

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 1987, the Respondent had illegally encroached upon the Govt. land. i.e. the notified Forest Land bearing Survey No. 179/(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 1987 for evicting him. However, no further action was taken).**The Respondent is continued to have illegal possession of 9855 Sq.mt. (approx.) of Forest Land and cultivating the same every year. He has also illegally constructed structures such as residential house, well, water tank, hut. 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.
- (vii) The cause of action for filing this fresh Eviction Application is explained in this office letter No.RFO/DJU/ENC/2003-04/224dtd. 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 Hon'ble 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.
- (x) The Applicant may please be allowed to lay further evidence if and when required in the interest of justice.

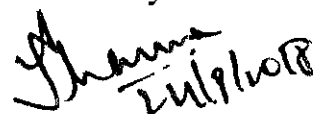
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(xi) The Applicant further undertake to produce the necessary original documents relied upon in this case at the time of the trial;

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 through her L.R. her son Lakhman Nathu has submitted reply dated 24-11-2017 along with affidavits from a few persons wherein he has stated as under:-

- i) That the Notice is issued in the name of Somi Nathu, who has died long back, and the Respondent Lakhman Nathu is her son and legal heir/representative.
- 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. 179/180(P) admeasuring 9855 sq. mts., situated at Nagoa, 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 since the year 1949, Themulrasf Ardeshir and Homi Ardeshir owned all that agricultural land, bearing Old Survey No.146



and 147, situated at Village Nagoa of Diu (hereinafter referred to as "the entire land" for the sake of brevity), by public WILL dated 30/12/1942. These entire in the Land Registration Office, Daman; under No.2164 at Page No. land is described in favour of Themulrasf Ardeshir and Homi Ardesh101 of Book B-4th modern. The suit land is part of this entire land.

- vi) That both Themulrasf Ardeshir and Homi Ardeshir were not residents of Diu area, the former was resident of Mumbai and the later was resident of Nasirbad.
- vii) That Themulrasf Ardeshir and Homi Ardeshir were not residing at Diu District 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.
- viii) 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.
- ix) 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. 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	370
2	Pipal	02
3	Chickoo	25
4	Mango Tree	10
5	Panni	09
6	Jambuda	03
7	Badam	01
8	Ravan Tad	04
9	Ambli	06
10	Bordi	02
	Total	432

- x) That the Respondent and/or his ancestors have dug a Well in the suit land for irrigation.

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- xi) That many other villagers of village Nagoa have also similarly occupied other part of the entire lands, during the same period in the year 1955. There are about 59 such parts/villagers occupying part of the aforesaid entire land including the family of Respondent, out of which about 13 family have constructed their pukka farm house and 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.
- xii) 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.
- xiii) 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. (60 years).
- xiv) 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.
- xv) 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.
- xvi) 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.
- xvii) 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.

xviii) Therefore, the Respondent most respectfully pray that the Notice 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 Opponent/Respondent herein submits Affidavit-In-Evidence by (1) Mr. Lakhman Nathu, aged about 52 years, son of late Mr. Nathu Rama, residing at House No. 3352 (2) Mr. Vira Bhagwan Bamanian also known as Vira Baguane, aged 79 years, Son of late Mr. Baguane Nathu, residing at House No.3526 (3) Mr. Nathu Rama Bamanian, aged 75 years, Son of late Mr. Rama Hira Bamanian, residing at House No.3378 (4) Mr. Bhagvan Jiva Bamanian, aged about 78 years, Son of late Mr. Jiva Rama, residing at House No.3362/1 and (5) Mr. Hira Jiva Bamanian, aged about 72 years, Son of late Mr. Jiva Rama, residing at House No.3459/1, Nagoa, Bhucharwada, Diu having almost same content with minor differences in words on solemn affirmation declare as under :-

- i) That I personally know the Respondent and his/her family and ancestors.
- ii) That I was Village Panchayat Member of Bhucharwada Village Panchayat during the period of 1999 to 2004.
- iii) That the village Nagoa was falling under the jurisdiction of Bhucharwada Panchayat at the relevant time and therefore I have personally seen the suit land and I am having personal knowledge about the possession and nature of possession of the Respondent over the suit land.
- iv) That being a Village Panchayat Member, I had many occasions to visit the suit land as well as nearby localities, including Forest land.
- v) That I have personally seen the Respondent and his ancestors in possession and occupation of the suit land, and cultivating the suit land, taking crops, and also fruits from fruit bearing trees in and over the suit land.
- vi) That to the best of my knowledge, and as far as I can remember, the peaceful possession of the Respondent over the suit land runs since more than 50 to 60 years.
- vii) That I have also seen the forest Land which is adjoining to the suit land, and I say that the Forest Land is protected and surrounded by a compound wall since last 38 to 40 years, and that the suit land is situated outside the said compound wall of the Forest Land. That the Forest Department or the Government was never in possession of the suit land.

