for Science v. Union of India : (2005)10SCC510 , the fundamental duty imposed by Article 51A(g) was read with Article 48A as the foundation of the jurisprudence of environmental protection. In T.N. Godavarman Thirumalpad (through K.M. Chinnappa) Vs. Union of India (UOI) and Others, the Supreme Court observed that the State, in particular has a duty in order to protect environment to shed its " extravagant unbridled sovereign power" and to forging its policy to maintain ecological balance and hygienic environment. In State of West Bengal and Others Vs. Sujit Kumar Rana, Article 51A(g) was read together with Article 48A to hold that the interpretative exercise in relation to forest laws should be in consonance not only with principles of purposive interpretive but also keeping the principles in Articles 48A and 5A(g) in mind.

80. The propositions of State Government are as under:

a) The Maharashtra Private Forest Act, 1975 deals with forest under entry 19 of List 1 of Schedule 7 as its stood then and now under entry 17A of List 3 as well as entry 42 of List 3 which deals with acquisition of lands. The main object of the Act is conservation of forest and incidentally acquisition of forest lands. The Supreme Court has propounded that the forest laws must be liberally construed.

b) The notices u/s 35(3) were issued to the petitioners regarding their lands. The definitions of the expressions "forest" and "private forest" are sufficiently clear and if harmoniously read with chapter V of the Indian Forest Act do not result in any anomaly. In other words though Section 2(f)(ii) refers to "lands", that does not affect the status of the lands involved in the present petitions. Thus, objection of the petitioner that the land must be a forest first is without any substance.

c) The concept of "abandonment" or "lapse" of this notice is alien to the Act and cannot be introduced in to the Act. The words "Valid and subsisting notice" cannot be introduced into the Act. This would go against the very object of the Act. The interpretation of Section 2(f)) (iii) is finally settled in Chintamani Velkar''s case. No words can be added to the provisions of Section 2(f)(iii) of the Maharashtra Private Forest Act particularly when the plain meaning of the words is apparent and there is

no ambiguity in the statute as framed. Hence, it is submitted that no limitation can be imposed on the vesting of lands whereby notice u/s 35(3) of the 1927 Act.

d) The definition of the expression "forest" u/s 34A of the Indian Forest Act is an inclusive one and in these circumstances it cannot be read as exhaustive as suggested by the petitioner. Consequently, a notification is not a sine qua non for land to be forest for the purposes of Section 35(3).

e) The petitioners were not holders of the land on the appointed date under the Urban Land Ceiling Act, since by then the lands had already vested in Government. Therefore, the orders passed by the competent Authority under the Urban Land (Ceiling and Regulation) Act, 1976 are of no consequence.

f) The non obstante clause in Section 3 of the Maharashtra Private Act prevails over the provisions of the MRTP Act, 1966. The Development Plan being a delegated legislation under the MRTP Act, 1966 cannot prevail over Section 3 of the 1975 Act.

g) The Maharashtra Private Forest Act, 1975 deals with forest under entry 19 of list 1 of Schedule 7 as it stood then and now under entry 17(A) of list 3 as well as entry 42 of list 3 which deals with acquisition of lands. Since the main object of the Act is conservation of forest and incidentally acquisition of forest lands, it must be liberally construed.

h) In Janu Waghmare''s case a Full Bench of this Hon''ble Court has held that the 1975 Act is covered by entry 19 of the State List (as it stood then) read with entry 42 of the Concurrent List. By the Constitution (42nd Amendment) Act, 1976 particularly u/s 57 thereof, the subject "forest" is no more solely a state subject but is covered by entry 17 A of the concurrent list. The statement of objects and reasons of the 1975 Act expresses a concern that the total forest land area in the State was approximately 21% of the total area then. This was less than the national average and was also substantially less than the 33.1/3% recommended by the National Forest Policy. The existing forest was a very bad state of regression. There is lack of fresh plantation in the private forests. There was lack of employment opportunities to the local population. Decrease in forest area also adversely affected the availability of forest produce required both by the local population and by the forest based industries. There was lack of firewood also. The provisions of the Indian Forests Act, 1927 were found to be inadequate. In order to get over these diverse problems an effective remedy was necessary. That is why the State Government decided to enact Maharashtra Private Forests Acquisition Act. Thus the petitioners'' submission that the 1975 Act deals with acquisition of forests is only partly true because the main or principle object of the Act is protection of forests, acquisition of lands being the means to achieve this object. Such an Act being a statute aimed at conserving and protecting the natural environment cannot be strictly construed as submitted by the petitioners. On the other hand it must be liberally interpreted as laid down by the Supreme Court in case of State of West Bengal and Others Vs. Sujit

Kumar Rana, . The relevant paragraphs are 21, 22 and 23. On similar lines, the learned Advocate General submitted that the strict interpretation as suggested by the Petitioners cannot be given to the provisions of Section 2(f)(iii) of the Maharashtra Private Forest Act, 1975. The definitions of the expressions "forest" and "private forest" are sufficiently clear and if harmoniously read with chapter V of the Indian Forest Act do not result in any anomaly. A land is forest u/s 2(f)(iii) if notice u/s 35(3) is issued with respect to such land. Though Section 2(f)(ii) refers to lands that does not affect the status of the lands involved in the present petitions.

81. This proposition can best be explained in the light of the Scheme of Chapter V of the Indian Forest Act 1927 and that of Section 2 of the Maharashtra Private Forest Act, 1975. By the Indian Forest Act, 1927 the law relating to forests was consolidated. Chapter V thereof deals with control over forests and lands not being the property of Government. Initially it comprised Sections 35 to 38. By Bombay Act No. 62 of 1948 Section 34 A was inserted in this Chapter. It defines "forest" by an inclusive definition. Section 35 deals with protection of forest for special purposes by issuance of a notification for the stated purpose. Notification u/s 35(1) cannot be issued unless the provisions of Section 35(3) are followed. This provision deals with issuance of notice to the owner of forest.

82. Initially the provisions of Section 35(3) laid down that notice under this provision must be issued to the owner of such forest or land. By Bombay Act No. 62 of 1948 the word "land" was deleted. It must be remembered that to begin with there was no Section 34A defining the word "forest". Therefore, the word "land" found its place in Section 35(3). Section 34A introduced by the same amending Act defined the word forest in an inclusive way. It included: (i) Land satisfying the dictionary meaning of the word forest, (ii) land satisfying the description in the first part of the definition, namely, "any land containing trees and shrubs and pasture land" and (iii) Any other land whatsoever which the State Government may by Notification in the official gazette declare to be a forest.

83. It is important to note that this definition is an inclusive definition specific to the provisions of Chapter V alone. Since it is an inclusive definition, the word "include" is used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body or the statute and when it is so used, these words or phrases must be construed as comprehending, not only such thing as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. Learned Advocate General relies upon the case reported in Regional Director, Employees'' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, . and 1995 (2) SCC 348 in the case of P. Kasilingam v. PSG College Technology. The words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where the Courts are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation.

84. It is also submitted that on applying grammatical construction the phrase "which the State Government may, by notification in the official gazette, declare to be a forest" qualifies only the substantive proximate, namely, the immediately preceding words "any other land whatsoever". Hence, it is submitted that a declaration is needed u/s 34A only for these lands. He relied upon the case of Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, . The intention of the legislature being that other lands which may not be forest and not even contain trees and shrubs or pasture lands but which are required to be protected and preserved can also be included in the definition of forest. It is, therefore, not by any state of imagination a restrictive definition. Nor do the words at the end of the section qualify the entire section. This is also apparent from the reading of Section 35(1)(2) and (3) with this definition. Since Section 34A includes "land" satisfying a certain description, the word "land" in Section 35(3) was rendered unnecessary. Therefore, it was deleted from the said provision of Section 35(3).

85. The provisions of Section 35(4) lay down that the notice may require the noticee not to do certain activities in the land for a period of one year. However, it no where says that after this period if no action is taken then the notice gets lapsed. Section 35(5) deals with manner of service of notice and Section 35(5A) deals with binding nature of the notice to the subsequent purchasers, if the notice is served upon the owner. It is further submitted that since the principal Act under consideration is the 1975 Act, and in view of the respondents contention that reference to overt acts under the 1927 Act are only to identify lands which are included in private forest for acquisition under it, the further provisions of the 1927 Act need not be gone into at all.

86. With regard to scheme of the Section 2 of Maharashtra Private Forest Act, 1975, the learned Advocate General submits that since the provisions of Indian Forest Act were found to be inadequate to achieve the goal of conservation of forest, the State Government passed the Maharashtra Private Forest (Acquisition) Act, 1975. u/s 3 of the said Act notwithstanding anything contained in any law for the time being in force etc. all private forests in the State stood acquired and vest free from all encumbrances in the State Government with all the rights over it. Section 2 of the said Act defines the expressions used in the Act. Section 2(c-i) defines "forest" and Section 2(f) defines private forest. The definition of the expression private forest is in two parts. First part defines what private forest means. According to this part it means any forest which is not the property of the Government. Therefore, any land satisfying the definition of forest u/s 2(c-i) and which is not the property of Government stands covered by this definition. The second part of Section 2(f)(iii) is inclusive part. It adds 6 mutually exclusive categories which are to be included in the definition of private forest. It is, therefore, submitted that though a land may not be a forest falling in the first part of the definition of private forest which is an exhaustive definition, still, it can be a private forest if it is covered by any of the later inclusive portions of the definition. For this purpose he placed reliance on the four

relevant inclusive parts of Section 2(f)(i) to 2(f(iv) of the Act.

87. From the said four clauses it is clear that with regard to Clauses (i),(iii) and (iv) they apply to "the lands" satisfying the attributes laid down therein. On the other hand category (ii) is the only category which applies to "a forest". Therefore, it is submitted that not much significance can be attached to this difference because the lands satisfying the attributes of (i) and (iv) are the lands which are already notified as forest. Still the word land is used to identify it as a private forest. Though Sub-section (iii) lays down that private forest includes any "land" in respect of which a notice has been issued under subsection 3 of Section 35 of the 1927 Act, the use of the expression ''forest" in Section 35(3) of the 1927 Act will not make any difference. This is because the word "forest" as defined in Section 34A includes a land falling within the dictionary meaning of the word "forest" or satisfying the description of the land falling in the first part of the definition of the forest u/s 34A of the1927 Act. To put it simply every forest is necessarily a land. It is, therefore, submitted that though Section 2(f)(iii) describes the said category of private forest as land with respect to which notice u/s 35(3) is issued and Section 35(3) refers to a notice issued to the owner of forest (and not land) the difference is not of significance.

88 Thus, a private forest can be a forest as defined in Section 2(c-i) of the Act, but it can also be covered by the inclusive part of the definition namely Section 2(f)(iii). Hence, to attract to Section 2(f) it need not necessarily be a forest as defined by Section 2(c-i) of the 1975 Act. Therefore, there is no substance in the submission of the petitioner that unless a land is forest as defined u/s 2(c-i) it cannot be a "private forest."

89. Section 2(f)(iii) "mentions" Section 35(3) notice only because the notice identifies forest. A careful look at the provision of Section 2(f)(iii) reveals that it mentions the provisions of Section 35(3) of the Indian Forest Act, 1927 for the purpose of identification of a land for the purpose of treating it to be private forest. The legislature has not incorporated the provisions of Section 35(3) of the 1927 Act into this provision. Therefore, the provision of Section 35(3) cannot be referred to for the purpose of interpretation of Section 2(f)(iii) of the 1975 Act. It is material to note that the legislature was well aware of the provisions of Section 35(4) onwards of Chapter V of the 1927 Act, but still no reference is made to these provisions though obviously nothing stopped the legislature from doing so if it so intended. Learned Advocate General submitted that it is well settled principle of law that where the wordings of a statute are absolutely clear and unambiguous recourse to different principles of interpretation may not be resorted to. He relied upon the case reported in Swedish Match AB and Another Vs. Securities and Exchange Board, India and Another, . This is also because if the legislature willfully omits to incorporate something of an analogous law in the subsequent statute or even if there is a casus omissus in a statute in a language which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the

guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. He relied upon the case reported in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, . To do so "would be entrenching upon the preserves of legislature", the primary function of a Court of law being "Jus dicere and not jus dare." The will of the Legislature is the supreme law of the land, and demands perfect obedience. Judicial power is never exercised for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature or in other words to the will of the law. Therefore, where the Legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without en-grafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law giver.

90. The learned Advocate General submits that the provisions of Maharashtra Private Forest Act do not contain concept of live and subsisting notice or of abandonment and hence it cannot be read into it. According to the petitioners, in order to constitute a private forest as understood u/s 2(f)(iii) of the Act the notice issued must be a valid and subsisting notice. They contend that looking at the provisions of Section 35(4) the notice gets lapsed after one year and that in order to brand a land to be a forest under this provision it must have been issued at least one year prior to the coming into effect of 1975 Act. In this regard it is submitted that 35(4) of the Indian Forest Act, 1927 does not lay down that if no action is taken by the Forest Department after issuance of the Notice u/s 35(3) it lapses.

