



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

Range Forest Officer, Diu. Applicant

V/S

Shri Dhanji Mavji
R/o Zolawadi,
Bhucharwada, Diu. Respondent

ORDER

1. **WHEREAS**, this office had received Summary Eviction Application No.22/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 3091 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.433/25/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") ,

J. Dhanji Mavji
24/12/2018

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 3091 Sq.rnt. (approx.) of Forest Land and cultivating the same every year. He has also illegally constructed some structures such as well, pacca pump house, water tank, Pacca hut, kharu. The Department of Electricity has cut off the power connection illegally issued to him. 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.

Shamir
21/8/2018

- (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.
 - (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 was held in the Court of Deputy Collector, Diu and argument heard from both the side;
5. **AND WHEREAS**, the Respondent has submitted reply through his legal attorney Miss. Jamnibai Maugi dated 29-11-2017 along with affidavits from a few persons wherein she has stated as under;
- i) That the Notice is issued in the name of the Respondent.
 - ii) With due respect, it is submitted that the Notice dated 07/11/2017 issued for hearing under S.40 of the Code is vague, and without any details, and therefore the entire proceeding stands vitiated on this count alone. That no proper detail is given in the said Notice. Also no material (including Application of the Applicants, documents, and reports, if any) is supplied with the Notice to the Respondent/Opponent. The Notice also lacks details with regards to the description of the land for which the same is issued and its boundaries and area/extent. Therefore this Respondent does not know at all on what ground and basis the Notice is issued and what are the materials and documents relied upon in support of the said Notice, and hence the Respondent is not in a position to put up proper defense. Therefore, the Notice is illegal, arbitrary, lacks details and requires to be set aside, and no action can be taken against the Respondent on the basis of such a Notice. This is against the principles of natural justice.
 - iii) However, reserving the right to challenge the Notice itself as being vague, arbitrary and without details, and also reserving the right to file further Reply on receipt of the copy of Application of Applicant, documents and materials, and assuming that the same is issued for lands bearing S.No. 180(P) admeasuring 3091 sq. mts., situated at Zolawadi, Diu (hereinafter called as "the suit land"), the following points and defense are raised.
 - iv) That the Opponent/Respondent is in settled possession of the suit land since more than 6 decades (i.e. since the Portuguese Regime), since many years prior to coming into force the provision of Land Revenue Code and hence the provision of S.40 of the Code is not applicable to the facts of the present case, and that no encroachment is made after the coming into force the provisions of LRC, and hence this proceeding is bad under the law and not maintainable.

- v) That originally Shri Cantilal Premchande and Chotalal Premchande owned all that agricultural land, bearing Matriz No.1015 & 1017, situated at Village Zolawadi of Diu (hereinafter referred to as "the entire land" for the sake of brevity), by registered Sale Deed & Gift Deed dated 06/05/1954.
- vi) That both Cantilal Premchande and Chotalal Premchande were resident of Diu City, and they were not interested in their aforesaid entire land, and this entire land being vacant and idle, and ancestor of the Opponent/Respondent being very poor persons and not having any source of livelihood, for livelihood of their family, since the year 1955, the ancestors of the Opponent/Respondent has entered into part of the aforesaid entire land (i.e. the suit land), and occupied the suit land, and started cultivating the same, and ever since, the Opponent/Respondent and his ancestors are in possession of the suit land adverse to the right, title, interest or share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all.
- vii) That thereafter, on application of abolition of proprietorship of lands in Diu Act, title of the entire land got extinguished and the same was vested in the Government by way of an enactment. However, the Government has never been in possession of the suit land.
- viii) That the Respondent and his ancestors are cultivating the suit land, taking seasonal crop of Bajri during monsoon and also other crops and vegetables like 'Dhanabhaji', 'Pandadi', 'Bengan', 'Mirchi', 'Onions' etc. during other seasons (Rabi season). Not only this, but the Respondent and his ancestors have planted many trees, the age of many of the trees is more than 50 years. The details of such trees are as under :-

Sr.No	Name of Tree	Total No. of tree
1	Coconut	85
2	Jambu	07
3	Limbda	11
4	Mitha Limbda	09
5	Panni	08
6	Bordi	03
7	Khajuri	05
8	Hoka Tad	13
9	Ravan Tad	18
10	Bilimori	02
11	Bavad	03
12	Chickoo	07
	Total	171