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- viii) Whatever stated hereinabove in my Affidavit is true and correct to my personal knowledge.
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.179/180 (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 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

J. Shrivastava
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Land Revenue Code before the Collector and Deputy Collector does not lieEven 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.
- 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

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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:
 - i) 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. .
 - ii) 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 since the year 1949, Themulrasf Ardeshir and Homi Ardeshir owned All that agricultural land, bearing Old Survey Numbers 146 and 147, situated at Village Nagoa of Diu (hereinafter referred to as "the entire land" for the sake of brevity), by Public Will dated 30/12/1942. These entire land is described in favour of Themulrasf Ardeshir and Homi Ardeshir in the Land Registration Office, Daman; under No.2164 at Page No.101 of Book B-4th modern. The suit land is part of this entire land. The Respondent has filed the copy of Certificate of Inscription and Description of the said entire land in the names of Themulrasf Ardeshir and Homi

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Ardeshir (which is in Portuguese Language), alongwith it's English Translation.

- iv) That both Themulrasf Ardeshir and Homi Ardeshir were not residents of Diu area, the former was resident of Mumbai and the later was resident of Nasirabad. This fact is also stated in the said Certificate of Inscription and Description of entire land.
- v) That Themulrasf Ardeshir and Homi Ardeshir were not residing at Diu District 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) 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.
- 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 the trees are given in the Written Reply.
- ix) That the Respondent and/or his ancestors have dug a Well in the suit land for irrigation.
- x) That many other villagers of village Nagoa have also similarly occupied other part of the entire lands, during the same period in the year 1955. There are about 59 such parts/villagers occupying part of the aforesaid entire land including the family of Respondent, out of which about 13 family have constructed their pukka farm house and 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

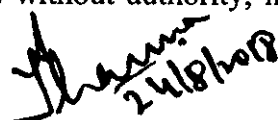
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their family in the said land since 1955. The Respondent and local villagers and other relatives and leaders have attended such births and deaths functions and ceremonies conducted in the aforesaid lands throughout all these years.

- xi) 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.
- xii) 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.
- 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 land since beginning.
- xiv) 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.
- xv) 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.
- xvi) That the Range Forest Officer in their application has manipulated and made false averment regarding the date of encroachment to be in the year 1987-1988, but the fact is that the Opponent/Respondent are in possession of the suit land since 1955 till date. That the Range Forest Officer, Diu has also relied upon the Report/Letter dated 09/09/2003 in their application, in which they come with a stand that the encroachments were made in the eighties and that eviction applications were filed in the year 1983 and that the said applications did not yield any concrete results and seems to be time barred and hence decided to initiate de novo legal proceedings. Thus this proceeding is clearly time barred. That, even counting from the year 1987, 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.

- xvii) The fact that 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 of the Eviction Application filed in the year 2005 and also from the Report dated 09/09/2003 of the Range Forest Officer, Diu.
- xviii) 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.
- xix) 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.
- xx) 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.
- xxi) 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.
- xxii) That this proceeding under S.40 of the Land Revenue Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.
- xxiii) 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 (Le. the Deputy Collector) is illegal, without authority, null and void ab-initio and without jurisdiction.
- xxiv) 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,

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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. Vira Bhagwan Bamanian who claims to be of 79 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. Vira Bhagwan Bamanian 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. Vira Bhagwan Bamanian 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 14/05/1987 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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Respondent before this Hon'ble Authority claiming possession over land in question.

vi) It is submitted that the alleged claim of the long standing possession of the Respondent, based on affidavits, over the land in question, cannot be considered, even otherwise, in view of the provisions of Section 2 of Forest (Conservation) Act, 1980 [As amended by Act 69 of 1988]. Section 2 is reproduced hereunder for ready reference as;

a) Restriction on the de-reservation of forests or use of forest land for non-forest purpose.-Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

ii) that any forest land or any portion thereof may be used for any non-forest purpose;

iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;

iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Explanation-For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than reforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

vii) It is submitted that from an analysis of the provisions Section 4 and 6 of the Indian Forest Act, 1927 and Section 2 of Forest (Conservation) Act, 1980 makes it clear that, once a land was declared reserved forest, no right could be acquired by anyone after issue of notification under Section 4 except under a grant or contract in writing made or entered into by or on behalf of

the Government, or by or on behalf of some person in whom such right or power to create the same was vested or by succession from such person and no activity of clearing such land or. Collection of forest produce could be made without previous sanction of the Government.

