



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

Court on its own motionApplicant

Vs

M/S Krishna Amusement Park and
Nursery Private Limited.....Respondent

ORDER

1. **WHEREAS**, this office has issued a notice dated 09/06/2017 on the strength of Panchnama dated 30/05/2017 from the Junior Engineer, Diu Municipal Council, Diu and also served through Talathi concerned and by Speed post vide No. EG962972955IN dated 16/06/2017 to the M/s. Krishna Amusement Park and Nursery Private Limited; the hearings were held on 20/06/2017, 22/6/2017, 23/06/2017, 24/6/2017, 27/6/2017, 28/6/2017, 29/6/2017 & 30/06/2017; a final notice was issued on 29/06/2017 to remain present on 30/06/2017;

2. **AND WEHREAS**, this office had passed a detailed and reasoned order dated 30/06/2017 after due proceedings under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968 on the merits of the facts, submissions, reasons and judgments of higher judiciary in exercise of the powers conferred to Deputy Collector, Diu vide notification no. 65-01-2014-LND/Part File/400 dated 06.05.2016 under section 40 of Goa, Daman and Diu, Land Revenue Code, 1968 ordering "the eviction of the respondent & removal of the encroachment from Government Land Bearing new City Survey Plot No. P.T.S. 109/7(PART) as per map enclosed as Annexure II admeasuring 55,945 (fifty five thousand nine hundred forty five only) square meters [the 782 square meters of land of PTS no. 109/7(Part) leased out as per lease deed dated 12.04.2001, situated at Gandhipara, Diu was not affected by that order] with immediate effect and directed Mamlatdar, Diu to do the needful immediately";

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19/9/2017

3. AND WHEREAS, M/s. Krishna Amusement Park and Nursery Private Limited through their advocate has filed a Writ petition in Hon'ble High Court, Mumbai and Hon'ble High Court had stayed the order upto 3rd July 2017, wherein the Hon'ble High Court directed that "there shall be no eviction or demolition upto 3rd July 2017 as directed by the impugned order dated 30.06.2017 passed by the respondent and petitioner have liberty to move the regular court on 3rd July at 11.00a.m.";

4. AND WHEREAS, M/s. Krishna Amusement Park and Nursery Private Limited have filed a Land Revenue Appeal No. 13/2017 against the order dated 30th June, 2017 passed by the Dy. Collector, Diu under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968. The Hon'ble Principal District Judge, Diu has passed an Order dated 08/08/2017 below EXH.1 that the present appeal is filed against the order passed by the Deputy Collector; Diu dated 30.06.2017 u/sec 40 of the Goa, Daman & Diu Land Revenue Code, 1968. The impugned order is reproduced herein below:

1. *"The Deputy Collector, Diu in exercise of the powers conferred to me under section 40 of the Goa, Daman and Diu, Land Revenue Code, 1968 do hereby order the eviction of the respondent & removal of the encroachment from Government Land bearing new City Survey Plot No. P. T.S. 109/7(PART) as per map enclosed as Annexure II admeasuring 55,945 (fifty five thousand nine hundred forty five only) square meters (the 782 square meters of land of PTS no.109/7 (Part) leased out as per lease deed dated 12.04.2001, situated at Gandhipara, Diu is not affected by this order) with immediate effect and also order that the cost of removal of the encroachment from the said Government Land and restoration of the Government Land shall be recovered from the respondent in the form of arrears of the land revenue, and direct Mamlatdar, Diu to do the needful immediately".*

2. *Heard, Adv. G. B. Naqvi for the appellant and DGP Adv. T. R. Desai for the state. Initially the stay application was argued by both the sides. However, as the entire case was being argued both the sides agreed to decide the main appeal itself. During the part heard arguments, Adv. Naqvi submitted that no opportunity of being heard to the appellant was given and the matter was decided hurriedly. As against this, DGP Adv, Desai submitted that it was the appellant who did not avail the opportunity of*

