



IN THE COURT OF DEPUTY COLLECTOR, DIU
U.T. ADMINISTRATION OF DAMAN & DIU, COLLECTORATE, DIU

Range Forest Officer, Diu. Applicant

V/S

Smt. Laxmi Karsan Bamania
w/o late Shri Karsan Bijal
R/o Zolawadi,
Bhucharwada, Diu. Respondent

ORDER

1. **WHEREAS**, this office had received Summary Eviction Application No. 03/Bhucharwada/2004-05, dated 16/12/2004 with list of particulars documents regarding encroachment on forest land bearing Survey No.180/0(Part) in rural area admeasuring area 496.20 sq.mts. situated at Zolawadi, Bhucharwada, Diu;
2. **AND WHEREAS**, in above application, the Range Forest Officer, Forest Department, Diu has register First Offence Report in the year 2003 for encroachment on proposed forest land bearing Survey No.180/0(Part) in rural area and also had informed that no claims from any party has been received and there is no objection from the Range Forest Office, Diu if the area to be declared as Reserved Forest vide letter No.43/25/Adm/Bhucharwada, dated 01/02/1980;
3. **AND WHEREAS**, the Applicant on behalf of the State most respectfully submit as under:
 - (i) The Applicant is holding a post of Range Forest Officer in the Forest Department, U.T. of Daman & Din and posted at Diu; as such a Public Servant. In the capacity of a Public Servant and having authorised by the Department, this Application is filed before your honour. His duties include protection of forests and plantations from illicit fellings, theft of timber, fire, grazing and encroachments.
 - (ii) The Applicant submits that the Government had decided to constitute 354.60 Ha. of Government land comprising Survey Nos. 150(Part), 171(Part), 179, 180(Part), 181(Part), 186(Part), 188(Part), 189(Part), 262(Part), 263(Part), 265(Part) and 279(Part) situated in Bhucharwada Village as Reserved Forest; and thereupon the notification was issued under Sec.4 of the Indian Forest Act, 1927 (Hereinafter caned as the "said Act") ,

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vide No. 13-2-77-FOR/(1) dated 27/12/1978 and the same was published in the Official Gazette of 5th April, 1979.

- (iii) The Applicant further submits that the Forest Settlement Officer had issued a Proclamation under Sec.6 of the said Act vide No. 257/FSO/PRF-93/79-80 dated 25/06/1979 explaining consequences which will ensure on the reservation of the said forest & requiring from concerned persons claims of right. if any, on or over the land comprised within the limits of the area notified under Sec. 4 or on any forest produce therefrom.
- (iv) That neither any claim(s) was preferred before the Forest Settlement Officer nor communicated to the Range Forest Officer, Diu within the stipulated period of time given in the said Proclamation. The Sarpanch, Village Panchayat, Bhucharwada village had also informed that no any claim was received by the Panchayat and conveyed 'No Objection' for constitution of the Reserved Forest.
- (v) The Applicant submits that in 1985, the Respondent had illegally encroached upon the Govt. land. i.e. the notified Forest Land bearing Survey No. 180(Part) situated in Bhucharwada village by counterfeiting the boundaries and clearing the vegetation, the offence case was registered against the Respondent at the time of offence. **(The Eviction Application was also filed in the Court of the Collector at Diu in 1985 for evicting him. In 1986, the Collector, Diu had issued notice to the Respondent to vacate & clear the land illegally occupied by him).**The Respondent is continued to have illegal possession of 496.20 Sq.mt. (approx.) of Forest Land and cultivating the same every year. The Applicant relies upon the relevant documents.
- (vi) The Respondent has violated the provision under Sec, 5, 26 (1) (a) & 63 of the said Act. Diversion of use of Forest Land for non-forest purpose is also prohibited under Sec. 2 of Forest (Conservation) Act 1980. There are repeated offence cases committed by him. A case is pending in the Court of the CJM at Diu.
- (vii) The cause of action for filing this fresh Eviction Application is explained in this office letter No.RFO/DJU/ENC/2003-04/224 dtd. 09/09/2003.The de novo legal proceedings have been initiated against the Respondent.
- (viii) The Applicant submits that the Respondent has encroached upon the Forest Land and the same is continuing: and as such, under Sec. 40 of the Goa, Daman & Diu Land Revenue Code, 1968, he is liable to be evicted & penalized for unauthorized use or occupation of the land; and the left over property, after summary eviction, is liable to be forfeited or removed under Sec. 41 of the said Code.
- (ix) The Applicant states that the said Forest Land is situated at Bhucharwada, therefore, this Hon'ble court has jurisdiction to take cognizance of the present Eviction Application.

