

- f. As per Para two of the judgment given by Enquiry Officer, City Survey, Diu in which there he has mentioned Section 65 of the Goa Daman and Diu Land Revenue Code 1968 which apply only to agricultural land while the said property is non-agricultural land. It means that Enquiry Officer passed an order without applying his mind as well as without the proper study of the case.
- g. As per the direction given by the Collector to Enquiry Officer was regarding the confirmation of the half share property in the name of the Custodian of Enemy Property for India, Mumbai not on the name of the U.T. Administration of Daman and Diu. So also impugned order is illegal.
- h. Instead of confirming the property of Smt. Hirambai Virji's in name of Custodian of Enemy Property for India, Mumbai the Enquiry Officer, City Survey, Diu confirmed Smt. Parvez Divecha's properties in the name of the U.T. Administration of Daman and Diu which is gross error and negligence towards the duty of the Enquiry Officer.
- i. The Enquiry Officer's observations and inferences in deciding the case are devoid of merits and are based on mere surmises and conjectures.
- j. The respondent has not complied the order of the Collector in TOTO and thus has flouted the order of the superior authority only on this ground appeal is required to be allowed.
- k. The appellant came to know about the impugned order dated 28/08/2002 on dated 29/01/2010 vide letter of Superintendent Collectorate, Diu bearing NO.56/27/Enemy Pro/2009/10/4055 dated 29/01/2010 So the appellant got the certified copy and filled this appeal. The appeal is within time of 60 days.
- l. Hence, on all above stated grounds and after the inspection of original records the appellant prayed to set aside the impugned order of the Enquiry Officer dated 28/08/2002 and to enter the name of the appellant Smt. Yasmin A. Joshi in city survey records of above said PTS No. 84/147, 84/148 and 84/149 in the interest of justice.

3. **AND WHEREAS**, the respondent was given personal hearing in the Court of Dy. Collector, Diu on 15/07/2010 at 16:00 hours, on 25/01/2011 at 16:00 hours, on 14/02/2011 at 16:00 hours, on 06/05/2011 at 16:00 hours, on 18/05/2011 at 16:00 hours, on 23/05/2011 at 16:00 hours, on 10/06/2011 at 16:00 hours, on 24/06/2011 at 16:00 hours, on 24/08/2011 at 16:00 hours, on 19/10/2011 at 16:00 hours, on 11/11/2011 at 16:00 hours, on 06/05/2015 at 16:00 hours, on 03/06/2015 at 16:00 hours, on 01/07/2015 at 16:00 hours, on 29/07/2015 at 16:00 hours, on 19/08/2015 at 16:00 hours, 16/06/2016 at 16:00 hours, on 15/07/2016 at 16:00 hours, on 26/07/2016 at 16:00 hours, on 30/08/2016 at 16:00 hours, on 21/09/2016 at 16:00 hours, on 26/11/2016 at 16:00 hours, on 07/12/2016 at 16:00 hours, on 11/01/2017 at 16:00 hours, on 18/01/2017 at 16:00 hours,

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4. **AND WHEREAS**, the appellant filed preliminary objections in the appeal matter of the enemy/ evacuee properties as under:

"We, the undersigned (1) Shri Devidas Mohanlal Zaiwala, (2) Shri Jawaharlal Motilal Shah, (3) Smt. Minaxiben Shamjibhai Solanki, (4) Smt. Daulatben Nurullah Jivani, (5) Shri Dr. Sureshkumar J. Chudasama and (6) Shri Bhaidas Vira Solanki all are residents of Diu District and are Lessees/Tenants of the Enemy/Evacuee properties, situated at Parsiwada, Near Vegetable Market, Diu, do herein most humbly and respectfully submit our preliminary objections as under:-