Sharma
19/9/2017

*filing the reply and refrain from arguing the appeal. As such, he prays for dismissal of appeal. However, DGP submitted, that if, this stand is taken by the appellant, let the matter be remanded back to the Deputy Collector, Diu with time from programmed. DGP Adv. Desai submitted that they will issue afresh notice to the appellant within a week from today. Adv. Naqvi and Adv. Modasia consented to receive the notice for and on behalf of the appellant. After receipt of notice the advocates for appellant consented to file the reply alongwith all the documents they want to rely positively on or before 28.08.2017. They also made statement that they will not seek any adjournment for filing of reply or the documents. Thereafter, all the parties consented to keep the hearing of the present matter on 18.09.2017 at 03.00 p.m. sharp at the office of Deputy Collector, Diu. The statement was also made for on behalf of the appellant, that on failure of the appellant to file reply with the documents or to remain present at the time of final hearing, the authority may proceed to pass ex-parte order on the same day or on the convenient day to the authority. In view of the statement made, and the following **order** has been passed.*

- (i) The impugned order passed by the Deputy Collector, Diu on 30.06.2017 is set aside with no order as to costs.*
- (ii) The Deputy Collector, Diu is directed to issue fresh notice to appellant with all the grounds available to them u/cacao of the Goa, Daman & Diu, Land Revenue Code.*
- (iii) The service of notice to appellant or their either advocates will be sufficient compliance by the Deputy Collector, Diu.*
- (iv) From the date of receipt of notice, the appellant will be entitled to inspect the R & P of the present case during the office hours with prior notice to the office staff of the Deputy Collector, Diu.*
- (v) As consented, the appellant shall file his reply and documents and complete the entire proceeding on or before 28.08.2017. Thereafter, the matter to be kept by the Deputy Collector, Diu on 18.09.2017 for final Hearing. No parties will be entitled to seek adjournment on any ground, unless the other side gives no objection for the same. Failure of the appellant to file reply with the documents if any he wants to rely on or before 28.08.2017 or to argue the present matter sharp at 03.00 p.m. on 18.09.2017, the Deputy Collector, Diu to proceed to pass ex-parte order on 18.09.2017 itself or on any convenient date to him but after final hearing of the present matter, anyhow within one week.*
- (vi) The Deputy Collector, Diu to inform the appellant or the advocates for the appellant of the order passed by him. Subject to the final order*

*Shamant
19/9/2017*

passed by the Deputy Collector, Diu, there will be one week stay to the impugned order from the date of its service to the appellant or their either Advocates.

(vii) The order is passed in presence of Ld. DGP Adv. Desai and the Ld, Advocates for the appellant, who undertakes to inform the same to the respective parties, and the same will be the notice of the said order to the parties in this appeal.

(viii) In view of the above directions, all the other applications filed by the either parties stands filed.”

5. AND WHEREAS, in pursuance and in continuation of the order of the Hon'ble Administrative Tribunal in LRA No. 13/2017 dated 08.08.2017, reports from Tourism Department, Police department and DMC were called for and in response, the following reports have been received by this office:

- a. Letter no. 3-11-ESTT/MAM/2016-17/2031 dated 11.08.2017 from Mamlatdar, Diu
- b. Letter no. 3-78/DT-GEN/2017-18/123 dated 11.08.2017 from Tourism Department, Diu
- c. Letter no. 3-78/DT-GEN/2017-18/124 dated 11.08.2017 from Tourism Department, Diu
- d. Letter No.PSI/Diu/Cr.No./38/17/2017/4145 dated 11.08.2017 from Police Department, Diu
- e. Letter no. 22-2905-2007/CONST/988 dated 11.08.2017 from Diu Municipal Council

(All documents are part of the record of this case)

6. AND WHEREAS, the following documents were already available in the case file no. 84/2017 under section 40 of Goa, Daman and Diu Land Revenue Code, 1968 (GDDLRC hereinafter):

- a. Panchnama from Diu Municipal Council dated 30.05.2017
- b. Google Earth and ISRO's Bhuvan satellite images of PTS no. 109/7(Part) admeasuring 782 square meters and PTS No. 109/7(Part) admeasuring 55,945 square meters
- c. Colour photocopy of the lease deed dated 12.04.2001
- d. Various statement, documents and submissions of KAPNPL and other documents in case 84/2017 u/s 40 of GDLRC and Case no. 01/2017 under Public Premises Eviction Act