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- (x) The Applicant may please be allowed to lay further evidence if and when required in the interest of justice.
- (xi) The Applicant further undertake to produce the necessary original documents relied upon in this case at the time of the trial;
4. **AND WHEREAS**, hearing in the Court of Deputy Collector, Diu was fixed on 24/11/2017 at 16:00 hours, and on 18/06/2018 at 16:00 hours;
5. **AND WHEREAS**, the respondent neither personally nor through her duly authorize advocate was remained present during hearing;
6. **AND WHEREAS**, the final notice No. 08/2005/640 was issued on 14/06/2018 and was served through Talathi and a report of the same is placed in the file;
7. **AND WHEREAS**, the following issues merit attention in determining whether it is an encroachment over government forest land or not:

A. Whether the undersigned is competent to conduct these proceedings?

- i) There are two aspects that need examination: First one being whether the undersigned is competent to try cases under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968. With respect to this, the answer is yes, since the powers under Section 40 for summary eviction of encroachment on government land have been delegated to the undersigned vide order no. 65-01-2014-LND/Part file/400 dated 06.05.2016 read along with Section 165 of GDDLRC and the judgment delivered by Hon'ble Supreme Court in *Govt. of A.P. V. Thummala Krishna Rao* [(1982) 2 SCC 134 has been distinguished by Hon'ble Supreme Court in "(2010) 2 SCC 461 and has **observed that Special Tribunal having powers of Civil Court can decide the question of adverse possession.**".
- ii) Moreover, the land is entered in the name of government in land records.

Even the Section 16 of GDDLRC provides that "*Rights to trees, forest, etc.— (1) The right to all trees, jungles or other natural products growing on land set apart for forest reserves and to all trees, brush wood, jungle or other natural product, wherever growing, except in so far as the same may be the property of any person, shall vest in the Government, and such trees, brush wood, jungle or other natural product shall be preserved or disposed of in such manner as may be deemed fit by Government.*" Thus, Section 16 read with section 40 of the Goa, Daman and Diu Land Revenue Code, 1968. that since the land has always been in the name of Government, then the Collector (powers now delegated to Deputy Collector under Section 40) has been authorized by the legislature to take appropriate action for preservation of the forest by evicting the person unauthorisedly occupying or wrongfully in possession of the Government land and in the present case the land is a

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Forest land and hence, the scope of powers under Section 40 are extended to the forest land being the Government land.

Thus, the competency of the undersigned is unquestionable with regard to the provisions of GDDLRC.

iii) Another important point is that the concerned Gram Panchayat had already given its no objection certificate when the Reserved Forest declaration process was initiated. This has been brought out in the written submissions and documents submitted by the Applicant.

B. One thing that is irrefutable is that the land is Government Forest Land. The reasons for that are as follows:

i) The land is recorded as government forest land in government records.

ii) Further, the **Hon'ble Supreme Court in T N Godavarman Thirumulkpad v/s Union of India &ors WP (C) No. 202 of 1995**, the Supreme Court has held that *"the Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description cover all statutorily recognized forests, whether designated as reserved, protected or otherwise forth purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works and ors. Versus State of Gujarat and ors. (1987 (1) SCC 213), Rura' Litigation and Entitlement Kendra versus State of U.P. (1989 Suppl. (1) SCC 504), and recently in the order dated 29th November, 1996 in W.P. (C) No.749/95 (Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and ors.)."* This makes it abundantly clear that the said land is government forest land in light of the notification no. 13-2-77-FOR/(1) dated 27th December, 1978 issued in this regard, a copy of which is on record in the case file.

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- C. Moreover, from the evidence on record it is clear that no Respondent or their accentors filed an any application in due course to prove their occupancy if any and no one has applied from registration about their crops if any in crop register and also they have not approached to deposit applicable Government revenue as per the norms of the LRC of Goa Daman and Diu Land Revenue Code, 1968. The Mamlatdar at Diu by his letter dated 30 May 2018 has confirmed that during the period from 1955 till 1985, no private person was in use and occupation of the land in question. This is a serious anomaly that the respondent has preferred to overlook rather than put cogent reasons in his defence.
- D. Further, another important fact to show that the animus is missing is that the then Asstt. Civil Administrator of Diu had issued notice No. MAM/Land/AP/73/3 dated 05/04/1973 wherein all persons who had any claim on any land were asked to file the same with the appropriate authority. The Respondent has failed to do so even at that time for the suit land.
- E. The Honourable Supreme Court of India observed in **R.Hanumaiah&Anrvs.Sec.ToGovt.OfKar.Rev.Dept. & ... on 24 February, 2010**: *"17. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government (emphasis added). In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorised to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requi*

res clear and categorical pleadings and evidence, much more so, if it is against the government."

F. In contrast, there is the unquestionable evidence that the land is government forest land, that there has never been any claim by the Respondent on the said land, that the Respondent has not had continuous, uninterrupted possession, that the Respondent has lacked the animus necessary for the claim of adverse possession.