91. Whenever the legislature expects certain proceedings to lapse it says so expressly. For example in the case of the Land Acquisition Act, 1894 u/s 11A , if no award is declared within two years after the date of Section 6 Notification, then the acquisition proceedings lapse. Section 2(f)(iii) does not say notice must be live, valid and subsisting immediately before the appointed date. As already pointed out above, the 1975 Act aims at conservation of forest and, therefore, as laid down by the Supreme Court it must be liberally construed. The Statement of Object and Reasons of the 1975 Act specifically expresses concern that the percentage of forest land in the State of Maharashtra is deteriorating and is less than the minimum average required. The Government and ultimately the public would lose major chunks of land if the petitioners interpretation is accepted. Therefore, to add the words suggested in the statute would be defeating the object of the Act.

92. The petitioner has suggested that this Court should read into the provisions of Section 2(f)9iii) the words "valid and subsisting" to notice issued or the Court must introduce the concept of lapse or abandonment of notice if no action is taken by the State Government after issuance of notice for a long period of time. It is submitted by learned Advocate General that the interpretation of Section 2(f)(iii) is no more res integra. In Chintamani Velkar''s case the Supreme Court has laid down that for a

land to be private forest, mere issuance of notice u/s 35(3) is sufficient and actual serving of notice is not warranted. This decision has been followed by a Division bench of this Court in Feroz Shabbar Hussain for himself and as the only son and legal representative of late Rabbabai Shabbar Hussain Vs. The State of Maharashtra, The Sub-Divisional Officer and The Deputy Conservator or Forests, .

93. Looking to the object of the 1975 Act it would be wrong to interpret it on consideration of hardship. Learned Advocate General relied upon the observations in para 11 in the case of Pearlberg v. Varty reported in (1972) 2 All E.R.6. He also relied upon A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others, to contend that the provisions of Section 3 to 28 of the Limitation Act cannot be applied to the situations which fall outside their purview. Learned Advocate General submitted that the concept of introduction of a period of limitation for a particular action is procedural in nature. It is not substantive part of law. Such rule of procedure can be applied only to the matters to which they apply under legislation either expressly or by necessary implication. Merely because a law causes hardship it cannot be interpreted in a manner as to defeat its object. It is also to be remembered that the Courts are not concerned with the legislative policy or with results, whether in jurisdiction or otherwise by giving effect to the language used nor is it the function of the Court where the meaning is clear not to give effect to it because it would lead to some hardship,. It is the duty imposed on the Court in interpreting a particular provision of law to ascertain the meaning and intendment of the legislature and in doing so, it should presume that the provision was introduced to effectuate a particular object or to meet a particular requirement. The sum and substance of the petitioners argument is that if the provisions of Section 2(f)(iii) are not interpreted in the matter they want, it would result in a lot of hardship to them.

94. Looking at the provisions of Section 3 of the 1975 Act, the permissions u/s 20 of the ULC Act or the Development Plan showing the lands in residential or industrial zone will not make a land a non forest land. According to the petitioners the State Government has by following conduct treated the lands as non forest lands.

(i) In some cases, exemption u/s 20 of the ULC Act has been granted. Section 42 of the ULC Act gives precedence to the provisions of the said Act over the other enactments so far as they are inconsistent.

(ii) These lands are shown either in residential or industrial zone under the Development Plan under the MRTP Act.

95 Coming to the first, it is submitted that u/s 3 of the 1975 Act, on the appointed date, notwithstanding anything contained in any law for the time being in force or any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or Authority or any other document, all private forests in the State Government stood acquired and vested free from all encumbrances in the State

Government. All rights, title and interests of the owner of any person other than the Government subsisting on any such forest on the said day, stood extinguished. This Act came into effect before the ULC Act. Therefore, on the appointed day of the ULC Act the lands in question had already vested in the State Government. The land owners could not have filed returns under the ULC Act because they were not the holders of the lands when the ULC Act came into effect. If by suppressing the fact that their rights stood extinguished, they have filed returns with regard to the said lands on the appointed date of the 1975 Act, then they are to be blamed for that. This is for the following reasons:

Under Section 6 of the ULC Act, person holding vacant land in excess of the ceiling limit was under an obligation to file statement. Section 2(1) of the ULC Act defines the term "to hold". It runs as under:

(1) "to hold" with its grammatical variations in relation to any vacant land, means - (i) to own such land; or ii) to possess such land as owner or as tenant or as mortgagee or under an irrevocable power of attorney or under a hire purchase agreement or partly in one of the said capacities and partly in any other of the said capacity or capacities. (Explanation: Where the same vacant land is held by one person in one capacity and by another person in another capacity, then for the purposes of this Act, such land shall be deemed to be held by both such persons.

96. The petitioners were not the holders of the lands on the appointed date of the ULC Act. The proceedings under the ULC Act are, therefore, non est and anything under the said enactment deserves to be ignored. Therefore, there is no question of conflict of the provisions of the 1975 Act with the provisions of the ULC Act here and Section 42 will not come into picture at all.

97. Same can be said about the Development Plans under the MRTP Act. The Development Plan is merely a delegated legislation and can never prevail over the express statutory provision. Because of the non-obstante clause in Section 3, the provisions of the Maharashtra Private Forest Act, shall prevail over the provisions of the MRTP Act. It must be presumed that the legislature was well aware of the development plan and its contents while putting Section 3 of the 1975 Act, in the statute book.

98. Even if the Urban Development Department has treated the lands to be in residential or industrial zones or N.A. permission is issued, such actions will not bind the entire State Government or the Forest Department. In Goa Foundations v. the State of Goa reported in 2001 (3) Mh. L.J., the submission was that the Minister of Industries expressed readiness to issue industrial licence for establishment of a new undertaking under the Export oriented Scheme. It was held that still the lands continue to be forest and prior approval of the Central Government under the Forest (Conservation) Act, 1980 was necessary. At page 778, a Division Bench of this Court has observed that merely because one of the Ministers of the Government of

India had granted permission, that permission would not be a permission for the purpose of the Forests (Conservation) Act, 1980. The doctrine of contemporanea exposition will not apply as the Act is a modern statute and the provision to be interpreted is not vague.

99. According to the petitioners, under the principle of contemporanea exposition, the interpretation placed by an administrative or executive authority on a statute or notification is a good and persuasive guide to interpretation. In the present case, the consistent conduct of the Central Government as well as the state Government indicates that at all material times, the notices were treated as having lapsed/abandoned/withdrawn. This principle will not apply for the following reasons.

a) In fact the State has contemporaneously not acted as suggested by the petitioners and hence there is no factual foundation to this plea. The very fact that in cases decided by the Division Benches of the Hon''ble Court leaded by Hon''ble Justice A.P. Shah and the other by the Hon''ble Justice Palshikar related to notices of 1961 show that the State did not consider that only notices of the 1975 would be covered by the 1975 Act. On this factual ground alone, this plea must be rejected.

b) Thirdly the Maharashtra Forests Act, 1975 s a modern statute. By and large, this principle does not apply to the statutes which are modern. 1 Ch.D.179 (Asshdeton Smith v. Owen).

c) The wording of Section 2(f)(iii) is not ambiguous. Its interpretation is no more res integra and has been made amply clear in Velkar''s case by the Supreme Court as well as by the Division Bench of this Hon''ble Court in Feroz Shabbar Hussain for himself and as the only son and legal representative of late Rabbabai Shabbar Hussain Vs. The State of Maharashtra, The Sub-Divisional Officer and The Deputy Conservator or Forests, . In the following judgments, it is laid down that if the wordings of a statute are not ambiguous the principle of contemporanea exposition will not apply.

i) Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, .

ii) Goldsmiths'' Company v. Wyatt (1970) 1 KB 95 .

iii) Governors of the Campbell College Beleast v. The Commissioner of Valuation for Northern Ireland (1964) All E.R.705 .

iv) The Trustees of the Clyde Navigation v. Laird and sons (1883) AC 658 .

In the M/s. Punjab Traders and others Vs. State of Punjab Traders and others, , the Supreme Court rejected the petitioners'' argument to apply this principle.

d) The petitioner has relied upon certain administrative instructions issued by the State Government to contend that the authorities have understood the provisions of Section 2(f) (iii) to mean that the notice issued must be served. It is submitted that

the instructions and directions issued by the Revenue Department do not bind the Court while interpreting the provisions of a statute. (see Commissioner of Income Tax, Madras Vs. K. Srinivasan and K. Gopalan, .

The Doctrine of promissory estoppel will not operate against a statute and particularly in this case.

100. Some of the petitioners have contended that they are not relying upon this doctrine. However, some have relied upon this doctrine. According to them, by exempting the land under the ULC Act, granting N.A. permission or putting the land in question in residential or industrial zone, the State Government is estopped from treating these lands as forest lands. This submission is misconceived because the provisions of Section 3 of the 1975 ULC Act precede over all other enactments. The exemption under the ULC was granted or N.A. permission was granted because the petitioners suppressed the fact that on the appointed date of the 1975 Act, the land stood vested in the State Government and their rights had already extinguished. The principle of estoppel will, therefore, not apply. (See Hira Tikkoo Vs. Union Territory, Chandigarh and Others,).

101. According to the petitioners, the actions of the State Government of permitting a scheme u/s 20 showing the land in Industrial or residential zone impliedly repeals the provisions of Section 2(f)(iii). In this regard, it is submitted that the said actions are in the form of delegated legislation. They will never repeal either expressly or impliedly statutory provisions. It is submitted that this concept is foreign to the statute and hence cannot be introduced in it. Therefore, the reason why the doctrine of abandonment of notice will not apply given herein above will apply to this submission also. The learned Advocate General, therefore, prayed that the petitions be dismissed.

102. Mr. Gautam Patel had intervened on behalf of the petitioners in PIL No. 17 of 2002 which dealt with the issue of nearly 3 lacs hectors of private forest land in the State being the subject matter of the Private Forest Act, yet, the possession of these lands was not taken. He submits that in the larger public interest the arguments of each of these petitioners must be rejected. He submits that the law laid down by the Hon''ble Supreme Court while upholding the decision of this Court in Chintamani''s case applies with full force. There is no question of this Court not following the said decision. He relies upon the Division Bench judgment of this Court which has been recently delivered. He submits that the Division Bench following the judgment in Chintamani''s case has held that once the notice u/s 35(1) of the 1927 Act is issued, on and from the appointed date the land covered by Section 2(f)(iii) and nothing further needs to be considered. He submits that it is nobody''s case that such notices are not issued. On the other hand, the photo copies thereof, or some details being unavailable does not mean that they are not issued, more so, when gazette notification has been produced by the State. Hence adopting the arguments of the learned Advocate General, he submits that these writ petitions be rejected.

103 Both Mr. Gautam Patel and the learned Advocate General have addressed us even on the issue, of this Court not issuing any direction because of the developments at site. In other words, they have addressed us on the arguments which have been canvassed by the petitioners that these lands are now part of the development plan or have been brought within the Bombay Municipal Corporation Limit and are fully developed. Therefore, hardships and irreparable loss would be caused if this Court were to allow the forest authorities to proceed against them. According to Mr. Patel, consideration of hardships and inconvenience are irrelevant when the statutory provision is clear and unambiguous. Once the statute is clear, then, there is no question of this Court taking assistance of any external aid. There is no need to refer to any historical event once the Legislature has expressed itself in clearest terms. Mr. Patel submits that merely because literal construction would result in the forest and revenue authorities proceeding ahead with their action does not mean that the same should not be proceeded with, more so, when the action is not void or illegal. Mr. Patel submits that the persons who have invoked the writ jurisdiction of this Court are derivative title holders. They are not the one against whom notices have been issued. Therefore, they cannot argue that they were unaware of the notices being issued or their ignorance should be condoned. With open eyes development and construction has been undertaken on forest land and that is impermissible.

104. Mr. Patel emphasises two points. Firstly, the impact on the forest wealth of the State which, according to him, is serious and severe and secondly, public purpose so also aim and objects of the Private Forest Act. According to him, that must be borne in mind while deciding these matters. He has relied upon paragraphs 15 to 18 of the affidavit in support of the Notice of Motion No. 350 of 2007 in Writ Petition No. 1957 of 2006.

105. Mr. Patel relies upon the following decisions:

1) M.C. Mehta Vs. Union of India (UOI) and Others,

2) T.N. Godavarman Thirumulpad Vs. Union of India (UOI) and Others, .

He also relies upon the decision of this Court in Writ Petition No. 3943 of 1991 decided on 13th July, 2005.

106. While concluding his arguments, Mr. Nariman, learned Senior Counsel submitted that having as a base the Development Plan 1967 for greater Bombay for all the lands covered by the Show Cause Notices the State Government after 30th August, 1975 through its agency the Municipal Corporation of Greater Mumbai being "the Planning Authority as defined by Section 2(19) of the Maharashtra Regional and Town Planning Act, 1966 (for short MRTP Act) made a declaration of its intention to make a Revised Development Plan in terms of Section 23 of the MRTP Act which has been published in Maharashtra Government Gazette Bombay Divisional Supplement of 13 th January, 1977. The lands covered by the show cause

notices, the notice lands, are within the "T", "N" and "R" Wards which are within the jurisdiction of the Planning Authority.