- viii) The Forest (Conservation) Act, 1980 was enacted by virtue of Entry 17-A of List III in the Seventh Schedule of the Constitution. Section 2 (as originally enacted) contains a non obstante clause. It lays down that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or authority shall without prior approval of the Central Government make any order directing that any reserved forest or any portion thereof, shall cease to be reserved or that any forest land or any portion thereof may be used for any non-forest purpose. By Act 69 of 1988 Clause (iii) was inserted in Section 2 and what was implicit in Clause (ii) was made explicit. Explanation appearing below Section 2 was also amended and it was made clear that the phrase non-forest purpose will mean breaking up or clearing of any forest land or portion thereof for cultivation of tea, coffee, spices, etc. and any purpose other than reforestation.
- ix) It is submitted that rights in or over the forest land can be accepted by the State Government and in this case by the Union Territory Administration, provided such proposal is submitted for approval to the Central Government and the same is accepted by the Central Government. In the present case no such proposal is ever submitted by the Daman and Diu Union Territory Administration to the Central Government at any point of time. Hence the admitted encroachment of the Respondent over the forest land has to be removed and in any case, no discretion is vested with this Hon'ble Authority to regularize the encroachment.
- x) As stated aforesaid, the normal encroachment on government land is totally different from the encroachment over the forest land. In case of the encroachment over the forest land, like in the present case, provision of Section 2 of Forest (Conservation) Act, 1980 prohibits any non-forest activities including agricultural activities. Hence the presence of the Respondent over the land in question is illegal. Further there are no structures over the land in question.
- xi) It is submitted that none of the Respondents before this Hon'ble Authority belongs to Tribal community hence they cannot seek benefit under the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Central Act No.2 of 2007). Further it is not the claim of the Respondents that their survival is dependent upon the land under encroachment and they have not offered any such proof. As stated above the Union Territory Administration of Daman and Diu does not wish

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."*

xxiii) 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".

xxiv) 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.

xxv) 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 Government land and the present case the land is a Forest land and hence,

the scope of powers under Section 40 are extended to the forest land being the Government land.

- (iii) The Respondent has made a deliberate false statement that they have been residing in the land in question for last four generations.
- (iv) The contentions raised are self-contradictory to the claim made by the Respondent;

11. **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 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.

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iii) The question whether the proceedings under section 40 of Goa, Daman and Diu Land Revenue Code (GDDLRC) are appropriate for eviction of an encroacher has been raised by the Respondent and the Respondent has cited two case laws in his defence:

1. STATE OF A.P. vs. B. VENKATAMMA AND ORS.

Reported in 2004 (5) ALD 605

2. GOVERNMENT OF ANDHRA PRADESH

vs.

THUMMALA KRISHNA RAO & ANR reported in 1982 AIR 1081: 1982 sec (2) 134

Both these case laws are not relevant to this case because of the following reasons:

- a. In the first case law, the so-called-encroacher was paying land revenue to the Government since many years. Contrary to that, in the present case, the Respondent has never paid any land revenue to the Government or shown any animus to possess in any other form.
 - b. The second case law pertains to private land being acquired by the government. This is also not related in anyway to the present case since the land has always been Government land.
 - c. Thirdly, both the cases are of Honourable Andhra Pradesh High Court, whereas Diu district falls under the jurisdiction of Honourable Bombay High Court.
 - d. Fourthly, if this contention of the Respondent is to be accepted, no case would ever be tried under Section 40 of GDDLRC, which is not what the law intends. Thus, this proceeding has been rightly conducted under Section 40 of GDDLRC.
- ii. The third question is whether these proceedings can continue in light of the enactment of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as FRA). Section 4 (5) of FRA 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 procedure is complete." For the Respondents to be protected by this provision of the FRA, there are certain preconditions that must be fulfilled, which are as follows:
1. The Respondents must be covered under the definition of "forest dwelling Scheduled Tribe" or "other traditional forest dweller". Both have been defined in the FRA which is reproduced below for reference:
 - a. "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and

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- who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;
- b. "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.
 2. The Respondents have not produced any evidence to show that they belong to Scheduled Tribe rather have clearly claimed that they are allegedly covered under the definition of "Other traditional forest dwellers" (a point that shall be examined thread bare in the following paragraph), let alone "forest dwelling Scheduled Tribe", no protection is afforded to the Respondents under FRA on this account. And the Respondents.
 3. As is clear from the definition of "other traditional forest dweller", the period of three generations is essential for the claim under the said provision of the FRA. However, it is axiomatic that the forest in question is a man-made forest and is a monoculture forest for major part. Further, the forest was declared as forest only in the year 1978, before which it was barren waste land. Thus, unlike the natural forests of states like Chhattisgarh, Jharkhand, etc., the forest in question did not exist before Forest Department; Diu undertook the plantation and a forestation drive from the year 1978 onwards. Hence, the claim that the Respondents are covered under the definition of "other traditional forest dweller" is hollow, manufactured and without substance.
 4. Furthermore, after liberation from Portuguese rule in 1961, Abolition of Proprietorship of Lands in Diu Act, 1971 was enacted and large swathes of land were given to the tillers under the said Act. However, this particular parcel of land was never claimed by the Respondents under that Act.
 5. Even more astonishing is the fact that even though the land survey and settlement was carried out in the year 1974-75, i.e. before the land was proposed to be declared as reserve forest in the year 1978, yet no one filed any claim on the land in question in this proceeding at that time under the provisions available to them like Section 14(3) of GDDLRC. This shows that they have not been in possession of the said land for three generations, which is a period of 75 years as per FRA, before 13th December, 2005.
 6. 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.