J. Sharma
24/8/2018

- ix) That the Respondent and his/her ancestors have their Hut (farmhouse) in the suit land since more than 50 years. There is also a Well in the suit land dug by the Respondent and his/her ancestors since the year 1982.
- x) That many other villagers of village Zolawadi have also similarly occupied other part of the entire lands, during the same period in the year 1955. There are about 23 such parts/villagers occupying part of the aforesaid entire land including the family of Respondent, out of which many have their huts and they are residing therein, and several births of children has taken place in their family in that land since 1955. Also, several deaths have occurred in their family in the said land since 1955. The Respondent and local villagers and other relatives and leaders have attended such births and deaths functions and ceremonies conducted in the aforesaid lands throughout all these years.
- xi) It is also pertinent to note that the Forest Department have constructed pukka compound wall surrounding their forest land since the year 1978. That the suit land is outside the said compound wall. That the Forest Department, about 8 years back, has renovated their said compound wall surrounding the Forest Land. Thus there is no dispute about possession of the suit land between the Respondent and the Forest Department or the Government.
- xii) That Respondent or his ancestors have not entered or occupied the suit land recently, but the same is in their possession since the year 1955 i.e. more than 6 decades.
- xiii) That the Government as well as the Forest Department, Diu has knowledge about the factum of possession and nature of possession of the Respondent and his ancestors in and over the suit property since beginning, and that on 14/11/1985, the Range Forest Officer had even filed Eviction Applications in the Court of the Collector and District Magistrate, Diu.
- xiv) It is also pertinent to note that in the year 1986, the Collector, Diu had issued Notice to the Respondent (or his/her ancestor) to vacate the suit land, however, no action was taken thereafter, as the Respondents were in settled possession of the suit land, and acquired title over the same, as their possession was adverse to the right, title, interest or share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all including the Government and Village Panchayat Bodies, for more than 30 years.
- xv) That inspite of the Notice issued in the year 1986, the Respondents remained and continued in possession of the suit land till date, openly, peacefully, continuously, as of right, as adverse owner thereof, and to the knowledge of all including the Government and Forest Department.

J. Khan
24/8/2018

xvi) That, therefore, the Opponent/Respondent has become the owner of suit land by principle of adverse possession and/or by way of law of prescription under Portuguese Laws, and this proceeding under S.40, of the Land Revenue Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.

xvii) Therefore, the Respondent most respectfully pray that the Notice under S.40 of the Code and the proceeding under S.40 of the Code is without authority, invalid, null and void and illegal and the same requires to be set aside, dismissed, revoked or stopped, in the interest of justice.

6. **AND WHEREAS,** the Opponents/Respondents herein submits Affidavit-In-Evidence by (1) Miss Jamnibai Maugi legal attorney, aged about 52 years, daughter of late Mr. Maugi Rama, residing at House No.2439 (2) Mr. Rama Maugi aged 81 years, Son of late Mr. Maugi Ruda, residing at House No. 1952 (3) Mr. Babu Sancar, aged 61 years, Son of Mr. Sancar Sidi, residing at House No. 2138 (4) Mr. Bagoane Natu, aged 67 years, son of late Mr. Natu Sancar, residing at House no. 2020 and (4) Mr. Rana Sancar, aged about 82 years, Son of late Mr. Sancar Dita, residing at House No. 2323, Jolawadi, Diu having almost same content with minor differences in words on solemn affirmation declare as under :-

- i. I say that the Notice dated: 07/11/2017 issued for hearing under S.40 of the Code is vague, and without any details. That no proper detail is given in the said Notice. Also no material (including Application of the Applicants, documents, and reports, if any) is supplied with the Notice to me. The Notice also lacks details with regards to the description of the land for which the same is issued and its boundaries and area/extent. Therefore I do not know at all on what ground and basis the Notice is issued and what are the materials and documents relied upon in support of the said Notice, and hence I am not in a position to put up proper defense.
- ii. That I have challenged the said Notice on legal grounds as stated in my Reply / Written Submission as well as on facts, assuming that the Notice is issued for lands bearing S.No.180(P) admeasuring 3091 sq. mts., situated at Zolawadi, Diu (hereinafter called as "the suit land").
- iii. That I and my family and ancestors are in settled possession of the suit land since more than 6 decades (i.e. since the Portuguese Regime). That no encroachment is made over the suit land after the coming into force the provisions of Land Revenue Code, and hence I believe that this proceeding is bad under the law and not maintainable.