107. Thereafter, the Planning Authority under the State Law made a plan of the existing land use, in terms of Section 25 of MRTP Act, which took note of the existing land use of the notice lands viz. Industrial/residential use. In terms of Section 26, the Planning Authority published a draft Development Plan which clearly indicated the designated uses:

" industrial use" in regard to lands of Oberoi Construction within "T" Ward. "residential use" in regard to lands of Godrej within "N" ward. "residential use" in regard to lands of Nanabhai Jeejeebhoy within "R" ward."

108. Objections to the Draft Development Plan in terms of Section 28 of the MRTP Act, were heard by the Committee appointed by the Planning Authority and on that basis the Planning Authority finalised the Draft Development Plan. The Planning Authority submitted the draft Development Plan to the State Government in terms of Section 30(1) of the MRTP Act on 30th April, 1985 for sanction.

109. The State Government while sanctioning the Development Plan, u/s 32 of the MRTP Act not being bound by recommendations of the Planning Authority had to apply its mind and has applied its mind while sanctioning the Final Revised Development Plan for:

"T" ward vide notification No. TBP-4392/6096/UD-11 (RDP dated 15th April, 1993, 14th December, 1993 and 23rd February, 1994 which indicates that the lands in the petition of Oberoi Construction are designated for "industrial" use.

"N" Ward vide notification Nos. TPB-4392/6039/UD-11(RDP) dated 1st April, 1993 which indicates that the lands in the petition of Godrej are designated for "residential use".

"R" Ward vide notification Nos. TBP-4392/6176/UD- 11(RDP) dated 15th April, 1993 and TBP- 4392/6279/93/UD-11/RDP dated 4th May, 1993 which indicates that the lands in the petition of Nanabhai Jeejeebhoy are designated for "residential" use.

110. When the Planning Authority was considering the objections/suggestions to the Draft Development Plan, in a number of instances the Forest Department had made representations and the same duly were considered. Lands for which objections were taken by the Forest Department, when upheld by the Planning Authority and the State Government were shown as "No Development Zone" in the final development plan.

111. The Final Development Plan sanctioned by the State Government is in force even today, the notice lands in the "T", "N" and "R" wards are not shown as "No Development Zone" and are in fact are designated as "industrial" or "residential" use. In other former Development Plan of 1966 sanctioned under the Bombay Town

Planning Act, 1954 there was no comparative expression ""No Development Zone" and the Forest lands were shown expressly as "Forest Reserved" in Exhibit CC to the Affidavit in Rejoinder in Oberoi Construction. It is submitted that the above events show a representation by the State Authorities that in fact after due consideration of all objections these lands (the notice lands) were treated by the State as not falling within Section 2(f)(iii) of the Maharashtra Private Forest (Acquisition) Act, 1975.

112. On the basis of the sanctioned Development Plan the notice lands were duly developed, as per permission of the Mumbai Municipal Corporation and large parts of the notice lands are already developed. Mr. Nariman submitted that it is not open for the State Government to change its stand after 31 years.

113. Mr. Nariman submitted that it is well settled that that where the meaning of an enactment is doubtful or obscure the Court may resort to "contemporary construction" that is construction which the authorities have put upon it by their conduct for a long period of time. In support of this contention he relied upon the judgment in the case of National and Grindlays Bank Ltd. Vs. The Municipal Corporation of Greater, Bombay, , paragraph 5 in particular. Mr. Nariman submitted that the construction consistently adopted by the State over 30 years should be accepted especially when there is no cogent reason given at all for a complete change of stance. Mr. Nariman submitted that it is not the petitioner''s case that the State can be estopped against provisions of the statute. The petitioners'' case is that the State having correctly interpreted and acted on such interpretation of Section 2(f)(iii) of the Maharashtra Private Forest (Acquisition) Act, 1975 for an continuous period of 30 years such interpretation should be accepted and this is not a case where manifestly Section 2(f)(iii) cannot now possibly bear the interpretation formerly placed by the State.

CONSIDERATION:

114. For properly appreciating the rival contentions, it would be necessary to refer to 1927 Act and the Private Forest Act, 1975.

115. VIIth Schedule to the Constitution of India speaks of Union List, State List and concurrent list. In so far as the Forests are concerned, the said subject has been placed in the "concurrent list" (List III). Entry 17A reads thus:

"Entry 17A:- (F) Forest" This has been inserted by the Constitution (Forty Second Amendment) Act, 1976, Section 57 (with effect from 3rd January, 1977). The net result of this is that by virtue of Articles 245 and 246 of the Constitution of India, the Parliament and subject to Article 246(1) the Legislature of any State also has powers to make laws with respect to any of the matters enumerated in this list (List III). In such circumstances, one must see both enactments, namely, 1927 Act and the Private Forest Act.

116. Indian Forest Act 1927 has been promulgated on 21st September, 1927. It is an Act to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. Chapter I of the Act is entitled "Preliminary". Section 1 is "short title and extent" Section 2 is "interpretation clause". It is pertinent to note that in the interpretation clause, the word "forest" has not been defined. Section 2A reads thus:

2A: Construction of certain references to Central or Bombay Acts: In the application of this Act to any area of the State of Maharashtra other than the Bombay area thereof any reference to a provision of a Central or Bombay Act shall, where no such Act is in force in that area, be construed as a reference to the provision of the corresponding law, if any, in force, in that area.

117. Chapter II deals with "reserved forests". Sections 3 to 26 deal with the power to reserve forests, mode of reserving any forest land or waste land, which is the property of the Government, to be reserved forest and consequences of issuance of notifications, proclamation and enquiry. Section 26 provides for prohibited acts in "reserved forest". Section 27 provides for dereservation of the reserved forest. Chapter III deals with "village forests" and chapter IV deals with "protected forests". Then, comes Chapter V which is titled "Of the Control Over Forests and Lands not being the property of the Government". Sections 34A and 35 of the same reads thus:

34A. Interpretation: For the purposes of the Chapter "forest" includes any land containing trees and shrubs, pasture lands and any other land whatsoever which the (State) Government may, by notification in the Official Gazette declare to be a forest.

35. Protection of forest for special purposes: (1) The (State) Government may, by notification in the Official Gazette:

(i) Regulate or prohibit in any forest -

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or clearing of the vegetation;

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any trees;

(e) the lapping and pollarding of trees;

(f) the cutting, sawing, conversion and removal of trees and timber; or;

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process;

(ii) regulate in any forest the regeneration of forests and their protection from fire; when such regulation or prohibition appears necessary for any of the following purposes:

(a) for the conservation of trees and forests.

(b) for the preservation and improvement of soil or the reclamation of saline or water logged land, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit hereon of sand, stones or gravel;

(c) for the improvement of grazing;

(d) for the maintenance of a water supply in springs, rivers and tanks;

(e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel

(f) for the maintenance of reservoirs or irrigation works and hydro electric works;

(g) for protection against storms, winds, rolling stones, floods and drought

(h) for the protection of roads, bridges, railways and other lines of communication and

(i) for the preservation of the public health.

(2) The (State) Government may, for any such purpose construct at its own expenses, (in any forest), such work as it thinks fit.

(3) No notification shall be made under Sub-section (1)nor shall any work be begun under Sub-section (2) until after the issue (by an officer authorised by the State Government in that behalf) of a notice to the owner of such forest 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 objection, 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.

(4) A notice to show cause why a notification under Sub section (1) should not be made, may require "that for any period not exceeding (one year) or till the date of the making of a notification, whichever is earlier the owner of such forest and all persons who are entitled or permitted to do therein any or all of the things specified in Clause (i) of subsection (1) whether by reason of any right, title or interest or under any licence or contract or otherwise, shall not, after the date of the notice and for the period or until the date aforesaid, as the case may be, do any or all the things specified in Clause (i) of subsection (1) to the extent specified in the notice.

(5) A notice issued under Sub-section (3) shall be served on the owner of such forest in the manner provided in the Code of Civil Procedure, 1908 for the service of summons and shall also be published in the manner prescribed by rules.

(5A) Where a notice issued under Sub-section(3) has been served on the owner of a forest in accordance with Sub-section (5), any person acquiring thereafter the right of ownership of that forest shall be bound by the notice as if it had been served on him as an owner and he shall accordingly comply with the notice, requisition and notification, if any, issued under this section.

(6) Any person contravening any requisition made under Sub-section (4) in a notice to show cause why a notification under Sub-section (1) should not be made shall, on conviction, be punished with imprisonment for a term which may extend to six months r with fine or with both.

(7) Any person contravening any of the provision of a notification issued under Sub-section (1) shall on conviction be punished with imprisonment for a term which may extend to six months, or with fine or with both.

118. A bare perusal of the title of chapter V and provisions appearing thereafter would make it apparent that 1927 Act is comprehensive legislation dealing with the Reserved Forest, Village Forest, Protected Forest, timber and other forest produce and control of timber and other forest produce in transit. It deals with collection of bricks and stranded timber. It provides for penalties and procedure and contains several subsidiary and miscellaneous provisions. It is not intended that such a comprehensive legislation will cover only forests and lands which are properties of the Government. Such forests and lands which are not properties of the Government also will have to be brought within the purview of the legislation and for obvious reasons. The anxiety of the legislature is not just to preserve and protect forests but also to ensure that timber and forest produce is available for the use of public at large. To ensure smooth flow and availability of forest produce and timber, it became necessary to protect the trees and lands etc. It is for that reason that the forests and lands which were not the properties of the Government have been included in the Indian Forest Act and provisions have been made with regard thereto. Now, the lands, which are not the properties of the Government but upon which trees and shrubs are grown have to be identified, and, therefore, Section 34A defines "forest". It is an inclusive definition. The definition is for the limited purpose of Chapter V. It was necessary to define that term because identification of the lands which are to be brought under the Act is smooth and expeditious. When forests have to be protected for special purposes, then, various activities therein have to be regulated or prohibited. For such regulation or prohibition, some measures have to be initiated by the State Government. Hence, it becomes necessary to outline the activities which are to be regulated or prohibited. For the purpose of issuance of such notification, that the definition of the term "forest" had to be inserted and that is precisely done. Section 35(1) enables the State Government to issue notification

regulating or prohibiting the activities in any forest. Sub-section (2) empowers the State Government to make construction and put up such work which is necessary to protect forest and to regulate or prohibit any activity therein which is more particularly described in subsection (1).

119. Sub-section (3) of Section 35 states that no notification shall be made u/s 35(1) nor shall any work be commenced u/s 35(2) until a notice is issued by the Forest Officer to the owner of such forest calling upon him to show cause within reasonable period to be specified in such notice why such notification should not be made or work constructed. Until objections, if any, and the evidence that is produced by the persons to whom the notices are issued have been considered the notification u/s 35(1) cannot be issued. There are further sub sections and reliance is placed upon Sub sections (5), (5A) and (6). These are the provisions which enable the State Government to take further steps. However, for the purpose of the present petition, it would not be necessary to interpret Section 35(4) to (7) in as much as there is a limited controversy before us.

120. It is urged that the words "or land" were deleted and that is done prior to the Private Forest Act coming into force. However, it is pertinent to note that Sections 34A, 35, 36, 36-A - 36C and 37 have been repealed by Maharashtra Act 29 of 1975. Section 4 of the Maharashtra Act 14 of 1978 re-enacts the Repealed Act (1927 Act) in Maharashtra for a limited purpose. In our view, chapter V of 1927 Act, which contains Sections 34 to 37 has been deleted in the State of Maharashtra upon enactment of the Private Forest Act. The Private Forest Act is an Act to acquire private forest in the State and to provide for certain other matters. The statement of object and reasons of the Private Forest Act reads thus:

WHEREAS the forest land in the state in inadequate;

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

AND WHEREAS it is, therefore, expedient to acquire private forests in the State of Maharashtra generally for conserving their material resources and protecting them from destruction or over exploitation by their owners or promoting systematic and scientific development and management of such forests for the purpose of attaining and maintaining ecological balance in the public interest, for improving the socio economic conditions of the rural population, and particularly of the adivasis and other backward communities who generally live in forest areas, for developing as he forest suitable for the purpose, for assigning a part of the private forest to the rural community; for controlling the soil erosion both in the forest areas and in the lower level agricultural lands, for conserving soil moisture for improvement of the water regime and raising the water table, for retarding the siltation of dams and tanks, for distribution of forest produce for the common good and preventing the

concentration of forest wealth to the common detriment for distribution of the mature exploitable forest produce as best to subserve the common good, for promoting employment opportunities based on forest, for meeting the requirements of forest produce including fire wood with a view inter alia to decrease the dependence on cow dung, and in particular for afforestation of private forest wherever feasible on scientific lines, and thereby create conditions for the preservation of soil, conservation of water, prevention of erosion of soil and for improvement of land and underground water resources to the best interest of agriculture and agriculturists in such private forests and other lands in the State, and for undertaking schemes (for such purposes.)