(All documents are part of the record of this case)

Jhanna
19/9/2017

7. **AND WHEREAS**, from the detailed perusal of the above reports and the enclosures and annexure attached to these reports and other document in the case file, I formed the following opinion:

- a. M/S Krishna Amusement Park and Nursery Private Limited (KAPNPL hereinafter) has encroached upon the government land bearing PTS No. 109/7 (Part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters as the land was never leased out to the lease;
- b. KAPNPL has breached the terms and conditions of the lease by constructing illegal and unauthorized structures on the government land bearing PTS No. 109/7 (Part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters;
- c. KAPNPL has breached the terms and conditions of the lease by running a hotel at Government Land PTS No. 109/7 (Part) admeasuring 782 (seven hundred eighty two) square meters and PTS No. 109/7(Part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters;

8. **AND WHEREAS**, the reasons for the opinion mentioned in paragraph 7. a. above are as follows:

- a. The lease deed dated 12.04.2001 clearly states that only 782 (Seven hundred and eighty two) square meters of land was leased out to KAPNPL as per the schedule of property leased out on page 19 of the lease deed.
- b. The boundaries thereof mentioned on page number 19 of the lease deed clearly show that the leased land admeasuring 782 (seven eighty two) square meters is surrounded by water in three sides and connected by land on the Southern side. However, from the documents mentioned at paragraph 2.a, 2.b and 2.e corroborated with document mentioned at paragraph 2.f, it is apparent that the land under the occupation of KAPNPL is surrounded by land on all sides, which clearly shows that KAPNPL has exceed the leased land and hence has encroached upon government land not leased out to KAPNPL.
- c. The area leased out is also shown in the map annexed to the lease deed, which measures only 782 (seven hundred and eighty two) square meters (Attached as **Annexure-II** of this order).

Y. Sharma
19/9/2017

- d. As per the undertaking of Director, KAPNPL dated 28.11.2008 addressed to Collector, Diu, in paragraph number IV i), it is clear that only 782 (seven hundred eighty two) square meters of land was leased to KAPNPL as per the lease deed.
- e. In letter dated 23.12.2008 from Director, KAPNPL, the Director has requested for grant of additional land admeasuring 5744 (five thousand seven hundred and forty four) square meters. In this letter, Director has clearly written as follows:

“The land admeasuring 782 sq. mts. Allotted to the Krishna Park, Diu is not sufficient as entire land is reconstruction for development activities and there are no F. A. R. coverage in the said land.”

This shows that KAPNPL clearly knew that only 782 (seven hundred eighty two) square meters of land was leased to KAPNPL.
- f. The request for additional land admeasuring 5744 (five thousand seven hundred and forty four) sq. mts. was repeated by the leasee vide letter dated 13.04.2009 addressed to Collector, Diu. This again shows that only 782 square meters of land was leased out to the leasee and that the leasee was aware of this fact.

9. AND WHEREAS, the reasons for the paragraph 7. b. above are as follows:

- a. From the appeal document and other documents submitted by KAPNPL before the Hon'ble Civil Judge, Sr. Div. at Diu, it is clear that KAPNPL has stated on record that they have constructed structures beyond the 782 (seven hundred eighty two) square meters since the total land area covered under constructions alone is more than the leased area of 782 (seven hundred eighty two) square meters.
- b. From the report of Mamlatdar, Diu it is clear that KAPNPL has made constructions on government land beyond the 782 square meters that was leased out. The total land coverage of the constructions is much more than the total leased area of 782 square meters. Thus, it is evident that the illegal constructions are on the government land bearing PTS No. 109/7 (part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters. This breach of the

Sharma
19/9/2011

condition no. 15 of the lease deed dated 12.04.2001 which states that the leasee shall not damage any government property. It is also a breach of the condition number 22 of the lease deed dated 12.04.2001 which specifies that the leasee shall be responsible for the "maintenance of the Swarna Jayanti Lake Garden including Fountains (musical as well as water fountains) the light features, illuminations, control room, the surrounding fencing, road, gates, etc. spread over a total area of 05.67.27 Sq. Mts., will be the responsibility of the Lessee". By no stretch of imagination can all the illegal construction like the swimming pool and hotel rooms be said to be covered under the meaning of the word maintenance in clause 22 of the lease deed.