- i) That we above all are lessees /Tenants and are very old possessors of the rented premises in portion of these above said properties situated at Parsiwada, near Vegetable Market, Diu and hence we above all are important and interested parties in this appeal matter or any other proceedings.
- ii) That the present so-called owner Smt. Jasmine Adi Joshi R/o. of Mumbai has filed an appeal in the Court of the Deputy Collector, Diu against the order passed by the Court of the Enquiry Officer, City Survey, Diu.
- iii) That the present Objectors have already filed the Regular Civil Suit bearing Reg. Civil Suit. No.05/2011, in the Court of the Honourable Civil Judge, (Sr. Dn.) at Diu and we are the Plaintiffs in this Suit. That this Honourable Civil Court has also passed the Status Quo Order against the Defendants. The present appellant is also one of the defendants in this Civil Suit and this Status Quo order is still in force and effective.
- iv) Even though the appellant has sold one portion of the property bearing No. PTS-84/147, admeasuring 298.00 Square Metres to (1) Bamania Mileshekumar Babubhai and (2) Shri Manmohansinh Keshbahadurshinh Chauhan of Diu without obtaining the permission of the concerned authority and or without making the partitioned of these properties. This illegal, disputed and controversy sale-deed is presented under Sr. No.21S/2011 on -01-07-2011 and it is Registered UIN0.187, at pages No. 211 to 230 of Book No.1, Dated: - 04-07-2011.
- v) That this present appellant is claiming in her appeal that she is the owner of the half share of property or properties, but no any of the authority (s) or Court has divided or partitioned into two divisions and also not allotted to her a particular parts or portions as per her claimed or demanded from the above said enemy/evacuee property or properties, situated at Parsiwada, near Vegetable, Market, Diu.
- vi) That we all Lessees / Tenants of these properties do herein most humbly pray and submit our Preliminary objection that we all Lessees/Tenants should be allowed as interested parties in this appeal matter and we also should be allowed to submit our say in this appeal matter. For joining as interest parties in this appeal matter in the interest of justice.

Y. Sharma
13/12/2018.

5. **AND WHEREAS**, the Appellant submitted his written argument as under.-

- 1) This is an appeal against the Order of the Enquiry Officer, City Survey, Diu, in File No.5285/2002, bearing PTS-84-147, 148 and 149 dated 28-08-2002.
- 2) Under this order the Enquiry Officer, City Survey, Diu, has confirmed undivided ½ share of the property in the name of the Union Territory of Daman and Diu. This order is quite illegal, unlawful and null and void and hence it is challenged by this appeal and prayed for quashing the said order.
- 3) The brief facts are as under:-
 - (A) One big immovable property No.548 situated in vegetable market (Parsiwada) at Diu was the private property. It was owned by two persons named Smt. Hiram bai Virjibhai and Smt. Pervez Causji Divecha jointly. Both have equal share in the said property. The total area of the whole property is 987 Sq. Mts.
 - (B) Out of the two persons referred to above, one person named Hiram bai migrated to the Pakistan and became Pakistani National. While Smt. Pervez Causji Divecha remained Indian and she was the Indian National and died on 10-12-1996 at Mumbai. Her death certificate issued by the Municipal Corporation of Greater Bombay is produced. A Xerox copy of the same produced along with this argument for ready reference.
 - (C) After the enforcement of Enemy Properties Act, this property came in the custody of the Custodian of Enemy Property, Mumbai and the Collector, Diu was looking after this property for the purpose of collecting the rent and to look after the same for and on behalf of the Custodian.
 - (D) The property was undivided. Hence the share of Indian National Smt. Pervez Causji Divecha was required to be separated and those proceedings were going on before the Custodian. The Collector, Diu, and his subordinates are aware of this fact and proceedings.
 - (E) The Indian National Smt. Pervez Causji Divecha is entitled ½ share i. e. 493 Sq. Mts. in this property and it was required to be divided. After the death of Indian National Smt. Pervez Causji Divecha, obtained letter of Administration from the Hon'ble Court of Judicature of Bombay (Testamentary and intestated Jurisdiction) vide petition No. 1090 of 2008 dated 13th April 2009. This letter of Administration was presented before the Custodian of Enemy Properties, Mumbai.
 - (F) Thereupon the Custodian of Enemy Properties, Mumbai wrote a letter No.10-02-011DIU/3108 dated 09-12-2009 to the Collector, Diu, and informed that U/s 8 of the Act 1968 to cancel all leases which are in force till 31-10-2010 by issuing notices to the lessees and to partition the property between the Indian National co-owner and Enemy Co-owner and to sell enemy share U/s 8 (2) (vii). I produce Xerox of the said letter for your ready reference with this argument.