AND WHEREAS it is also expedient to provide that in the case of owners of private forests (other than those whose lands were used for extracting minor minerals such as stone quarries) whose total holdings of lands became less than twelve hectares the appointed day on account of acquisition of their forest lands under this Act, or whose total holding of lands was already less than twelve hectares on the day immediately preceding the appointed day, the whole or the appropriate portion of their forest lands so acquired shall be resorted to, and revested in, them, so that their total holdings of lands may be twelve hectares or less, as the case may be, and they may be able to continue to earn their livelihood from such lands; and to provide for certain other purposes hereinafter appearing. It is hereby enacted in the Twenty Sixth year of the Republic of India as follows:

Thus, the Private Forest in the State being in degraded and over exploited state, which was adversely affecting the agriculture and agricultural population, so also for the purpose of conservating the material resources and protecting them from destruction and from over exploitation by the owners, that, it became necessary to enact the Private Forest Act. Further, promotion of systematic and scientific development and management of the private forest and forest land in the State became necessary. This is an act for the purpose of attaining and maintaining ecological balance in the public interest. It is for improving of socio economic conditions of the rural population and particularly the Adivasis and other backward communities who generally live in forest area. Thus, public purpose that has to be achieved resulted in Private Forest Act being enacted. It is Sub-serving the larger public interest. At the same time, the owners of the private forest, whose total holding of land became less than 12 H on the appointed day on account of acquisition of their forest land under the Private Forest Act, have been carved out so that their total holdings being less they should be able to continue to earn their livelihood from such land. This can be done by restoring to them the whole or appropriate portion of their forest land. They will have to re-vest in them. This would indicate that the Act contemplates acquisition of the lands which are private forests. They are not of public ownership. The forest privately owned had to be also protected and preserved for the purposes aforesaid. To achieve that object and purpose the Private Forest Act has been enacted. A reference can, therefore, be

made to the Full Bench Decision of this Court in Janu Chandru Waghmare and Ors. v. The State of Maharashtra and Ors. reported in 1978 Bom. 119. On this aspect the Full Bench observes thus:

31. Turning to the definition of ''private forest'' given in Section 2(f), it will appear clear that even this definition consists of two parts; the first part indicating what the expression "means" according to the Legislature and second part indicating what the expression ''includes according to the Legislature. In the first part ''private forest'' has been defined to mean ''any forest '' which is not the property of the Government'' while under the inclusive part six items or heads mentioned in Sub clauses (iv) to(v) have been included in the definition. The ''meaning'' part presents no difficulty and the question is about the inclusive part of the definition. The true impact of this inclusive part of the definition cannot be realised without bearing in mind the provisions of Chapter V of the Forest Act, 1927. It may be stated that the Indian Forest Act, 1927 deals with different types of forests such as (i) Reserved forests, (ii) Village forests, (iii) protected forests and (iv) forests which are not the property of Government. Chapter V deals with the fourth category of forest and contains Sections.34-A, 34 and 38. u/s 34A it has been provided that for the purposes of that Chapter "forest" includes any land containing trees and shrubs, pasture lands and any other land whatsoever which the State Government may, by notification, declare to be a forest. Section 35(1) enables the State Government to issue a notification regulating or prohibiting certain such as, breaking up or clearing of the land for cultivation, pasturing of cattle, firing or clearing of the vegetation, girdling, tapping or burning of any tree or the stripping off the bark or leaves from any trees, cutting, sawing, conversion and removal of trees and timber or quarrying of stone or the burning of lime or charcoal etc. when such regulation or prohibition appears necessary for any forest not belonging to Government, for the purpose of conservation of trees and forests, preservation and improvement of soil, improvement of grazing, maintenance of a water supply in springs, rivers and tanks, maintenance, increase and distribution of the supply of fodders, leaf manure, timber or fuel, maintenance of reservoirs or irrigation works, protection of roads, bridges, railways and other lines of communication and preservation of the public health etc. Under Sub- Section (3) of Section 35 it is provided that no notification under Sub-clauses (1) shall be issued until after a show cause notice to the owner of such forest has been issued and until his objections, if any are heard and considered by Government. Section 38 provides for protection of private forest at the request of the owners and states that upon a request in that behalf being made by the owners the State Government can apply the provisions of the Forest Act to such private forest by means of a notification. If Sub clauses (i) to (iv) of Section 2(f) are read in the light of the aforesaid provisions of Ss34, 34 and 38 of the Forest Act, 1927, it will appear clear that these sub clauses bring within the definition of private forest four types of land in respect of which action has been taken by the State Government under Ss34A, 35(1), 35(3) and 38 of the Forest Act. Sub-clause (i) brings within the

definition of ''private forest'' any land declared before the appointed day to be a forest u/s 34A of the Forest Act and Sub-clause (ii) brings any forest in respect of which a notification u/s 35(1) of the Forest Act has been issued immediately before the appointed day within the category of ''private forest''. Both the Sections viz,. 34A and 35 of the Forest Act have been repealed with effect from 30th Aug.1975 after the coming into force of the Acquisition Act and in view of such repeal no fresh declaration by issuing a notification u/s 34A or fresh issuance of a notification u/s 35(1) is now possible. As regards action taken either u/s 34A or u/s 35(1) prior to 30.8.1975 our attention was not drawn to any defective declaration or defective notification issued under either of these provisions. More over, it would be reasonable to assume that such prior declaration u/s 34A was in respect of such land as possessed the essential attributes of a forest. Prior action u/s 35(1) must have been merely regulatory or prohibitory of certain acts specified in the section and that too in respect of ''forest'' in as much as the power to issue such regulations or prohibitions is confined to forest. No grievance can be made with regard to action taken by means of a notification u/s 38 of the Forest Act in respect of land mentioned in Sub-clause (iv), in as much as such action is taken with a view to formation or conservation of forest over such land at the request of the owners of land. It is thus clear that Sub-clauses (i),(ii) and (v) of Section 2(f) deal with, declared, adjudicated or admitted instances of forests. Sub-clause (iii) of Section 2(f) no doubt seeks to cover land in respect of which merely a notice has been issued to the owner of a private forest u/s 35(3) and his objections may have remained unheard till 30.8.1975 as Section 35 has stood repealed on the coming into force of the Acquisition Act. Here also, as in the case of owners of land falling under Sub-clause (iii) of Section 2 (c-1), his objections, if any, including his objection that his land cannot be styled as forest at all can be heard and disposed of u/s 6 of the Acquisition Act, and this position was conceded by Counsel appearing for the State of Maharashtra. Sub-clause (v) includes within the definition of private forest the interest of another person who along with Government is jointly interested in a forest while Sub-clause (vi) includes sites of dwelling houses constructed in such forest which are considered to be necessary for the convenient enjoyment or use of forest and lands appurtenant thereto. In our view, the artificiality involved, if any, in the definition of ''private forest'' in Section 2(f) is indeed of a very minor nature and does not introduce anything over which the State Legislature has no competence. The contention of Mr. Singhvi and Mr. Paranjape that under the artificial definitions even lands which cannot by any stretch of imagination be regarded as forest in its normal or natural connotation have been brought within that concept as well as their apprehension that lands which may be barren tracts where quarrying operations may be carried on may be included in the artificial definitions under the power of declaration conferred on the State without any hearing are misconceived. In the first place, the artificial parts of the two definitions of ''forest'' and ''private forest'' does not do anything of the kind as suggested and secondly u/s 6 of the Act owners of such land which is sought to be declared as forest would have an

opportunity of raising objections to the proposed declarations and of satisfying the Government that their lands are not and cannot be treated or declared as forests.

121. It is common ground that the observations of this Court in the above decision as far as the concession of the government and applicability of Section 6 so also providing for an enquiry run counter to the Supreme Court judgment in Chintamani''s case. A later Division Bench view brought to our notice by the Intervenors confirms this position. It is to achieve the above that the Act had to define certain words and phrases. The term "appointed day" is the date on which the Act came into force and which in this case, is 30th August, 1975. The term "forest" has been defined in Section 2(c)(i). It is a track of land covered with trees and other things mentioned therein. The growth of trees and other things may be natural or planted by Human Agency and existing or being maintained with or without Human effort or such tract of land on which such growth is likely to have effect on the supply of timber, fuel, forest produce or grazing facilities so also the growth of which is likely to have an effect on the normal stream flow, protection of land from erosion or such other matters are also covered by the term "forest". Further the term includes land covered with strips of trees of forest, land which is a part of forest or lies within it or was part of a forest or was lying within the forest on 30th August, 1975. Further, the pasture land, water logged or cultivable or non cultivable land, lying within or linked to a forest, as may be declared to be forest by the State Government so also forest land held or let for purpose of agriculture is a forest. Even the forest produce on such land is brought within this definition. The Forest Act is defined as the Indian Forest Act, 1927. Now comes the definition of "private forest". It means any forest which is not a property of the Government and includes any land declared before 30th August, 1975 to be a forest u/s 34A of the Forest Act. Thus, chapter V of the 1927 Act having been repealed, as the same was dealing with the forest and land not being property of the Government that aspect had to be covered or else the Private Forest Act becomes meaningless or futile legislation. It is well settled that the Legislature does not waste itself. It does not legislate only for the sake of legislating. It legislates because it is necessary. In this behalf, a reference could usefully be made to the following observations of the Supreme Court in Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others,

9. In considering the rival submissions of the learned Counsel and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpretation of a statutes. A statute is best understood if we know the reason for it. The reason for the statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of Committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of

Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act,. Having discovered the reason for the statute and so having set the sail to wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament, is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance ''the fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute and the context of any Act may well indicate that wide or general words should be given a restrictive meaning. (See Halsbury 4th Edn.Vol.44 Para 874)

Hence, whatever was necessary to be done by the State of Mahasrtashtra to control forest and lands which are not Government properties has been done by enacting the Private Forest Act. Therefore, the word "forest" had to be defined widely. The legislature has used the words "means and includes". The word "forest" has necessarily to be defined because the Private Forest means forest which is not a property of the Government but the definition does not end here. It also covers the land and forest which were hitherto covered by Chapter V of 1927 Act. Therefore, once the notification is issued u/s 34A in respect of any and that land becomes a forest after declaration in the official gazette. Therefore, such land which has been notified in the official gazette and declared to be forest pursuant to Section 34A had to be included in the definition of the term "private forest" and that is a deliberate inclusion. The inclusion is because chapter V of the 1927 Act itself was to be repealed and stood repealed. Once that stood repealed and ceases to apply in the State of Maharashtra, then, it could have been possibly stated that the same is not Forest in Maharashtra any longer. Therefore, such lands which have been declared to be forest under the 1927 Act but which are not in the ownership of the Government have been termed as "private forest" for the purpose of 1975 Act. Similarly any forest with regard to which a notification within the meaning of Section 35(1) of the 1975 Act has been issued and is in force immediately before the appointed date, must also be included after repeal of Chapter V. This is because the notification u/s 35(1) of the 1927 Act is issued in respect of any forest and for the purpose of regulating or prohibiting the activities therein, so also to enable the Government to carry out any work therein. However, an argument is always

possible that since no notification is issued u/s 35(1) with regard to any land which may be a forest, but not a Government property or such a notification, if issued, cannot remain in force after repeal of Chapter V of 1927 Act. Therefore, such forest in regard to which notification is issued before the the appointed day u/s 35(1) of the 1927 Act is "private forest". This is inserted to take care of this argument. The Legislature did not desire to leave any lacuna so as to enable anybody to urge that the notification u/s 35(1) no longer being in force the land reverts back to its original status and can be used for any non forest purpose or activity.

122. Section 2(f)(i) has been worded differently because it takes care of a different situation. When 1927 Act was in force and applicable to the area in question, even then, Section 35 of the same itself was clear. Section 35 provides for protection of forest for special purposes. The notification in the official gazette contemplated by Section 35(1) of 1927 Act is to regulate or prohibit the activities mentioned therein, in any forest. All that Section 35(3) states that the notification prohibiting or regulating the activities in any forest should not be issued until a notice is given to the owner of the forest. That is because Section 35 itself appears in chapter V of the 1927 Act as pointed out above. Chapter V of 1927 Act is dealing with the control over the forest and land not being the property of the Government. Therefore, the 1927 Act contemplates a forest which is not the ownership of the Government. Similarly, it also contemplates any land not being the property of the Government but it contains trees and shrubs or pasture lands and, therefore, would come within the definition of the term "forest". Regulation or prohibition of the activities which destroy the forest is, therefore, necessary. All that Section 35(3) of 1927 Act states that first notice will have to be issued to the owner calling upon him to show cause within reasonable period to be specified in such notice, why such notification should not be made or work constructed, as the case may be. That sub-section provided for objections to be raised so also enabling the owner of the forest to produce evidence and after hearing contemplated therein is over, a notification u/s 35(1) regulating or prohibiting the activities mentioned therein can be published in the official gazette. Similarly the work of construction can also commence u/s 35(2).

