

IN THE COURT OF THE COLLECTOR, DIU

**Shri Nathubhai alias
Hirabhai Pitha Solanki,
R/o Gandhipara, Diu.....Applicant**

Vs.

The Mamlatdar, Diu..... Respondent

Read:-Application dated 30/01/2017U/s 38 of Land Revenue Code for regularization the encroachment land from Shri Nathubhai alias Hirabhai Pitha Solanki, resident of Gandhipara, Diu.

ORDER

The applicant Shri Nathubhai alias Hirabhai Pitha Solanki, r/o Gandhipara, Diu, has applied to the Court of Collector to regularize the encroachment made by the applicant under Section 38 of Land Revenue Code 1968 while the proceedings of removal of encroachment are pending in the Court of Deputy Collector under section 40 of Goa, Daman and Diu, Land Revenue Code, 1968.

Brief facts of the case are as follows:

The Mamlatdar, Diu vide his letter No. MAM/DIU/LND/2016-2017/1795 15/06/2016 reported that the local people of Gandhipara, Diu have illegally encroached on Government land and many people have been started construction on government land in various places at Gandhipara, Diu. The detailed layout plan where encroachments were made was obtained from the Enquiry Officer, City Survey, Diu vide letter No.65-03-Illegal Encr.-2016-LND/982, dated 23/06/2016 with specific report stating that illegal encroachment on Government land is made and civil structures or walls are erected on the same land. On this report, a case under section 40 was filed in the court of Deputy Collector u/sec 40 LRC 1968.

Meanwhile, this office has received an application from Shri Nathubhai alias Hirabhai Pitha Solanki resident of Gandhipara, Diu dated 30/01/2017 under section 38 of Goa, Daman and Diu, Land Revenue Code, 1968 regarding regularization of Encroachment. The Collector, Diu in exercise of the powers conferred to him under section 38 of Goa, Daman and Diu, Land Revenue Code, 1968 directed to issue notice for hearing.

The Deputy Collector, Diu in exercise of the powers conferred to him under section 40 of Goa, Daman and Diu, Land Revenue Code, 1968 have stayed the proceedings undergoing in his court and only after the decision on the application under Sec 38 LRC 1968, the detailed order will follow.

Consequent to this, hearing was held on 05/07/2018, 06/07/2018, 19/07/2018, and 16/08/2018 to decide the applicant's request on application u/s 38 for regularization of encroachment and the same was decided on merits.

The applicant Shri Nathubhai alias Hirabhai Pitha Solanki, r/o Gandhipara, Diu, himself accepted that he has made encroachment on government land. Written submissions were made by the applicant's lawyer that the parcel of land in question is very small & it will be of no use to the government. It is claimed by the applicant that this land cannot be put to any other use & cannot be auctioned also. Further he argued that in past also such encroachments have been regularised by the then Collectors & there are precedents for the same. The lawyer Mr. G. B. Naqvi also said that he has asked for old records in RTI where such land was allotted & encroachments regularized. He also submitted that the applicant is a Schedule Caste so his case may be considered sympathetically.

On the other hand the Mamlatdar pleaded that the land in question is government land & the same should not be regularized.

The following issues merit deliberation:

1. Has the applicant encroached on government land?

The answer to this is an unambiguous yes because this is what the respondent has himself accepted in his reply dated 19/07/2018.

2. Can regularization of encroachment be claimed as a right of the applicant?

It cannot be overlooked that encroachment remains encroachment and regularisation cannot be demanded as matter of right even if the Policy for regularisation is framed and adopted by the Government. (*Rabari Mewabhai Jodhabhai & Others Vs. State of Gujarat (GujHc 2007)*)

3. Does the argument of the applicant that the encroachment protects from stray animals and non-objection of neighbors give him the right to the encroached government land?

The answer to this is unarguably No.

There is no reason to allow encroachment on government land on the grounds stated by the respondent. If this were to be upheld, tomorrow, everyone will encroach on government land in garb of protection against stray animals and neighbours would collusively encroach on government land. Thus, this cannot be accepted as a reason to justify and allow encroachment on government land.

The supreme court in K. Ramadas Shenoy vs. Chief Officers, Town Municipal Council (1974) 2 SCC 506 held that an illegal construction materially affects

the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction.

In Shanti Sports Club vs. Union of India (2009) 15 SCC 705, the court held:

“In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads.”

Further, the advocate of the applicant argued that Sec 38 empowers the encroachments so made by any person by the party paying 5 times the piece of the value of the land. In any view of the matter, regularisation of encroachment is not a matter of right and is required to be decided in facts of each individual case. ***Bharat Gagdevbhai Gohel Vs. M B Parmar or His Successor In Office*** (Guj HC 2008). The applicant in present case has encroached on Government land. The same family were granted land by the Government, despite which, they have encroached additional land. Though the applicant belong to SC community, they are well educated. The land in question is setback area and other recreational area which was deliberately left out at the time of planning of the site. It is also to be brought on record that the applicants do not require the land for their sustenance since they are of well to do family. Even if the petitioners were not conscious encroachers of the land, nevertheless, fact remains that they have been occupying nearly 100 Sq. Mts. of land what was granted to them by the government.

However, considering the cases at present before me, the land on which the applicants is residing at present allotted land by government only. But the applicant despite being beneficiary of government land allotment program preferred to encroach the surrounding or adjoining land which cannot be justified on the grounds that the same will not be of any use to any other person or government. Having heard the learned Counsel appearing for the parties and considering the facts and circumstances of the case, I am of the view that the government land is encroached and the same is not justified by the appellant.

In light of submission made by the applicant, and after hearing all the arguments, I reject the application as I find no merit in it. Therefore, it is hereby ordered that the application u/s 38 for regularization the encroachment land bearing New City Survey Plot PTS No-96/48(P), area admeasuring 59sq.mts. situated at Gandhipara, Diu is rejected.

The said case was decided & explained to the parties & Judgment pronounced in open court on 16th August, 2018.

Given under my hand and seal of this Office, this 1st day of January, 2019.




01/01/19
(HEMANT KUMAR) IAS
COLLECTOR, DIU

To,

**Shri Nathubhai alias
Hirabhai Pitha Solanki,
R/o of Gandhipara, Diu for compliance.**

Copy to:-

- 1) Dy. Collector, Diu for further needful in the matter.
- 2) Mamlatdar, Diu for information and necessary action.
- ✓ 3) NIC, Diu to upload it on the official website.
- 4) Guard File.