J. Rama
24/11/2017

- iv. That originally Shri Cantilal Premchande and ChotalalPrernchande owned All that agricultural land, bearing Matriz No. 1015 & 1017, situated at Village Zolawadi of Diu (hereinafter referred to as "the entire land" for the sake of brevity), by registered Sale Deed & Gift Dee dated 06/05/1954.
- v. That both Cantilal Premchande and Chotalal Premchande were resident of Diu City, and they were not interested in their aforesaid entire land, and this entire land being vacant and idle, and ancestor of the Opponent/Respondent being very poor persons and not having any source of livelihood, for livelihood of their family, since the year 1955, the ancestors of the Opponent/Respondent has entered into part of the aforesaid entire land (i.e. the suit land), and occupied the suit land, and started cultivating the same, and ever since, the Opponent/Respondent and his/her ancestors are in possession of the suit land adverse to the right, title, interest or share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all.
- vi. That thereafter, on application of abolition of proprietorship of lands in Diu Act, title of the entire land got extinguished and the same was vested in the Government by way of an enactment. However, the Government has never been in possession of the suit land.
- vii. That I and my ancestors are cultivating the suit land, taking seasonal crop of Bajri during monsoon and also other crops and vegetables like 'Dhanabhaji', 'Pandadi', "Bengan', 'Mirchi', 'Onions' etc. during other seasons (Rabi season). Not only this, but I and my ancestors have planted many trees, the age of many of the trees is more than 50 years. The details of such trees are as under:-

Sr.No	Name of Tree	Total No. of tree
1	Coconut	85
2	Jambu	07
3	Limbda	11
4	Mitha Limbda	09
5	Panni	08
6	Bordi	03
7	Khajuri	05
8	Hoka Tad	13
9	Ravan Tad	18
10	Bilimori	02
11	Bavad	03
12	Chickoo	07

[Handwritten Signature]
24/8/2018

	Total	171
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- viii. That I and my ancestors have our Hut (farmhouse) in the suit land since more than 50 years. We also have dug a Well in the suit land since the year 1982.
- ix. That many other villagers of village Zolawadi have also similarly occupied other part of the entire lands, during the same period in the year 1955. There are about 23 such parts/villagers occupying part of the aforesaid entire land including my family, out of which many have their huts and they are residing therein, and several births of children has taken place in their family in that land since 1955. Also, several deaths have occurred in their family in the said land since 1955. The Respondent and local villagers and other relatives and leaders have attended such births and deaths functions and ceremonies conducted in the aforesaid lands throughout all these years.
- x. I also say that the Forest Department have constructed pukka compound wall surrounding their forest land since the year 1978. That my suit land is outside the said compound wall. That the Forest Department, about 8 years back, has renovated their said compound wall surrounding the Forest Land. Thus there is no dispute about possession of the suit land between myself and the Forest Department or the Government.
- xi. That I or my ancestors have not entered or occupied the suit land recently, but the same is in our possession since the year 1955 i.e. more than 6 decades.
- xii. That the Government as well as the Forest Department, Diu has knowledge about the factum of possession and nature of possession in and over the suit property by me and my ancestors since beginning, and that on 14/11/1985, the Range Forest Officer had even filed Eviction Applications in the Court of the Collector and District Magistrate, Diu.
- xiii. It is also pertinent to note that in the year 1986, the Collector, Diu had issued Notice to us to vacate the suit land, however, no action was taken thereafter, as we were in settled possession of the suit land, and acquired title over the same, as our possession was adverse to the right, title, interest or share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all including the Government and Village Panchayat Bodies, for more than 30 years.
- xiv. That inspite of the Notice issued in the year 1986, we remained and continued in possession of the suit land till date, openly, peacefully,

continuously, as of right, as adverse owner thereof, and to the knowledge of all including the Government and Forest Department.