Y. K. Khandekar
13/12/2008

- (G) Thereafter the appellant i. e. Yasmin Adi Joshi applied to the Collector, Diu, to handover the possession of her ½ share in the property No.548. Thereupon she received a reply No.56- 27/Enemy Prop/2009-10/4055 dated 29-01-2010 from the Superintendent (G) Collectorate, Diu, informing that the ½ share of the Indian National co-owner is already confirmed in the name of the Union Territory Administration of Daman and Diu, vide Order dated 28-08-2002 along with a copy of the Order portion. Thus the appellant came to know about the confirmation order.
- 4) As stated above on getting the information vide letter No.56-27IEnemy Prop/2009-10/4055dated 29-01-2010, the appellant preferred this appeal challenging confirmation order dated 28-08- 2002 to the Collector, Diu, U/S 188 of the Land Revenue Code. Thereafter this appeal was transferred to the Deputy Collector, Diu, for hearing.
- 5) Now I submit the argument about the disputed confirmation order as under:-
- (i) The Enquiry Officer, City Survey, Diu, on receipt of the letter from the Collector, Diu, dated 01-08-2002, took up the case by opening a proceeding sheet in respect of PTS-84-147, 148 and 149 issued a notice and fixed the matter on 21-08-2002.
- (ii) On 21-08-2002, as per Rojnama site inspection was made and it is further written that notice sent to Pervez Causji Divecha is returned by Postal Department with an endorsement "not known". Hence the cover (envelope) is kept in the file and as per Rojnama" afternoon session Mamlatdar is present and the case is kept for judgment".
- (iii) And on 28-08-2002, order was passed confirming PTS No.84-147, 148 and 149 admeasuring 298 Sq. Mts., 80.87 Sq. Mts. and 162 Sq. Mts. respectively in the name of Administration of Daman & Diu. And vide letter No. E.O.CTS-Diu/5285/2002/1933 dated 02-09-2002, the Superintendent, Collectorate, Diu, was informed about the confirmation of this property in reference to the letter of the Collector, Diu, dated 01-08-2002.
- 6) In this matter surprising thing is this written statement has been filed by the Mamlatdar, Diu, on 29-08-2002 i. e. after the judgment is declared.
- 7) Looking to the above facts, it is crystal clear that the Enquiry Officer, City Survey, Diu, has not applied his mind at all and in hurry to confirm the property in the name of Administration of Daman and Diu, the Enquiry Officer, City Survey, Diu, has forgotten the fact that this is the enemy property and there is no iota evidence to show anything

Handwritten signature and date: 13/3/2018

about the ownership of the U. T. Administration of Daman and Diu. Moreover one of the co-owner Smt. Pervez Causji Divecha is Indian National.

- 8) The letter from the Collector, Diu, is clear and it states in clear term to confirm the ½ share in the name of Custodian to the extent of Pakistani National. This is also not considered. On the contrary it is ignored deliberately.
- 9) Moreover the Enquiry Officer, City Survey, Diu, has overlooked deliberately the letter No.56-27-72-CONFENEMY-PROP/5500 dated 20-02-2002 from the Collector Office, Diu to the Enquiry Officer, City Survey, Diu. In this letter it is clearly stated that "as per the certificate issued by the Custodian of Enemy Property for India, Mumbai dated 6/12/2001, there is a half share of immovable property No.548 bearing PTS No.841147 area 258.00 Sq. Mts., PTS NO.84/148 area 87 Sq. Mts., and PTS NO.84/149 area 162 Sq. Mts. belongs to Smt. Hirambai Virji, Pakistan National and so the half share of the said property is vested to Custodian of the Enemy Property for India. Mumbai and hence the half share belongs to Smt. Hirambai Virji is required to be confirmed in the name of custodian of Enemy property of India, Mumbai.
- 10) You are, therefore, requested to confirm the half portion of all three properties, which are provisionally entered in the name of Smt. Hirambai Virji, Pakistani National as per the certificate issued in the name of Custodian of Enemy Property for India, Mumbai and confirmation order along with site plan may please be sent to this effect to this Office for office record".
- 11) One more thing I want to submit that the enemy property is numbered 548 and there is a huge property of 987 Sq. Mts. it is a joint property owned by two persons named Smt. Hirambai and Smt. Pervez. It has 493 Sq. Mts. in their undivided shares respectively. This properties comprises 4 PTS numbers as under:

Sr. No.	PTS No.	Area
1	84/147	298 sq.mts.
2	84/148	87 sq.mts.
3	84/149	162 sq.mts.
4	84/151	440 sq.mts.

- 11) These facts show that he has left one bigger part of the property admeasuring 440 Sq. Mts. This clearly shows that the Enquiry Officer, City Survey, Diu, has not applied his mind at all and has failed to refer the record even.
- (12) Thus the confirmation is quite illegal, unlawful, null and void and deserves to be set-aside/quashed. More ever this order is totally perverse.

6. **AND WHEREAS**, Present Shri G. B. Naqvi, Advocate for the applicant and Shri T. R. Desai, Government pleader Shri G. B. Naqvi, has submitted final arguments. Government

Y. H. Naqvi
12/12/2018

pleader was served copy of the same as is evident from his signature on the final arguments submitted. Also, Shri Sanjay Makwana, Field Surveyor, EOCS, Diu is present and has submitted the original Record and Proceeding. The Government pleader has already submitted his written arguments.