123. The Maharashtra Legislature was aware that once it repeals chapter V of 1927 Act, then, there is every likelihood of forest and lands which are not the properties of the Government being lost for ever. The broad object of the Private Forest (Acquisition) Act and intention in enacting the same being obvious, the Maharashtra Legislature did not leave out any forest and lands which are not its properties from the purview of the Private Forest (Acquisition) Act. Since the intent was to acquire all private forest and vest them in the State Government, then, they being hitherto controlled by Chapter V of 1927 Act, must also be included. Once the intent is so clear and expressed as such, then, we have no hesitation in rejecting the arguments of the petitioners that mere issuance of a notice u/s 35(3) without any notification being published in the official gazette within the meaning of Section 35(1) would not mean that the land is excluded from the purview of the Private Forest (Acquisition)

Act enacted by the Maharashtra Government. What this argument overlooks is that the issuance of the notice u/s 35(3) is for the purpose of enabling the Government to prohibit or regulate the activities covered by Section 35(1). As observed above, these activities were going on in the forest. Once the land or area is forest and it is not the property of the Government, but still it is necessary to regulate and control it, then, such regulatory power must be available. For that power to be available and exercised, a notification u/s 35(1) of the 1927 Act was required to be published in the official gazette. To enable such publication and before the same is published, the owner of the forest should have no room for complaining that he has no opportunity to object, that a notice to show cause u/s 35(3) was provided. Such a notice has to be issued to the owner of the forest as is clear from Section 35(3). Merely because the words "or land" appearing in Section 35(3) after the word "forest" are deleted that by no means can be construed as a case of the land not being forest. The words "or land" are deleted by the amendment to 1927 by the State made in 1948. The word "land" being included in Section 34A of the 1927 Act, it was found necessary to delete it from Section 35(3) of the same. This aspect cannot control the interpretation which is placed upon Section 35(3) by the Hon''ble Supreme Court. However, even that aspect to be covered and to leave no ambiguity the Maharashtra Legislature worded Section 2(f)(iii) of the Private Forest Act as applying to any land.

124. It is true that the words "or lands" appearing in Section 35(3) of the 1927 Act were deleted but Mr. Nariman''s argument that the words having been deleted would mean that before the Private Forest Act became applicable to the same, such lands must be a forest is fallacious. It does not carry the matter any further. Section 2(f) had to be worded widely so as to cover all private forests. Once chapter V of the 1927 Act being worded in a manner so that all forests and lands not being the properties of the Government came within the prohibitory and regulatory measures, then, taking the object of 1927 Act and chapter V thereof ahead, the State Government in this case, defined "private forest" widely. This broad and wide definition is a deliberate attempt. It is a measure so as to bring all private forests in the State within the control of the State Government. Therefore, all provisions in Chapter V of 1927 Act have been included in the term "private forest". The term "private forest" was not defined anywhere. The 1927 Act possibly had that lacuna or defect. To cure the same, the State Legislature defined the term "private forest" and brought within its net not only the lands and forests which are covered by chapter V of 1927 Act but even those sites where some dwelling houses are constructed in the forest which are considered to be necessary for the convenient enjoyment or use of the forest and land appurtenant thereto. Such is a sweep of Section 2(f) that wherever the State Government and other person is having a joint interest in the forest, the interest of that private person in that forest also should be capable of being acquired and vested in the State Government. Therefore, we find Section 2(f)((v) and (vi) appearing in definition of the term "private forest" being worded

accordingly. Not only that owner/s of the land may request the State Govt. to conserve the forest thereon with an application to the Collector in writing. Once such a desire is expressed, then, that land had to be managed by the forest officials. The State Government used to notify such lands and thereafter 1927 Act was made applicable thereto. That is a provision in Section 38 of the 1927 Act. That provision is not repealed. But the Legislature has brought even such lands within the purview of private forests under the Private Forest (Acquisition) Act.

125. There is much substance in the contention of the learned A.G. that Section 2(f) defines Private Forest and while defining it, the Legislature includes any "land" in respect of which notices have been issued u/s 35 of the 1927 Act. Merely because, in Section 35(3) of the 1927 Act, the expression "Forest" is used that is of no significance. The word "forest" is defined in Section 34-A of the 1927 Act and the definition is for the purpose of Chapter V. The term includes any land containing trees, shrubs, pasture land and any other land whatsoever which the State Government may by notification in the official gazette declare to be a forest. Section 35 deals with protection of forest for special purposes and in the same, subsection 3 is appearing. The words "or land" were deleted from Sub-section 35(3) of the 1927 Act. When the Private Forest Acquisition Act was enacted, the word "private forest" has been defined to mean any forest which is not a property of Government. It includes any land as would be clear by Section 2(f)(i),(iii) and (iv). The intention appears to be obvious, inasmuch as the Legislature intended to include not only forest but land, declared before the "Appointed Day" to be a forest u/s 34A of the 1927 Act and any forest in respect of which any notification is issued u/s 35(1) of that Act and such notification is in force immediately before the appointed day. If the Legislature did not exhaust itself and proceeded to include such land in respect of which notices have been issued u/s 35(3) and excluded an area not exceeding two hectares in existence as the Collector may specify so also a land in respect of which notification has been issued u/s 38 of the 1927 Act, then, nothing is left out. All private forests have to vest in the State. For the purposes of effective and complete vesting, firstly, the word "forest" was defined in the Private Forest Act. Thereafter "Private Forest" has been defined. In such circumstances, the submission of Mr. Nariman that the words "or land" being deleted from Section 35(3) would have definite bearing on the matter cannot be accepted. As rightly urged by the learned A.G. the provisions in Section 35(3) are not incorporated in the Private Forest Act. Therefore, that provision cannot be referred to for the purposes of interpretation of Section 2 (f)(iii). That apart, Section 34 A of 1927 Act included land of certain description and, therefore, the said word has been deleted from Section 35(3). Further, the land may not be falling in the first part of the definition of the term Private Forest but if it is covered by latter inclusive portion, then, it would be a private forest. If the submissions of the petitioners in this behalf are accepted, then, we would be doing violence to the plain language of Section 2(f)(iii) of the Private Forest Act. Petitioners do not dispute that forests are lands also. In such

circumstances and when there is an authoritative pronouncement of the Supreme Court which is consistently followed by this Court, then, it is not possible to accede to the submissions of the petitioners. Merely because the petitioners canvassed a submission with regard to deletion of words "or lands" from Section 35(3) of the 1927 Act, we cannot, by accepting that, dilute the effect of the Supreme Court decision in Chantamani''s case.

126. In our opinion, all this has been done so as to give full and complete effect to Section 3 of the Private Forest (Acquisition) Act, 1975. Section 3 reads thus:

3. (1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or authority or any other document with effect on and from the appointed day, all private forests in the State shall stand acquired and vest, free from all encumbrances, in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government 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.

(2) Nothing contained in Sub-section (1) shall apply to so much extent of land comprised in a private forest as in held by an occupant or tenant and is lawfully under cultivation on the appointed day and is not in excess of the ceiling area provided by Section 5 of the Maharashtra Agricultural Lands (Ceiling on Holidays), Act, 1961 for the time being in force or any building or structure standing thereon or appurtenant thereto.

(3) All private forests vested in the State Government under Sub-section (1) shall be deemed to be reserved forests within the meaning of the Forest Act.

A bare perusal of the same would indicate that notwithstanding anything contained in any law for the time being in force or any settlement, grant, agreement, usage, custom or any decree or order of any Court, Tribunal or Authority or any other document, with effect on and from 30th August, 1975 all private forests in the State shall stand acquired and vest in the manner indicated in Sub-section (1) of Section 3. If these sub sections are read in the backdrop of the object and purpose that is sought to be achieved, so also the mischief that is sought to be taken care of or lacuna to be plugged, then, it is not possible to agree with the petitioners that the notice u/s 35(3) of the 1927 Act being issued as far back as in 1957, no effect can be given to them. There is nothing like stale, old, obsolete or non surviving notice. The 1927 Act was applicable till the appointed day. The 1927 Act had chapter V in it. Chapter V being repealed with effect from the appointed day by Act 29 of 1975, then, whenever the notices may have been issued, the forest or land in respect of which the said notices have been issued, becomes a private forest. The argument also overlooks the fact that Chapter V of 1927 Act was enacted so as to enable the State Government to protect the forest and lands which are private properties but

which need protection because such lands contain trees and shrubs or were pasture lands. They could be notified u/s 34A of the 1927 Act but they have to be notified by the State Government itself. The State Government could have declared such lands even if they were not of its ownership as forest. The State Government alone is the Authority contemplated by Sections 34A, 35, 36,36A, 36B, 36C, 37 and 38 of 1927 Act. Therefore, 1927 Act to the extent of chapter V therein had to be implemented and enforced by the State Government. Therefore, notices u/s 35(3) had to be issued by the State Government. Once the State Government issues such notice, then, the intention is apparent. The intention is to regulate and prohibit certain activities in forest. Merely because such a notice is issued by it in 1957 and 1958 but it did not take necessary steps in furtherance thereof, does not mean that the notices have been abandoned as contended by the petitioners. There is no concept of "abandonment or disuse" in such case. Apart from the fact that these concepts could not be imported in a modern statute, we are of the view that they cannot be imported and read into statute of the present nature. Statutes which are meant for protecting and preserving forests and achieve larger public interest, cannot be construed narrowly as contended. The interpretation, therefore, if at all there is any ambiguity or scope for construction has to be wider and sub-serving this public interest so also the intent and object in enacting them. The reason for the State Government not being able to pursue the measures for preserving and protecting the forest wealth is obvious.

The 1927 Act did not provide for any acquisition and vesting. The power in that behalf was lacking as is apparent from the reading of Sections 36, 36A to 36C and 37. Section 37 would make this aspect more clear. Section 37 of 1927 Act provides for expropriation of forest in certain cases. The State Government found that provision also not as enough, in as much as, Expropriation u/s 37 is by resorting to acquisition in the manner provided by Land Acquisition Act, 1894. Thus, vesting was not automatic as is apparent from Section 3(1) of the Private Forest Act. The acquisition under the Land Acquisition Act was also a long drawn process and contemplated payment of market value as compensation plus other set of provisions entailing in delay. The purpose of expropriation was thus not achieved by this long drawn process. To get over all this and provide for automatic and complete vesting and thereafter payment of compensation etc. that the Private Forest Act was enacted. If one looks at Sections 3 to 20, then, this intention is apparent and specific.

127. An argument was canvassed that our interpretation as above would over look Section 21 of the Private Forest Act. Section 21 thereof reads thus.

21(1) Wherever it appears to the State Government that any tract of land not being the property of Government, contains trees and shrubs, pasture lands and any other land whatsoever, and that it should be declare, in public interest and for furtherance of the objects of this Act, to be a private forest, the State Government shall publish a notification in the official gazette:

(a) declaring that it is proposed to declare such tract of land to be a private forest; and (b) specifying, as nearly as possible, the situation and limits of such tract.

(2) On the publication of such notification, the collector or any other officer authorised in this behalf by the State Government shall issue a notice to the owner of such tract of land and to all other persons having an interest in such tract of land, calling on them to show cause within a reasonable period to be specified in such notice, why such declaration should not be made.

(3) After hearing the objections, if any, of the owner and other persons and considering any evidence that they may produce in support of the same, the Collector or as the case may be, the authorized officer shall submit his report to the State Government, along with the objections, proceedings and his opinion whether the tract of land should or should not be declared to be private forest.

(4) After taking into consideration, the objections, proceedings and report and the opinion of the Collector, or as the case may be, of the authorised officer, the State Government shall decide whether such tract of land or any part thereof should or should not be declared to be a private forest such decision shall be final.

(5) If the State Government decides to declare such tract of land or any part thereof to be a private forest, it shall publish such decision by a notification in the Official Gazette.

(6) Upon publication of the notification under Sub section (5) the tract of land in question or any part thereof shall be deemed to be private forest, and thereupon, all the provisions of this Act shall apply thereto, subject to modification that the appointed day in relation thereto shall be deemed to be the date of the issue and publication of the notification in the official gazette under Sub-section (5) in relation thereto.

(7) If the State Government decides not to declare such tract of land or any part thereof to be a private forest, it shall communicate its decision to all persons interested tract of land or any part thereof.

(8) On the publication of a notification under subsection (1) in respect of any tract of land, it shall not be lawful for the owner of such tract of land or any other person to do therein, except with the previous permission in writing of the Divisional Forest Officer, any of the following things; for a period of one year from the date of such publication, or till the date of the publication of the notification under Sub-section (5), or as the case may be, till the date of communicating the decision under Sub-section (7) or as the case may be, till the date of communicating the decision under Sub-section (7) whichever period expires earlier, namely:

(a) the breaking up or cleaning of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or cleaning of the vegetation;

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;

(e) the lopping and pollarding of tree;

(f) the cutting sawing, conversion and removal of trees and timer; or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing process.

(9) If any person contravenes the provisions of subsection (8) he shall on conviction, be punished with imprisonment, for a term which may extend to six months or with fine or with both.

21A. Nothing in Section 21 shall apply to any non forest land, not being the property of Government, on which by artificial means or by human agency afforestation is made by planting forest tree species.