- xv. That, therefore, we have become the owner of suit land by principle of adverse possession and/or by way of law of prescription under Portuguese Laws, and this proceeding under 5.40, of the Land Revenue Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.

Whatever stated hereinabove on facts are as per my personal knowledge, and whatever stated on legal aspects are as per legal advice I have obtained and I believe the same to be true.

7. **AND WHEREAS**, the Opponent/Respondent herein submitted application on dated to frame and decide preliminary point of Determination/issue of Jurisdiction as under:-

- i) The Respondent above-named begs to file the present application for deciding the point of jurisdiction as a Preliminary point of determination / issue in this case, as the same goes to the root of the matter involved and this case is capable of being disposed of on this sole ground of jurisdiction.
- ii) As per Revenue Record, land involved is a Forest Land, thereby it is within the management of the officers and authorities designated under the concerned Forest Act and Rules.
- iii) The Respondent is original and local resident of Diu District of Union Territory of Daman and Diu and is occupant and agriculturist in this land which falls within the Survey No. 180 (part) in Diu District which lands the Respondent and his/her families have been occupying using and cultivating for over four generations. The area within which the said land falls has been declared as the Reserved Forest Area by a Notification No.13-2-77-FOR/(1) dated 27/12/1978. The Respondent is traditional forest dwellers under the Scheduled Tribes and other traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter "Forest Dwellers Act". The said Notification was followed by a Proclamation dated 05/04/1979 under S.6 of the Forest Act 1927. After the above notification declaring the concerned area as Forest Area, in the year 1983, the Collector Diu had issued Notice to the Respondent under the Goa Daman and Diu Land Revenue Code, 1968. However at that time, no further action was taken against the Respondent under the Land Revenue Code. Thereafter in the year 1987-88, the application was filed by the Range Forest Officer against the Respondent, for initiating eviction proceeding under the said Land Revenue Code. However, once again no further action was taken and the matter continued to languish in the Revenue Courts. This case against the Respondent was

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24/8/2018

again revived wherein fresh notice was issued to the Respondent in the year 2005 under S.40 of the Land Revenue Code. Once again, after sending the notice, the proceeding was not continued and the matter languished. And then, quite belatedly and suddenly, Your Honour (as Deputy Collector, Diu) once again and for the fourth time in the year 2017 issued Notice to the Respondent under S.40 the said Code and thus the present proceeding has ensued.

- iv) The Respondent has duly submitted his Written Statement along with supporting Evidence in form of Affidavits as well as submissions made orally has pointed out that the proceedings under the Goa Daman and Diu Land Revenue Code before the Collector and Deputy Collector does not lie. Even it has been amply argued that the Collector as well as Deputy Collector Diu do not have jurisdiction to determine the Respondents' right to use of land under and in view of the said Forest Dwellers Act. Even then, your goodself has not considered this aspect of lack of jurisdiction on your part to hear and decide the present proceeding undertaken under S.40 of the said Code.
- v) The said land falls within reserved forest area, in the light of the passing of the Forest Dwellers Act in the year 2006. The Forest Dwellers Act provides certain heritable rights (but no rights of alienation) to forest dwelling scheduled tribes and other traditional forest dwellers upon verification by competent authorities under the Forest Dwellers Act. The Respondent states and submits that he/she is a traditional forest dweller as defined under S.2(0) of the Forest Dwellers Act. Accordingly the Respondent states and submits that he/e is entitled to the rights granted under S.3 of the Forest Dwellers Act and he/she is generally covered by the provisions of the said Act.
- vi) The Respondent further states and submits that since he/she and his/her families have been occupying and cultivating the said land for over four generations, he/she is covered by the definition of "other traditional forest dwellers", and as such is entitled to the rights enumerated in S.3 of the Forest Dwellers Act.
- vii) The Respondent further submits that S.4(5) of the Forest Dwellers Act, provides that "Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification process is complete". Therefore, the Respondent states and submits that firstly "other traditional forest dwellers" are protected from eviction until his/her claims claim is decide under the Forest Dwellers Act! And secondly, the eviction, if any, is to be undertaken under the Forest Dwellers Act, itself, and not under any other law.