7. AND, WHEREAS, the appeal stands rejected on following grounds:

- (A) There is an inordinate delay in filing the appeal. Moreover, there is no justification for the delay in filing the same.
- (B) No infirmity in the proceedings, because the notice was duly issued. The procedure established by law was duly followed.
- (C) The issue of the person to whom the notice was issued being dead long before the proceeding for confirmation began is not valid since the duty is cast on the person who acquires the rights to inform the revenue department of the death of the concerned person and not the revenue authority (under section 96 of Goa Daman & Diu Land Revenue Code 1968).
- (D) However, it is apparent that the Enquiry Officer has erred to the extent that half of each of the plots making up the said property has not been confirmed in the name of the Union Territory of Daman and Diu.
- (E) Further, it seems from the facts of the case that the Indian national lady who had half share in the said property has died intestate and without known heirs. In such a scenario, the law is very clear. Section 23 of Goa, Daman and Diu Land Revenue Code states that if an occupant dies intestate and without known heirs, the Collector shall take possession of his occupancy and may lease it for a period of one year at a time. The said section further states that If within three years of the date on which the Collector takes possession of the occupancy, any claimant applies for the occupancy being restored to him, the Collector may, after such enquiry as he thinks fit, place such claimant in possession of the occupancy or reject his claim.
- (F) Further, the name given in the death certificate 237105 dated 08/02/1999 is Pervez Dinshaw Gandevia Alias Pervez keki velvan, whereas the irrevocable General Power of Attorney given by Jasmine Adi Joshi daughter of Parvis Cawasji Divecha. Thus, the validity of the General Power of Attorney is also questionable as the names are not matching.
- (G) Also, appeal filed by Devshibhai Gangabhai Khunti, GPOA of Smt. Yasmin A Joshi differs from the name as per the Irrevocable GPOA given by Jasmine Adi Joshi. This is another reason for rejection of the appeal.

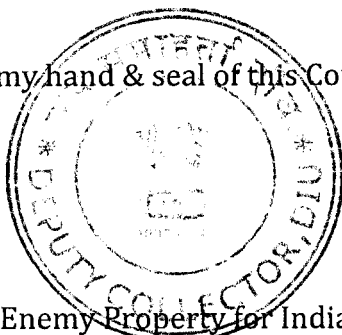

13/2/2018

8. **NOW THEREFORE**, keeping the above facts, submissions, arguments and reasons in view, I, **DR. APURVA SHARMA, DANICS, DY. COLLECTOR, DIU** in exercise of the powers conferred to me Under Section 188 of Goa, Daman and Diu Land Revenue Code, 1968 do hereby order the one half undivided share in the properties bearing New City Survey Plot. No.84/147,148 and 149 each admeasuring 0.02.98 sq. mts., 0.00.87 sq.mts. and 0.01.62 sq.mts. respectively situated near Vegetable Market, Diu town of Diu District shall be taken in possession of by the Mamlatdar, Diu on behalf of Collector, Diu on the fifteenth day of this order.

9. I do also order that the other half share of the properties mentioned in the preceding paragraph should be confirmed in the name of Custodian of Enemy Property for India, Mumbai.

10. Further, I do hereby direct to issue notice along with a copy of this order to the Custodian of Enemy Property, Mumbai in whose name the PTS no. 84/151 admeasuring 440 sq mts has been confirmed to show cause as to why only half share of PTS no. 84/151 should also not be confirmed in the name of the Custodian of Enemy Property for India and rest be not taken in possession by Collector, Diu.

11. Given under my hand & seal of this Court on thirteenth day of March, 2018.



Dr. Apurva Sharma
13/3/2018
(DR. APURVA SHARMA, DANICS)
DY. COLLECTOR, DIU

To:-

1. Custodian of Enemy Property for India, Mumbai
2. Mamlatdar, Diu for necessary action.
3. Block Development Officer, Diu for information.
4. Enquiry Officer, Diu for information & necessary action.
5. Shri Devshi Gagan Khunti, Diu for compliance.
- ✓ 6. NIC, Diu to upload it on the official website.
7. Guard File.

Copy to:

1. Advisor to Hon'ble Administrator, DD & DNH/ Secretary (Revenue) since the said land had been confirmed in the name of UT Administration of Daman and Diu by the impugned order of EOCS, Diu
2. Collector, Diu since the said land had been confirmed in the name of UT Administration of Daman and Diu by the impugned order of EOCS, Diu

Dr. Apurva Sharma
13/3/2018
(DR. APURVA SHARMA, DANICS)
DY. COLLECTOR, DIU