Section 21 is on par with Section 34A of the 1927 Act. Section 21 would not cover the land and properties of the petitioners before us for obvious reasons. These are not the properties and lands with regard to which the State Government has yet to take a decision and declare them to be a private forest. Section 21(1) would take care of eventuality which is not contemplated by Section 2(f)(i). Once again, the intent is to go ahead and further. Such of the lands which are not covered by a Notification u/s 34A of the 1927 Act, then, with a view to include them, Section 21 has been inserted in the Private Forest Act. In other words after repeal of Section 34A of 1927 Act, identical provision had to be made in the Private Forest Act and, therefore, Section 21 has been inserted. That is for an avowed object and purpose. There may be certain private lands containing trees and shrubs or there may be pasture lands or any other land and it is necessary to declare them in public interest and for furtherance of the object of the Private Forest Act to be a "private forest". To enable the State Government to do so and publish a notification in that behalf in the official gazette, that Section 21 has been enacted. Far from assisting the petitioners, reliance upon this provision by them would militate against their stand. It only shows that when legislature repeals certain provisions and reenacts it, then, reenacted provisions, being worded broadly and widely, an interpretation must be placed thereon which furthers that intent the purpose of wording it widely and not defeat or frustrate it, more so, when public interest is at the root of the legislation.

128. Once the entire object and purpose of enactment is understood, then, the picture is clear. There is no scope for any argument, then, that Section 35(3) notice is abandoned or fallen in disuse. Once a notice is issued that is enough. We had to undertake the above exercise and scan the entire Act in order to appreciate the contention that the judgment of the Hon''ble Supreme Court in Chintamani''s case (supra) which has been consistently followed by this Court is inapplicable to the facts

of the present case.

129. To appreciate this argument the facts in only three cases need be noticed. The first writ petition and two others. are preferred by Godrej and Jeejeebhoy. In each of these cases notices u/s 35(3) have been published in the official gazette or particulars thereof are available in the Government record. We will come to the arguments of the same having been not issued at all a little later. Once the argument is that they have not been issued at all, then, it is clear that the petitioners'' Counsel accept the position that their issuance is enough for the purpose of vesting u/s 3(1) of the Private Forest Act. In other words, the lands, which are covered by these notices, would vest in the State, moment the notices are issued, is crystal clear from their arguments. To be fair, this argument is in the alternative. However, their main argument is that these notices were issued as early as in 1957 and have not been pursued in as much as they did not culminate in notification u/s 35(1) being issued at any time. Once they do not so culminate, then, they are deemed to be abandoned. What this argument overlooks is that a binding precedent cannot be so read by us. The argument that the notices lapse or are abandoned has no force. There is nothing in Section 2(f)(iii) or in other provisions of the Private Forest Act which would enable us to read lapsing or abandonment of the notices. The learned Advocate General is right in urging that whenever the legislature intends that the proceedings lapse, such provision is made expressly in the statement. (see Section 11A of the Land Acquisition Act, 1894). No such provision is there in the subject enactment.

130. A binding precedent cannot be disregarded by this Court by such hairsplitting. More so, when the statutory provision is unambiguous and clear. Section 2(f)(iii) does not speak of any subsisting, continuing notice. It only speaks of an act of issuance of a notice u/s 35(3) of the 1927 Act. The only exception is that even if such notice has been issued that will not cover the area not exceeding two hectares in extent as specified by the Collector. However, whenever such notice may have been issued, the land with regard to which this notice is issued, is a private forest. There is no question of reading anything and more so that notice not culminating, as urged, into a Notification u/s 35(1) of 1927 Act. If we read Section 2(f)(iii) in this manner, we would be rewriting the statutory provision which is impermissible. Not only such rewriting is impermissible when statutory provision is clear but Court cannot read into it something which the Legislature has not provided, once the language is unambiguous.

131. Hon''ble Justice G.P. Singh in his treatise on "Interpretation of Statute" in this regards says thus:

When the words of a statute are clear, plain or unambiguous, i.e. They are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The rule stated by TINDAL, C.J. In Sussex Peerage case is in the following form:

If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare ordinary sense. The words themselves do alone; in such cases best declare the intent of the lawgiver. The rule is also stated in another form. "When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself. The results of the construction are then not a matter for the Court, even though they may be strange or surprising, unreasonable or unjust or oppressive. Again and again, said VISCOUNT SIMONDS,L.C., "this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used. And said GAJENDRAGADKAR J. "If the words used are capable of one construction only then it would not be open Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. (7th Edition 1999 pages 38-39)

132. Therefore, acceding to the request of the petitioners to read into these provisions the words "live or subsisting notices" would be doing violence thereto. It would defeat the public interest. Such an interpretation of an Enactment which aims at preservation and protection of forest in public interest is impermissible. That apart, that would also mean ignoring a binding precedent.

133. In Chintamani Gajanan Velkar''s case, the Hon''ble Supreme Court was dealing with a case where the appellant/land holder was in possession of the forest land. Survey Nos. 31 to 33 in village Versova District Thane roughly amounting to 30 acres were the lands in question. The appellant Chintamani filed an application u/s 6 of the Maharashtra Private Forest Act which provides for settlement of a dispute in relation to a private forest land. It appears that initially the Deputy Collector passed the order on 25th September, 1980 in favour of the appellant holding that the land was waterlogged and could not be treated as a forest land and, therefore, the same did not vest in the State on 30th August, 1975. It was pointed out that the notice u/s 35(3) of the 1927 Act was issued on 29th August, 1975 and was served on the land holder after the appointed date and to be precise on 12th September, 1975. The Deputy Collector held that a notice must not only be issued but served and since the same was not served before the appointed date the land did not vest in the State.

134. An appeal was preferred by the State Government before the Maharashtra Revenue Tribunal (for short MRT) against this decision and MRT reversed the view of the Deputy Collector. It held that the notice was issued on 29th August, 1975 and there is no requirement of service but issuance being enough the matter was remanded by MRT to the Deputy Collector for consequential enquiry. That order was passed by MRT on 23rd August, 1983. It reversed and set aside the order of the Deputy Collector dated 15th September, 1980 and ordered remand.

135. Upon remand, the Deputy Collector passed the order that the question of notice u/s 35(3) of 1927 Act had become final and the said issue cannot be reiterated now nor could it be reopened. The order dated 29th June, 1992 of the Deputy Collector passed after remand was challenged before MRT but it upheld the same. The review application by the appellant Chintamani was also dismissed. Chintamani, therefore, approached this Court by filing writ petition. The learned single Judge of this Court (P.S. Patankar J. as His Lordship then was) dismissed the said writ petition on 24th January, 1997. A L.P.A. from this decision was dismissed by the Division Bench of this Court on 11th December, 1997. It is in these circumstances that the matter was brought before the Hon''ble Supreme Court by challenging the above decisions.

136. A perusal of paragraph 8 of the Supreme Court decision would reveal that the very issue which is before us was raised. The Hon''ble Supreme Court referred to the definition of "Private Forest" and in paras 10 to 19 observed thus:

10. We are concerned only with Sub-clause (iii) of Section 2(f). The definition of "private forest" has been expanded in the Maharashtra Act, 1975 so as to take in a various categories of lands which are not government forest land. One such category of land is mentioned in Sub-clause (iii) of Section 2(f). Learned Counsel for the appellant has relied upon the decision of this Court reported in Banarsi Deb v. ITO and CWT v. Kundan Lal Behari Lal to contend that in certain situations the word "issue" can be construed by this Court as amounting to actual service. On the other hand, learned Senior Counsel, Mr. Mohta has placed reliance on the decision of this Court reported in CIT v. Bababhai Pitamberdas (HUF).

11. Before dealing with this question it is necessary also to refer to Section 35 of the Central Act, 1927 which has been referred to in Section 2(f)(iii) of the Maharashtra Act, 1975.Section 35 of the1927 Act reads as follows:

35. Protection of forests and special purposes (1) The State Government may, by notification in the Official Gazette:

(i) Regulate or prohibit in any forest -

(a) the breaking up or clearing of the land for cultivation;

(b) the pasturing of cattle;

(c) the firing or clearing of the vegetation

(d) the girdling, tapping or burning of any tree or the stripping off the bark or leaves from any tree;

(e) the lopping and pollarding of trees; ''

(f) the cutting, sawing, conversion and removal of trees and timber, or

(g) the quarrying of stone or the burning of lime or charcoal or the collection or removal of any forest produce subsection to any manufacturing process;

(ii) Regulate in any forest the regeneration of forests and their protection from fire; When such regulation or prohibition appears necessary for any of the following purposes-

(a) for conservation of trees and forest;

(b) for the preservation and improvement of soil or the reclamation of saline or waterlogged land, the prevention of landslips or of the formation of ravines and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or grave

(c) for the improvement of grazing;

(d) for the maintenance of a waster supply in springs, rivers and tanks;

(e) for the maintenance, increase and distribution of the supply of fodder, leaf manure, timber or fuel;

(f) for the maintenance of reservoirs or irrigation works and hydroelectric works;

(g) for protection against storms, winds, rolling stones, floods and drought.

(h) for the protection of roads, bridges, railways and other lines of communication and

(i) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in any forest, such work as it thinks fit.

(3) No notification shall be made under subsection (1) nor shall any work be begun under subsection(2), until after the issue by an officer authorised by the State Government in that behalf of a notice to the owner of such forest calling upon 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.

12. It will be noticed that the procedure u/s 35 of the 1927 Act is that a notice is to be issued to the landholder u/s 35(3), it is to be served and his objections heard. If they were rejected, then a notification is to be issued u/s 35(1) treating the land as forest land.

13. It is true that the Maharashtra Act 1975 which came into force on 30.8.1975 expanded the definition of private forest in Section 2(f). The question for consideration is whether the appellant''s land falls within Sub clause (iii) of Section

2(f).

14. It will be noticed that there is a difference between Section 2(f)(ii) and (iii)So far as Sub-clause (ii) of Section 2(f) is concerned, it refers to various lands in respect of which notification has been issued u/s 35(1) of the Indian Forest Act, 1927 before ;the appointed day 30.8.1975.

15. But Sub-clause (iii) of Section 2(f) does not refer to any notification that could be issued u/s 35(1) of the Indian Forest Act, 1927. It only refers to the notice that could be initially issued under Sub-section (3) of Section 35. In a normal case, as already stated, the notice has to be issued u/s 35(3) and should be served on the landholders, objections thereto have to be heard and an order could be passed treating them as forest land only after the notification u/s 35(1) was issued.

16. Thus in Section 2(f) we find lands in respect of which notification u/s 35(1) has been issued. They fall under Sub-clause (ii) of Section 2(f), being cases in which notice has been issued to the landholder u/s 35(3) of the 1927 Act, he has been heard and then his objections have been rejected land then the final notification has been issued u/s 35(1) of the Indian Forest Act, 1927. u/s 2(f)(ii) such lands automatically vests in the State on 30.8.1975 if the notification u/s 35(1) of the 1927 Act has been issued before 30.8.1975. There is no difficulty here. But the question is in respect of the cases where only notice has been issued u/s 35(3) before the appointed day, namely, 30.8.1975. The question is whether the Legislature contemplated that there should be no further inquiry and there would be no need for any notification u/s 35(1) of the 1927 Act.

17. It is true that the repealing provision - Section 24(1) of the Maharashtra Act, 1975 merely repeals Section 35 of Indian Forest Act, 1927 and appears prima facie prospective but the question is whether there is anything in the repealing Act of 1975 which can show an intention on the part of the Maharashtra Legislature that the further procedure contemplated by Section 35(3) namely notice being issued u/s 35(3) being served on the owner and the notification u/s 35(1) being issued has been dispensed with.

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 u/s 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 Maharahstra 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 u/s 35(3) and for not allowing the notification to be issued u/s 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 u/s 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 u/s 35(3) on the other. In the latter cases, the Legislature thought it fit to exclude 2 hectares of the landholder from vesting. If that was done, a notice that was issued u/s 35(3) would itself be sufficient and if such notice was issued before the 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 l andholder. Ther There is n o need for any service of such notice before 30.8.1975, nor for an inquiry nor for a notification u/s 35(1).

137. Thus, the Hon''ble Supreme Court interpreted the very provisions and held that there is a difference between Section 2(f)(ii) and (iii). It further held that Section 2(f)(iii) does not refer to any notification that may be issued u/s 35(1) of the 1927 Act. It only refers to a notice that could be initially issued u/s 35(3). The Hon''ble Supreme Court, therefore, pointed out the difference between each of the sub clauses of Section 2(f) and answered the issue by further holding that the clue to interpret them is provided by Section 2(f) (iii) itself. It rejected the argument of any discrimination as is evident by paragraphs 18 and 19. It is on this basis that it upheld the decision of the MRT and that of this Court.