J. Hanu
24/12/18

- viii) Furthermore, the Forest Dwellers Act and the rules made thereunder are a complete code in themselves and provide a completely separate procedure and mechanism for (1) determining the nature and extent of individual or community forest rights, (2) verifying claims of forest dwellers, and (3) recognition of rights of such verified forest dwellers. The Act also constitutes various Committees and bodies which are specifically empowered to carry out the process of determination, verification and recognition of rights. There are separate authorities before which appeals lie from adverse orders. Therefore, the Respondent states and submits that the Forest Dwellers Act provides a complete procedure for determination of forest dwellers and rights, and until such determination, the persons claiming to be the Forest dwellers cannot be evicted. Eviction proceedings, if any, which might result from any adverse orders suffered after following the procedure laid down by the Forest Dwellers Act, shall follow only once the said procedure is completed and any appeals therefrom exhausted. Furthermore, such eviction, if any, shall have to be conducted in terms of the Forest Dwellers Act.
- ix) Under the circumstances, the determination of the Respondent's rights under the Forest Dwellers Act cannot be undertaken by your honour as well as Collector, Diu, which is within the jurisdiction of the competent authorities constituted under the said Act.
- x) The Respondent therefore submits that the present proceeding initiated against him under the Land Revenue Code is by the Collector, Diu and the Deputy Collector, Diu is patently illegal and arbitrary.
- xi) Therefore it is essential and crucial that this point of lack of jurisdiction on your part under S.40 of the said Code be decided as a preliminary point of determination / issue.
- xii) Therefore, it is humbly prayed that:
- a) That this Hon'ble Court be pleased to frame as a preliminary issue whether this Court / Authority under S.40 of the Goa Daman and Diu Land Revenue Code 1968 has the jurisdiction to hear and decide the present proceeding undertaken.
- b) And till that time, and during the pendency of and final decision of this application, the further proceeding of this case be stayed / suspended and kept in abeyance, in the interest of justice.

8. **AND WHEREAS**, the Opponent/Respondent herein submitted Written Notes of arguments as under:-

- i) That the Notice dated: 07/11/2017 under S.40 of Goa, Daman and Diu Land Revenue Code (hereinafter referred to as "the Code" for brevity) is vague

- and without any details, and therefore the entire proceeding initiated on basis of the said Notice stands vitiated on this count alone.
- ii) That the Respondent has filed Written Reply to the said Notice only on assumption that the same is issued for the suit land.
 - iii) That originally Shri Cantilal Premchande and Chotalal Premchande owned All that agricultural land, bearing Matriz No. 1015 & 1017, situated at Village Zolawadi of Diu (hereinafter referred to as "the entire land" for the sake of brevity), by registered Sale Deed & Gift Deed dated 06/05/1954.
 - iv) That both Cantilal Premchande and Chotalal Premchande were resident of Diu City, and they were not interested in their aforesaid entire land, and this entire land being vacant and idle, and ancestor of the Opponent/Respondent being very poor persons and not having any source of livelihood, for livelihood of their family, since the year 1955, the ancestors of the Opponent/Respondent has entered into part of the aforesaid entire land (i.e. the suit land), and occupied the suit land, and started cultivating the same, and ever since, the Opponent/Respondent and his/her ancestors are in possession of the suit land adverse to the right, title, interest or share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all.
 - v) Thus, the Opponent/Respondent is in settled possession of the suit land since more than 6 decades (i.e. since the Portuguese Regime), since many years prior to coming into force the provision of Land Revenue Code and hence the provision of S.40 of the Code is not applicable to the facts of the present case, and that no encroachment is made after the coming into force the provisions of LRC, and hence this proceeding is bad under the law and not maintainable.
 - vi) That thereafter, on application of abolition of proprietorship of lands in Diu Act, title of the entire land got extinguished and the same was vested in the Government by way of an enactment. However, the Government has never been in possession of the suit land.
 - vii) That the Respondent and his ancestors are cultivating the suit land, taking seasonal crop of Bajri during monsoon and also other crops and vegetables like 'Dhanabhaji', 'Pandadi', 'Bengan', 'Mirchi', 'Onions' etc. during other seasons (Rabi season). Not only this, but the Respondent and his ancestors have planted many trees, the age of many of the trees is more than 50 years. The details of the trees are given in the Written Reply.
 - viii) That the Respondent and his/her ancestors have their Hut (farmhouse) in the suit land since more than 50 years. There is also a Well in the suit land dug by the Respondent and his/her ancestors since the year 1982.
 - ix) That many other villagers of village Zolawadi have also similarly occupied other part of the entire lands, during the same period in the year 1955. There