7. Furthermore, the Respondent has not submitted any proof to show how the livelihood of the Respondent is dependent upon the said land.

In light of the above rule position, facts, arguments and reasons, it is evident that the current Respondents are not protected by the FRA.

- 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. The FRA defines forest in Section 2 (d) as follows: "'forest land" means land of any description falling within any forest area and includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;" from this definition it is clear that the said land is covered in the definition of forest.

- iii. 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.

- 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. This shows that the animus to possess is glaringly missing in this case.
- 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. Further, even while the Respondent failed to take necessary steps to get the land recorded in his name, the Respondent has got a parcel of land under Abolition of Proprietorship of Lands in Diu Act, 1971 in vicinity of this land, but the Respondent has never made any claim on this land till the show cause notice was issued during the course of these proceedings. This shows that the Respondent's claim of possession since 1955 is absolutely hollow and without substance.
- F. 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.*

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

- G. The claim of the Respondent that due to the long pendency of this suit, the Respondent has perfected his title through adverse possession falls flat in light of the judgment of the Hon'ble Supreme Court in **Mandal Revenue Officer vs. Goundla Venkaiah & Anr** on 6 January, 2010 wherein the Hon'ble Court held that *"In our considered view, the approach adopted by the High Court was ex-facie erroneous because absence of final order in the proceedings initiated under the Encroachment Act cannot lead to an inference that the concerned authority had recognized the possession of Gonda Mallaiah over the schedule land. That apart, even if this Court was to presume that the proceedings initiated against Gonda Mallaiah under the Encroachment Act had been dropped, the said presumption cannot be over stretched for entertaining the respondents' claim that their possession was open and hostile qua the true owner i.e. the Government."* Thus, these proceedings are clearly a continuation of the proceedings initiated in the 1980s and hence are not time-barred in any way.
- H. From the above judgment and facts elaborated in paragraph number 11(C) to (F), it is clear that there is no animus in this case and thus the Respondent fails to establish the respondent's right to the suit land on the grounds of adverse possession even if we consider for a moment for argument's sake that the Respondent had possession of the suit land since the time he has claimed it.
- I. Further, the Respondent has based his claim of adverse possession primarily on the affidavits submitted by various persons as has been detailed above. However, in **S. Lingamaiah vs. State Of A.P. And Ors.** on 9 January, 2004, the question whether on the basis of the averments made in the affidavits and counter-affidavits it can be said that the petitioner had perfected his title to the property by reason of adverse possession? The Court held that *"merely on the basis of averments in the affidavit and counter-affidavits, it cannot be said whether or not the petitioner had perfected his title to the property by way of adverse possession."* Thus, even this contention cannot be accepted in support of the respondent's case.

- J. Further, in **CIVIL APPEAL NO. 7444 OF 2009 RAJNARAYAN SHARMA/SSIRNAM SHARMA AND OTHERS** decided on September 12, 2017, Hon'ble Supreme Court had categorically held that mere oral evidence without documentary evidence is not sufficient to prove possession of land. In paragraph 7 of the said judgment, the Hon'ble Supreme Court observed, "*7. Having regard to the position narrated above, it is clear that there is no documentary evidence to show that the plaintiffs are in possession of the suit property and their case is only based on oral evidence, which is controverted by the defendants in their oral evidence, in our considered opinion, the High Court was not justified in holding that the plaintiffs are in possession of the property.*"
- K. It is clear from the case file, the submissions, and facts of this case that there is no documentary evidence in support of the claim of the possession of the suit land by the respondent. Further, the statements of the witnesses of the Respondent have been controverted by the Plaintiffs. Thus, the Respondent's claim on the basis of adverse possession stands rejected.
- L. The assertion of the applicant that there are trees on the suit land does not prove in any way that the respondent or anyone for that matter legally possesses the suit land.
- M. With respect to the issue of forest having constructed a fence (not a compound wall as claimed by the Respondent), it is clear that this dispute has been under litigation continuously since the mid-1980s, and the fence was erected upon the undisputed part to prevent any further encroachment. This does not in any way dilute the fact that the said land is under litigation since 1980s.
- N. In contrast to the dubious and barely tenable claims of the Respondent, 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 and that the Respondent's defence is ridden with contradictions, unexplained loopholes and innumerable lacunae.
12. **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*

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