138. We do not think that there is scope for any argument that this decision does not deal with identical controversy. The very same issue has been raised before us. Once the Supreme Court decision is in the field and it deals with the identical issue and question, then, the law laid down therein is applicable and binding. It may be that several arguments have been raised by the learned senior counsel before us pointing out various shades of controversy but the fact remains that they could not dispute the applicability of law laid down in Chintamani''s case. They tried to urge before us that Chintamani''s case proceeded on the basis that the notice u/s 35(3) being issued on 29th August, 1975, the Hon''ble Supreme Court held that it is clearly covered by the legal provisions brought to its notice. The argument is that the Supreme Court was dealing with the case where the notice u/s 35(3) issued to Chintamani is dated 29th August, 1975 and the Private Forest Act came into effect on 30th August, 1975. Therefore, the notice was proximate in point of time. It was immediately prior to the appointed day and in that sense was a live and subsisting notice. Therefore, the Hon''ble Supreme Court held that such a notice is issued prior to the appointed date and date of its service is wholly irrelevant. Even if it may have been served after the appointed date, that aspect is of no assistance in so far as construction of Section 2(f)(iii). The emphasis of all the learned senior counsel is on the fact that the Supreme Court dealt with the case where the notice was not very old but recent one. Therefore, Section 2(f)(iii) was interpreted accordingly. In other words before the Supreme Court an issue raised was whether the notice which is issued prior to the appointed date but served after the same can still be said to be covered by Section 2(f)(iii) of the Private Forest Act or not.

139. With respect, we are unable to agree with the learned Senior Counsel. The Supreme Court decision cannot be read in this manner. It is a binding precedent. Upon a reading of the Supreme Court decision, it is apparent that it was construing Section 2(f)(ii) and

(iiii) of the Private Forest Act. The binding effect of the Supreme Court decision cannot be whittled down or diluted by any hairsplitting. In Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, in the context of a binding precedent and the mandate of Article 141 of the Constitution of India, this is what is is observed.

So far as the first question is concerned. Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An ''obiter dictum'' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (See Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, . When a Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See Narinder Singh Vs. Surjit Singh, and Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another,)."

To the similar effect are the observations in another decision reported in Suganthi Suresh Kumar Vs. Jagdeeshan, It is not permissible for us to ignore the law laid down therein. There is nothing in the above reproduced paragraphs, which are the ratio of the decision, which would enable us to hold that the Supreme Court was not interpreting Section 2(f)(iii) but only considering the issue, as to whether a notice issued prior to the appointed date but served later, would be said to be covered by Section 2(f)(iii). The issue squarely raised before the Hon''ble Supreme Court was whether mere issuance of notice u/s 35(3) was enough to attract Section 2(f)(iii) of the Private Forest Act or not. It is in that context that the observations have been made. That is why we have reproduced paras 8 onwards of this decision. If we were to accept the argument of the learned Senior Counsel, we would not only be showing disrespect to this binding decision but would be adding something of our own in the same. That is also not permissible. It may be true that the Supreme Court decisions are not to be read like statute but equally its binding effect cannot be wiped out in this manner. Even the judicial discipline forbids this. That apart, our attention has been invited to two Division Bench decisions of this Court which follow the law laid down in Chintamani''s case.

140. In Writ Petition No. 3356 of 2001 decided on 29th March, 2006, Feroz Shabbar Hussain for himself and as the only son and legal representative of late Rabbabai Shabbar Hussain Vs. The State of Maharashtra, The Sub-Divisional Officer and The Deputy Conservator or Forests, , Division Bench of this Court dealt with identical controversy. There the land in respect of which the petitioner sought prohibitory injunction restraining his dispossession was held by one Narayan. A notice u/s 35(3) of the 1927 Act was issued on 24 t h January, 1961 in respect of this land. The petitioner before this Court was a legal representative of deceased Rubbabai S. Hussain who had acquired the land in question from Narayan. The deceased submitted an application for grant of licence to enable him to carry on quarrying activities on the said land. A licence was issued earlier but later cancelled. That order was challenged by filing the Writ Petition being Writ Petition No. 309 of 1982 but the same was dismissed.

141. The application was filed on 11th March, 1991 before the Sub Divisional Officer/Deputy Collector, Panvel seeking enquiry u/s 22A of the Private Forest Act and praying for releasing the land from declaration as a forest land. This application was granted by the Sub Divisional Officer on the basis that though notice u/s 35(3) of the 1927 Act was issued, but notification u/s 35(1) thereof not being issued the land cannot be treated as a private forest. He held that there is no need to proceed u/s 22A and released the land because it was free from declaration.

142. Revision Application was preferred and the Authority set aside this order of the Sub Divisional Officer. The Minister of Forest (Revisional Authority) passed the order dated 4th October, 2000 holding that the land is a private forest and that is how this writ petition was filed. It is pertinent to note that the argument about the notice u/s

35(3) not fructifying or resulting into a notification u/s 35(1) of the 1927 Act found favour with the Sub Divisional Officer but was rejected by the Revisional Authority.

143. A perusal of paragraphs 5 to 8 of this decision would show that not only notice u/s 35(1) was issued on 24th January, 1961 but it appears that previous owner Narayan duly received it on 17th March, 1961. However, that aspect is hardly of any relevance to us. What matters is identical argument was advanced and following the law laid down in Chintamani''s case and earlier decisions, in paragraph 9 of this judgment, this is what is held by the Division Bench.

The order passed by the Sub Divisional Officer/Deputy Collector, Panvel , would show that due to absence of Notification u/s 35(1) of the Forests Act, it was declared that the land in question cannot be treated as private forest. This approach of the Sub Divisional Officer/Deputy Collector, Panvel is itself incorrect. This Court in the case of Ankush Keshav Bowledkar v. State of Maharashtra 1998(3) Mh.L.J.776: AIR1999 601 has held that if a notice has been issued u/s 35(3) of the Indian Forest Act, 1927 in respect of any land prior to coming into force of the Maharashtra Private Forest (Acquisition) Act, 1975 on 30th August, 1975 such land in respect of which a notice has been issued become a private forest u/s 2(f) of the Maharashtra Private Forests (Acquisition) Act, 1975. It is further held that the crucial and relevant aspect is issuance of notice u/s 35(3) of the Forest Act and not its service. So also in the case of Chintamani Gajanan Velkar Vs. State of Maharashtra and Others, it is laid down that if notice is issued u/s 35(3) of the Forests Act prior to the appointed date i.e. 30th August, 1975 then the land will have to be regarded as "private forest". Needless to say the absence of notification u/s 35(1) of the Forests act could not be treated as a ground to declare the land in question as outside the definition of expression "private forest" as was done by the Sub Divisional Officer/Deputy Collector, Panvel.

144. Even the law laid down in this decision is binding upon us.

145. We find nothing in this decision which would enable us to take a view that the same is per incuriam and does not lay down the correct law. The said decision is rendered following Chintamani and we see no reason to take a different view.

146. Faced with this difficulty, the petitioners then contended that much water has flown, after the notice u/s 35(3), in respect of the lands in question, was issued. In other words, their argument is that law laid down by the Division Bench in Firoz''s case which was in the context of the notice which was issued as early as in 1961 and, therefore, could be held to be applicable to the present case as well, but after the notices in these cases were issued much water has flown. Their argument is that the lands could not be treated as private forest any longer. The revenue entries may be as "private forest" but the lands themselves cease to be forest. The land as well as the area and surroundings where they are situate are city Municipal limits. The lands have been part of the development plan. That development plan is on the basis that

the lands are subjected to Maharashtra Regional and Town Planning Act, 1966 (for short MRTP Act). Further the lands are within the urban agglomeration and were covered by the Urban Land (Ceiling and Regulation) Act, 1976. There are developments made on the lands in as much as buildings and colonies have been constructed, people are residing there. All amenities such as roads, electricity, water are made available. People have started residing and where ever construction activities are progressing, the same are with the sanction and approval of the planning authorities. The State Government, therefore, cannot now treat these lands as private forest is the submission.

147. We see no force in this submission either. The Private Forest (Acquisition) Act is an Act specifically dealing with the private forest, their acquisition and vesting in the State Government so also the consequences flowing therefrom. Further, it covers this specific aspect and subject and there is no question of any conflict between these provisions and that of the MRTP Act, 1966. In fact, the validity of the Private Forest Act is not challenged nor is it urged that Section 2(f) thereof is bad in law or otherwise having no legal effect. Thus, the Private Forest Act has not been challenged as ultra vires of the constitutional mandate and more particularly flowing from Articles 14 and 21 thereof. The only argument is that the notice u/s 35(3) of 1927 Act even if issued would have no legal effect after the land with regard to which the same is issued has been included in the Development or Zonal plan. Further argument is that once it is so included, then, it ceases to be a private forest. To be fair, this argument is canvassed by Mr. Khambata and has been supported to some extent by others. However, even that is without any merit and force.

148. We see much substance in the contention of the learned Advocate General on this aspect. The lands do not become non forest or cease to be forest. Reliance by the learned Advocate General on Section 3 and non obstante clause thereof is appropriate. The learned Advocate General is right in his contention that any action of the planning department or authority or sanction or approval of the building construction proposal will not bind the forest department nor will such action binds the State Government in so far as vesting of the private forest in it.

149. Mr. Khambatta did not demonstrate to us as to how there is any conflict between the provisions of Private Forest Act and Town Planning Act.

150. The argument proceeds on the admitted position that the Private Forest Act being enacted in 1975 is a Later Act. However, it is contended that the very lands are included in a Development Plan prepared u/s 22(m) of the MRTP Act. That plan is a Later Act and the Development Plan of 1991 is current one. That earmarks these lands for residential or industrial user. The Zoning is on that basis. Hence, the lands cannot now be termed as "private forests". What this argument overlooks is that the lands were private property. Now, they vest in the State. By virtue of the provisions of the Private Forest Act they are Private Forest. How, these being termed and dealt with as such could be affected by the MRTP Act, 1966 or the Development Plan

sanctioned thereafter is not clear to us at all. The area and field covered by the two statutes is distinct. Mr. Khambatta could not demonstrate, as to how a Development Plan or the lands being included within Municipal or uban limits, conflicts with their status as private forests. That argument presupposes that a private forest is unheard of within the city or urban limits. However, merely urging this much is not enough. The argument must have a legal foundation and basis. The conflict is to be demonstrated in law. Merely urging that the Zoning or Development Plan Reservations would show that some portions are earmarked as social forestry or No Development Zone is not enough. It must be shown that the vesting of the subject lands as private forests in the State is affected or is wiped out in law. That is not admittedly the position. In such circumstances, there is substance in the contentions of the learned Advocate General. That apart, the Town Planning Act and more particularly Section 22 thereof enables the State Govt. to make appropriate proposal and designation in the development plan so as to preserve and protect forests, parks and ecological balance. Far from any development plan, proposal or designation conflicting with the Private Forest Act, in our view, they supplement the same. Once the Private Forest vests in the State by virtue of Section 3(1), that vesting cannot be said to be affected in any manner merely because the private forest is also part of the Municipal Corporation. Further, the Planning Authorities envisaged by the planning law can formulate the development plan with regard to such land but that by no means affects its legal status as a private forest vesting in the State. It is a State and public property and if the State itself is sanctioning the development plans proposals it cannot ignore the vesting more so, when it is under a later enactment. We see no force in the argument that the status of the lands as private forest or their character as such would be lost merely because a development plan applies to the area. The Development Plan proposal and designation so also the user cannot conflict with the character of the land as a private forest. To accept the arguments of the petitioners would mean that despite vesting the private forest continues as a land covered by the development plan and being within the municipal limits it looses its character as a private forest. A private forest is a forest and upon its vesting in the State Government by virtue of the Private Forest (Acquisition) Act would remain as such. Therefore, we see no conflict because of any change in the situation. Vesting was complete on 30th August, 1975. On 30th August, 1975 the lands with regard to which the notice was issued u/s 35(3), being a private forest vested in the State, it was a private forest always and, therefore, there is no question of the development plan or any proposal therein superimposing itself on its status. Their status and legal character as private forest vesting in the State and, therefore, State and the Public Property remains unaffected. There is no conflict between this situation and the development plan proposal and user indicated therein. The development plan, reservation, proposal, designation and permissible users qua several lands and properties would remain but those being under distinct enactments not touching the forest and private forest they could in no manner prevail upon or adversely affect the private forest. Therefore, the

argument of Mr. Khambatta cannot be accepted.

151. In this behalf, a reference can usefully be made to the decision of the Hon''ble Supreme Court reported in Hira Tikkoo Vs. Union Territory, Chandigarh and Others, . Dealing with some what identical arguments the Hon''ble Supreme Court in paragraphs 19 to 26 observed thus:

19. We have examined the scheme and provisions of the Act and the Rules. They do not seem to contemplate creation of any vested right where any other State or Central Legislation bars use of a particular land for industrial development. The Chandigarh Administration in these cases had prepared a scheme, carved out plots, auctioned them and received part or full payment of the price.

In implementing its development scheme, it ignored the notification issued reserving a major portion of the land covered by the scheme as "forest" It is in this circumstance that the Administration is showing its inability to honour the commitment made by offering the plots, acceptance of price and giving delivery of possession. When a scheme of development of land and allotments made thereunder are found to be in contravention of any law and contrary to general public interest, no claim based on so-called vested right can be countenanced. Similar is the position with regard to 900 meters restriction imposed under the Aircrafts Act. No citizen can be allowed to claim any vested right which would result in violation of a statutory provision of law or Constitution. The claim, therefore, based on alleged vested right, has to be outright rejected.