are about 23 such parts/villagers occupying part of the aforesaid entire land including the family of Respondent, out of which many others have their huts and they are residing therein, and several births of children has taken place in their family in that land since 1955. Also, several deaths have occurred in their family in the said land since 1955. The Respondent and local villagers and other relatives and leaders have attended such births and deaths functions and ceremonies conducted in the aforesaid lands throughout all these years.

- x) Moreover, the Forest Department have constructed pukka compound wall surrounding their forest land since the year 1978. That the suit land is outside the said compound wall. That the Forest Department, about 8 years back, has renovated their said compound wall surrounding the Forest Land. Thus there is no dispute about possession of the suit land between the Respondent and the Forest Department or the Government.
- xi) That the Respondent or his ancestors have not entered or occupied the suit land recently, but the same is in their possession since the year 1955 i.e. more than 6 decades.
- xii) That the Government as well as the Forest Department, Diu has knowledge about the factum of possession and nature of possession of the Respondent and his ancestors in and over the suit land since beginning.
- xiii) That on 20/04/1983, the Range Forest Officer had filed Eviction Application in the Court of the Collector, Diu. Thereafter, again on 14/11/1985, the Range Forest Officer had filed another Eviction Application in the Court of the Collector and District Magistrate, Diu.
- xiv) It is also pertinent to note that in the year 1986, the Collector, Diu had even issued Notice to the Respondent (or his/her ancestor) to vacate the suit land, however, no action was taken thereafter, as the Respondents were in settled possession of the suit land, and acquired title over the same, as their possession was adverse to the right, title, interest or share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all including the Government and Village Panchayat Bodies, for more than 30 years.
- xv) That the date of encroachment as per the Range Forest officer in their applications of the year 1983 and 1985 are contradicting and the dates are manipulated and got up just to show that recent encroachment has been made and to bring the applications within time, however the fact is that the Opponent/Respondent are in continuous possession of the suit land since 1955. However, even counting from the year 1983, 30 years have been passed without any interruption or hindrance over the continuous, open and peaceful actual physical possession of the suit land by the Opponent/Respondent, now this proceeding is clearly time barred by efflux of time and the Opponent/Respondent have acquired title over the suit land

by the law of limitation/adverse possession and/or by law of prescription under the law i.e. Portuguese Civil Code which is still in force in this territory.

- xvi) The fact that even after 1983 till date, the Opponent/Respondent are in open, continuous, peaceful and uninterrupted possession over the suit land and cultivating the same every year is admitted and fortified from the pleadings in para 5 of the Eviction Application filed in the year 2005 and also from the Report dated 09/09/2003 of the Range Forest Officer, Diu.
- xvii) That inspite of all the above stated Eviction applications and Notice, the Respondents remained and continued in possession of the suit land till date, openly, peacefully, continuously, as of right, as adverse owner thereof, and to the knowledge of all including the Government and Forest Department.
- xviii) That, therefore, the Opponent/Respondent has become the owner of suit land by principle of adverse possession and/or by way of law of prescription under Portuguese Laws.
- xix) Thus, there is clearly a bonafide dispute of title, as the Respondent claims that the Govt. or Forest Department had lost title to the suit land by operation of the law of limitation.
- xx) It is settled law that the Government cannot evict the persons summarily who are having long standing possession and disputing the ownership of the Government. Such disputes can be decided by a competent Civil Court only. For this proposition of law, the following binding authorities are relied upon :-
- (i) STATE OF A.P. vs. B. VENKATAMMA AND ORS.,
reported in 2004 (5) ALD 605.
- (ii) GOVERNMENT OF ANDHRA PRADESH
V/s
THUMMALA KRISHNA RAO & ANR reported in 1982 AIR
1081: 1982 SCC (2) 134.
- xxi) That this proceeding under S.40 of the Land Revenue Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.
- xxii) Without prejudice to the above contentions, it is submitted that the proceedings before this Hon'ble Court (i.e. the Deputy Collector) is under S.40 of the code and the present case is based only on the ground of encroachment and not on the ground of unauthorised occupation. Hence this Hon'ble Court could not and should not have proceeded with this case under S.40 of the code and hence the show cause notice as well as proceedings taken by this Hon'ble Court (i.e. the Deputy Collector) is illegal, without authority, null and void ab-initio and without jurisdiction.
- xxiii) Therefore, taking into consideration the facts as well as the provisions of law, this proceeding under S.40 of the Code is without authority, invalid,