8. **AND WHEREAS**, having established that the land is government forest land and that the Respondents are illegal encroachers on the said forest, the next point that merits attention is what are the obligations of the state in cases of encroachment on government forests. The judgments of Hon'ble Supreme Court are referred to identify the same, which are as follows:

- i. In this regard, the Hon'ble Supreme Court of India has issued directions in **T. N. Godavarman Thirumulkpad vs Union Of India & Orson** 12 December, 1996 that *"1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith."*
- ii. In the same case, the Hon'ble Supreme Court has ordered in I.A. Nos. 276 with I.A. Nos. 413, 437, 453 and 454 that *"From the aforesaid, it is quite clear that all encroachers into the Tatkola forest have to be evicted. It is no doubt true that according to Section 64A show cause notice has to be issued. But that can only be with a view to enable the person to whom notice is issued to show that his land does not fall within the boundaries of the forest as drawn up by the Survey of India. If the land is identified as falling within the Survey of India boundary then there could be no other defence open to the person concerned and the State would be under an obligation and duty to evict the encroacher, by force if necessary."* It is amply clear that once the land is identified as forest land, then there is no other option available to the Government other than eviction of the encroachers. It is duty bound to do so. In this particular case before the Hon'ble Supreme Court, the dispute regarding whether it is forest land or not was contested, for which the Hon'ble Court sought report from Survey of India. In the present case, however, it is not disputed by anyone that the said land is not government forest land. Thus, the directions of Hon'ble

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Supreme Court are applicable to the U.T. Administration of Daman and Diu as well.

iii. Further, the observation of Hon'ble Supreme Court in the matter of NATURE LOVERS MOVEMENT VERSUS STATE OF KERALA reported at 2009 (SC) 1573 considering the scope of Section 2 ,of Forest (Conservation) Act, 1980 are unambiguous, binding and prescriptive, which are as follows:

a. "Conclusions

i. *After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organization not owned, managed or controlled by the Government except after obtaining prior approval of the Central Government."*

iv. Neither the Respondent has ever claimed any such approval by the Central Government nor produced any evidence in this respect; in contrast, the Applicant has categorically pointed out that the absence of the same;

9. **AND WHEREAS**, it is evident from the above facts, submissions, reasons and judicial pronouncements of higher judiciary that the land is government forest land, that the Respondent is an encroacher on the same, that the Respondent has failed to present any claim on the said land, all of which have led me to form the opinion that the Respondent has encroached on and damaged government forest land and that this is a fit case for eviction from the said land;

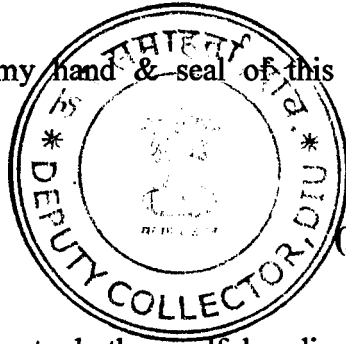
10. **AND WHEREAS**, the absence of the respondent even after duly serving the notice is therefore a just ground for passing an order ex-parte;

11. **NOW THEREFORE**, keeping the above facts, submissions and reasons in view, I, Dr. Apurva Sharma, DANICS, Deputy Collector, Diu in exercise of the powers conferred to me under section 40 of Goa, Daman and Diu, Land Revenue Code, 1968 read along with the provisions of Forest (Conservation) Act, 1980, and the judicial pronouncements of higher judiciary, do hereby order the eviction of the respondent & removal of the encroachment from encroachment on forest land bearing Survey No.180/(Part) in rural area admeasuring area 496.20 sq.mts. situated at R/o Zolawadi, Bhucharwada, Diu as per map attached, situated at

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Zolawadi, Bhucharwada, Diu and also order that the cost of removal of the encroachment from the said Government Land and restoration of the Government Land shall be recovered from the respondent in the form of arrears of land revenue, and direct the Mamlatdar, Diu to do the needful on the 22nd day from the service of this order to the Respondent.

12. Given under my hand & seal of this Court on Twenty fourth day of August, 2018.



Sharma
24/8/18
(DR. APURVA SHARMA, DANICS)
DY. COLLECTOR, DIU

To:-

1. Mamlatdar, Diu....to do the needful as directed.
2. Range Forest Officer, Diu, Forest Department, Diu, for necessary action.
3. Concerned Talathi to serve this order upon the Respondent immediately and submit service report to this court promptly.
4. Smt. Laxmi Karsan Bamania w/o late Shri Karsan Bijal, R/o Zolawadi, Bhucharwada, Diu for compliance.
- ✓ 5. NIC, Diu to upload it on the official website.
6. Guard File.

Copy to:

Collector, Diu for information.

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24/8/18
(DR. APURVA SHARMA, DANICS)
DY. COLLECTOR, DIU

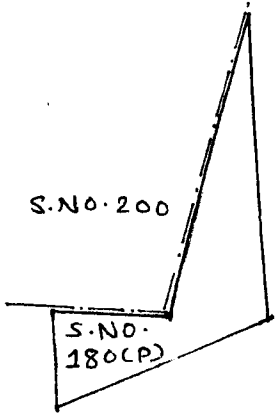
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PLAN SHOWING FOREST LAND ENCROACHED BY
SHRI SMT. LAXMI w/o Late Shri KARSAN B. BAMANIA FO ZOLAWADI
SURVEY NO. 180 (P) SITUATED AT BUCHARWADA PRF
AREA: 496-20 Sq mt.

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—→	ENCROACHMENT

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