20. The learned senior Counsel then made some attempts to rely on the doctrine of "promissory estoppel" and ''legitimate expectation''. Doctrine of legitimate expectation has developed as a principle of reasonableness and fairness and is used against statutory bodies and Government authorities on whose representations or promise, parties or citizens act and some detrimental consequences ensue because of refusal of authorities to fulfill their promises or honour their recommendations. The argument under the label of ''estoppel and ''legitimate expectation'' are substantially the same. The Administration herein no doubt is guilty of gross mistake in including in its development scheme, a portion of land covered by the forest and land with restrictions under the Aircrafts Act. A vital mistake has been committed by the Chandigarh Administration is overlooking the notification reserving land under the Forest Act and the restrictions imposed under the Aircrafts Act, but overriding public interest outweighs the obligation o f a promise or representation made on behalf of the Administration. Where public interest is likely to be harmed, neither the doctrine of "legitimate expectation'' nor ''estoppel'' can be allowed to be pressed into service by any citizen against the State Authorities. In Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, , a two Judge Bench of this Court by explaining and distinguishing Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, observed thus:

It is only in public interest that it is recognized that an authority acting on behalf of the Government or by virtue of statutory powers cannot exceed his authority. Rule of ultra vires will become applicable when he exceeds his authority and the Government would not be bound by such action. Any person who enters into an arrangement with the Government has to ascertain and satisfy himself that the authority who purports to act for the Government, acts within the scope of his authority and cannot urge that the Government is in the position of any other litigant liable to be charged with liability.

21. In the aforesaid case of M/s Jit Ram Shiv Kumar (supra), the Municipal Committee of Bahadurgarh town to develop a Mandi promised that the traders who purchase plots in Mandi would be exempted from paying octroi duty on goods imported for trade to the Mandi. The State Government in exercise of powers under the Punjab Municipal Act directed the Municipal Committee to withdraw the exemption from payment of octroi duty. When the traders, who had set up their business in the Mandi on promise of getting exemption from octroi duty, challenged the action of the Municipality and the Punjab Government and raised on plea of ''estoppel'' It was rejected by this Court by relying on the decision of Constitution Bench of this Court in the case of Ramaotar Vs. State of Madhya Pradesh, and State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., . This Court in M/s Jit Ram Shiv Kumar (supra) recorded the following conclusion which supports the view we propose to take in the circumstances of the present case:

On a consideration of the decisions of this Court it is clear that there can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority. The Court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promise made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest.

22. In public law in certain situations, relief to the parties aggrieved by action or promise of public authorities can be granted on the doctrine of ''legitimate expectation'' but when grant of such relief is likely to harm larger public interest, the doctrine cannot be allowed to be pressed into service. We may usefully call in aid Legal Maxim "Salus puli est suprema lex: regard for the public welfare is the highest law. This principle is based on the implied agreement of every member of society that his own individual welfare shall in cases of necessity yield to that of community. His property, liberty and life shall under certain circumstances be placed in jeopardy

or even sacrificed for the public good.,"

23. On the same principle and to protect larger public interest, the Chandigarh Administration can be relieved of fulfilling legitimate expectation arising from its allotment of plots on the ground that their development scheme under consideration have been found to be in contravention of Forest Act and Aircrafts Act. Another legal maxim which can be invoked to their aid is "Lex non cogit ad Impossibilia: the law does not contemplate a man to do that which he cannot possibly perform."

24 The allottees of the plots are, no doubt, faced with an uncertain situation with loss already caused to them due to negligence and mistake on the part of the Planning Authorities of the Chandigarh Administration. In preparing the development scheme, the existing notification reserving major part of land as forest under the Indian Forest Act and restriction on construction in periphery of 900 meters from the Air Forces base under the Aircrafts Act were overlooked. As we have held above, on a representation that the land is available for allotment of industrial plots, the allottees stake their money and plans for setting up their industries. The representations made in them by the Planning Authorities have turned out to be misleading as a substantial part of the land could not have been included in the development scheme. The allottees paid price for the plots and incurred expenses in preparing their industrial projects. We have held about that the doctrine of ''legitimate expectation" and ''estoppel'' cannot be applied against the Administration to compel it to allot the original plots because that would be permitting violation of statutes intended to conserve forest and restrictions imposed in the interest of general public and security of Nation under Aircrafts Act. Doctrine of ''estoppel'' cannot, therefore, be allowed to be urged against the Administration. This Court cannot direct the Administration to commit breach of statutory provisions and thus harm general public interests. De Smith, Woolf and Jowell in their authorities book on " judicial Review of Administration Action (5th Edition at page 565 para 13-028) have stated one of the principles of public law powers thus : ''A public body with limited powers cannot bind itself to act outside of its authorized powers; and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by creating an estoppel." (See the Administrative Law by H.W.R. Wade and C.F. Forsyth, Eighth Edition at pages 370-373. Also the book on Judicial Review of Administration Action'' by De Smith, Woolf and Jowell, 5th edition at page 565 para 13028.)

25. Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute and, therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The rules of fairness by which every public authority

is bound, requires them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public Authority. There are no allegations and material in these cases to come to a conclusion that the action of the authorities was malafide. It may be held to be careless or negligent. In some of the English cases, the view taken is that the public authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these cases any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public money. The funds are in trust with them for utilization in public interest and strictly for the purpose of the Statute under which they are created with specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where doctrine of ''estoppel'' will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees.

26. In the predicament aforesaid, the Administration has adopted a fair attitude. It has come out with a proposal to give alternative plots but of smaller sizes because of the paucity of land available in development schemes in Phase I and II. The statutory compensation and the rule of fairness have both to be evenly balanced. This Court cannot allow the Administration to commit breach of law and harm public interest. At the same time, it cannot be absolved of its liability to give appropriate redressal and compensation to the parties and citizens who have suffered loss because of their grossly mistaken decisions and actions. The allottees of the plots, when they were given option to accept alternative plots of smaller sizes, ought to have accepted the offer being the appropriate compensation to them in the circumstances obtaining. The allottees who have consented to accept alternative plots even of smaller sizes and others who did not consent may be because they were in litigation and required plots of bigger sizes constitute two different groups requiring different treatment in the matter of directing grant of appropriate redressal to them by the Administration.

152. Before us, there is no question of any mistake. The argument of conflict between the Development Plan proposals and Urban Land status under the MRTP Act and ULC Act is already dealt with above. No vesting which is prior can be said to be affected by mere inclusion in the above proposals or returns/statements finalized under UlC Act. Similarly, mere approval or permission to develop the property for housing or construction of buildings cannot be said to be a case of specific representation or promise. The plea of estoppel is also raised on the same basis. There is no estoppel against vesting under a statute which is the position in this case. We see no substance in the other arguments of the petitioners that the State

Government has interpreted these provisions of the Private Forest Act and more particularly Section 2(f)(iii) as applying to the notice which is immediately proximate in point of time. The argument that, therefore, State Government did not initiate any action and allowed the lands to be made part of the development plan so also treated them as falling in urban agglomeration. The understanding of the officers of the Government is not the stand of Government. That apart, a similar argument was canvassed in the case of Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, . The Hon''ble Supreme Court rejected the same thus:

The statutory provision has precedence and must be complied with. Further the opinion of the Deputy Registrar as dexpressed in his circular dated February 1, 1979 and his letter dated June 4, 1979 has no relevance because his lack of knowledge or misunderstanding of law as expressed in his opinion has no relevance. The High Court relying upon the aforementioned two documents observed as under:

There is no inconsistence between S.73-B and the byelaws because even the Government has construed Section 73-B in such manner that even though the byelaws are not amended and reserved seats remain unfiled by election the same can be filled up by co-option

With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a Government Officer can afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion.

Precisely such an argument was canvassed before the Hon''ble Supreme Court and in Hira Tikko v. Union Territory, Chandigarh and Ors. (supra) the same has been turned down. For these very reasons even this argument must fail. The State Government''s Officers'' lapses and inaction or acts of omission and commission cannot have any impact on the interpretation of the provisions in question. Some authority or the officer in the State Government holding any view is of no consequence and relevance in such matters. Ultimately, interpretation of legal provision or statute is a duty of the Court. That duty has to be performed by the Court of law. The plain letter of law, clear and unambiguous provision cannot be brushed aside or interpreted contrary to the language by such a backdoor process. The principle of contemporanea exposito cannot be pressed into service in such cases.

153. In the light of the authoritative pronouncement in Chintamani''s case we see no substance in the argument that the construction activities on the land being in accordance with the sanctioned plans and approvals so also the lands being part of the development plan and affected by Urban Land Ceiling Act, State''s action impugned in these petitions is without any jurisdiction or authority in law. All

arguments with regard to the user of the land today has no legal basis. User today is after development or continuing development. Once development is on private forest, then, the same could not have been permitted or carried out. Mere omission or inaction of the State Government cannot be the basis for accepting the arguments of the petitioners. First of all most of the petitioners are not the owners of these lands. They are deriving their authority to develop and use these properties on the basis of certain limited rights created in their favour by the original owners. The original owners knew that the notices u/s 35(3) in respect of their lands have been issued. They may or may not have disclosed this aspect to the petitioners or their predecessor. That cannot have any bearing on the issue raised before us. It is not open for the petitioners to urge that they have purchased these lands or acquired rights therein without being aware of the notices u/s 35(3) of 1927 Act. If they have acquired these lands despite being aware of the notices, then, they have to blame themselves. If they were unaware of issuance of these notices and case is that they have been misled by their vendors, then their remedy lies elsewhere. Merely because they have invested crores of rupees and developed these lands by constructing buildings and townships does not mean that the State Government cannot proceed by treating these lands as private forest. The State cannot be prevented in taking further steps so as to safeguard and protect the private forest. More so, when the State itself has been putting in forefront the policy of preserving and protecting private forest and material resources and wealth generating from it. The private forest upon vesting u/s 3(1) by virtue of Sub section (3) thereof becomes "Reserved Forest" within the meaning of Forest act, 1927. Once these are reserved forests, then, all the more the petitioners'' arguments cannot be accepted. If State desires not to allow any encroachment on reserved forest, then, we cannot in any manner prevent the State from doing so. As held by the Hon''ble Supreme Court, these are matters of larger public interest. If larger public interest is going to to sub served by protecting and safeguarding forest wealth, greenery and environment, then, the petitioners cannot complain. This is an argument of desperation as urged by the learned Advocate General and we see some substance in it. Therefore, it is not possible to uphold the argument of Mr. Khambata that notice u/s 35(3) of 1927 Act and all actions in pursuance thereof are superseded by development plan, proposal or designation. Equally, untenable is the argument that in the zonal plan designation user of these lands was industrial/residential and, therefore, that will also supersede the notice u/s 35(3) of the 1927 Act. That apart, we are of the opinion that the petitioners cannot raise these pleas because the notices have been issued much prior to the Town Planning Act or Urban Land Ceiling Act coming into force. Their legal effect cannot be wiped out merely because the noticees have divested themselves of their right in these lands and subsequently those acquiring them have then put to a different use.

154. The notices in this case have been issued way back in the year 1956 - 57 to the original owners. Although, some debate was raised before us with regard to

issuance of the notice, ultimately, the two affidavits filed on behalf of State give year-wise breakup of notices issued by the then office of Conservator of Forest, Western Circle, Nashik. Further the affidavit in reply filed by Principal Secretary (Forest) Government of Maharashtra sets out with details of all the lands in respect of which the notices were issued between 1950 and 1966. Paras 2 and 3 of the same are clear. There is a specific statement in the affidavit that at no point of time was any decision taken to drop any of the earlier notices.

Therefore, only because of transfer of lands to the newly constituted Borivali National Park Division, that would not permit any inference being drawn to the contrary. The submission that the notices have been gazetted presupposes their issuance.

That no notices are issued is not the case of the original owners. They are not before us. They have not made any grievance on this score for all these years. The petitioners are transferees or derivative title holders. They cannot urge that the notices are not issued. Even otherwise, we are satisfied from the above statements that the notices have been issued.

155. We are satisfied from a reading of the affidavit of Principal Secretary that the Government took conscious and general decision to implement provisions of the 1975 Act by taking possession of all the lands vested in it. While taking possession it received complaints from small land holders who lost possession of their lands in the process. The pressure on the State Government from the small land holders affected the scheme of implementation of the Act but the affidavits state that in no case the State Government took any decision to drop any proceedings. The State Government has made a categorical statement before us that once notices u/s 35(3) were issued, it proceeded on the basis that land automatically vested in the State. Out of 1141 notices that were outstanding on 3rd August 1975 (appointed day), in no case has the Government taken any conscious decision to drop the proceedings.

156. In such circumstances, we are of the view that the conduct of the State Government and the Forest Department highlighted before us is of no assistance to the petitioners. Mere delay in delivery or taking of possession by the State will not in any manner dilute the effect of the Statutory provision which is plain and unambiguous. Further, interpretation thereof by the Supreme Court which has been followed by this Court cannot also be brushed aside only on the ground of delay or inaction.

157. We have, therefore, no hesitation in rejecting this submission also.

158. The arguments of the petitioners insofar as estoppel and legitimate expectation also fail for the above mentioned reasons.

159. In the result, we see no force in the challenge to the impugned notices and each of these writ petitions must, therefore, fail. They are accordingly dismissed.

Rule is discharged. No order as to costs.