null and void and illegal and without jurisdiction and I urge this Hon'ble Authority to reject the application of the Applicant, in the interest of justice.

9. **AND WHEREAS**, the applicant herein submits Written Submissions on behalf of Applicant as under:-

- i) The present case filed by the Forest Department, Diu for removal of encroachment is not the usual case of encroachment. In the present case admittedly the area encroached is a reserved forest where Section 4 Notification under Indian Forest Act, 1927 was issued on 27.12.1978 and Notification u/s 6 was issued on 25.6.1979. No claims were made by the present Respondent regarding their rights in the forest land and even the Local Panchayat issued their no objection for declaring the land as forest land.
- ii) However, the Respondent is contesting the claim based on the alleged long standing possession from the year 1955. This claim is mainly based on the testimony of one Mr. Rama Maugi who claims to be of 81 years old and claims that he has seen the Respondent occupying the land from the year 1955. Except these bare words of this witness, no documentary evidence is produced on record showing the possession or nature of activities of the Respondents on forest land.
- iii) It is submitted that from the year 1955 till declaration of forest under Indian Forest Act, 1927, the area in question was recorded in the name of Government and at no point of time the Respondent or his ancestors made any claim for recording their rights in the revenue record. This is highly unusual. Hence it becomes clear that the testimony of the witness Mr. Rama Maugi and other witnesses is not trustworthy.
- iv) The revenue record prima facie suggest the possession of a person but in this case from 1955 till 1985 the revenue record does not indicate that encroachers have applied for recording their name in revenue record in any capacity over the land in question. 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. Hence the testimony of witness Mr. Rama Maugi and others becomes merely statement without any basis whatsoever and hence these witnesses are not trustworthy. Further even otherwise, the fact of possession cannot be proved merely by oral evidence unless corroborated by documentary evidence.
- v) It is submitted that the only documentary evidence about existence of the Respondents over the land in question in the present case, was of 16/08/1983 when the Forest Department, Diu recorded the cases of encroachment by the Respondent and other persons. Other than this documentary evidence, no other document is ever produced by the

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to allow the Respondents to continue with the possession in any capacity whatsoever.

xii) 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 very important;

xiii) "Conclusions

(1) 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."

xiv) Further the Hon'ble Supreme Court of India in WP(c) 4677/1985 in the matter of M.e. Mehta v. Union of India wherein clear mandate and direction is issued by the Hon'ble Supreme Court of India that "their shall be no further encroachment in the area and it will be the responsibility of Department referred above".

xv) It is submitted that in any case, the non-forest activities admittedly conducted by the Respondent over the land in question has resulted into severe loss and damage to the environment as agricultural activities requires leveling etc of the land which ultimately results in destruction of forest and natural flora and fauna. Hence apart from eviction, the necessary penalty is required to be imposed on Respondent for destruction of natural forest with full knowledge and intention.

xvi) Therefore, considering the above legal and factual position, this Hon'ble Authority is required to pass the necessary orders directing eviction of the Respondent, forthwith, from the forest land in view of Section 2 of Forest (Conservation) Act, 1980.

10. **AND WHEREAS,** the applicant herein submits preliminary point of determination/issue in response to the Application/Reply Notice dated 18th June, 2018 filed by the Respondent and pray for the rejection of the same on following grounds:

- (i) To delay the proceedings before the Honourable Authority.
- (ii) As per Section 16 read with section 40 of the Goa, Daman and Diu Land Revenue Code, 1968. I say that, if a land vested in the Central Government, then the Collector has been authorised to take appropriate action against the person unauthorised occupying or wrongfully in possession of the

Shamir
26/18/2019