- c. KAPNPL has constructed illegal constructions as mentioned in the Panchnama dated 30.05.2017 received from Diu Municipal Council (DMC hereinafter). The Panchnama makes it clear that there are numerous constructions which are illegal and in breach of the terms and conditions of the lease deed. These constructions have damaged the government land bearing PTS No. 109/7 (part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters. The constructions like swimming pool and rooms are in no way within the purview of the word maintenance as specified in the clause 22 of the lease deed.
- d. The letter from DMC also shows that the total area of ground covered under the legal and illegal constructions is approximately 2668 (two thousand six hundred and sixty eight) square meters, which comprises of 463 square meters of ground coverage as permitted by the license given by DMC and 2205 (two thousand and five) square meters which is the illegal construction. This shows that the illegal construction is way beyond the leased 782 (seven eighty two) square meters. These constructions have damaged the government land bearing PTS No. 109/7 (part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters. The constructions like swimming pool and rooms are in no way within the purview of the word maintenance as specified in the clause 22 of the lease deed.
- e. The satellite images clearly show that the leasee has filled up the lake as has also been noticed from the site map attached

Jhanna
19/9/2017

with the "Panchnama" mentioned above, with correlation with time series satellite images downloaded from Google Earth and BHUVAN map, that KAPNPL has constructed, apart from other illegal constructions, the illegal constructions mentioned at Serial number one to seven on page one of the Summons dated 09.06.2017 and has filled up the Swarna Jyanti Lake in that area for that construction which has damaged the lake and damaged the environment at various places. The Mamlatdar's report corroborates the findings as are visible in the satellite images.

10. AND WHEREAS, the reasons for the opinion in paragraph 7. c. are as follows:

- a. As per the paragraph on page 3 of the said lease deed states that "whereas the Lessor invited tenders vide tender notice no. 3-78-DT-ADM-98/130 on dated: 09-06-1999 for leasing out site for setting up Bar-cum-Restaurant & Entertainment Centre alongwith exclusive rights for water sports activities in the Swarna Jayanti Lake Garden, situated at Gandhipara, Diu..." read along with the terms and conditions of the said lease deed specify that only Bar-cum-Restaurant and Entertainment Centre and water sports are the only activities allowed to the leasee as per the lease deed dated 12.04.2001.
- b. As per the condition number 19 of the lease deed dated 12.04.2001, it is clearly stated that "the Lessee shall not carry out any trade at the said premises other than the one in respect of which the present lease is granted".
- c. As per the letter no. 3-78/DT-GEN/2017-18/123 dated 11.08.2017 from Tourism Department, Diu, and the statements of various persons working at the premises and staying in the premises, it is clear that a hotel is being run in the leased and encroached premises. The hotel is spread over the land beyond the leased 782 (seven eighty two) square meters.
- d. Further, as per the same letter no. 3-78/DT-GEN/2017-18/123 dated 11.08.2017 from Tourism Department, Diu, it is also apparent that KAPNPL has not obtained any hotel license as is required under the Goa, Daman and Diu Tourist Trade Act. This is in breach of the condition number 5 of the lease deed which reads as follows: "No work shall be

Sharma
19/9/2017

commenced without prior clearance and approval under Goa, Daman and Diu land Revenue Code, 1968, the Environment (Protection) Act, 1986 and all other relevant Acts, Regulations, Notifications, etc. for the time being in force.”

- e. Further, as per the same letter no. 3-78/DT-GEN/2017-18/123 dated 11.08.2017 from Tourism Department, Diu, it is also apparent from the printouts and booking on online booking sites like makemytrip.com, goibibo.com, etc. that a hotel being run in the leased and encroached premises.
- f. Letter no. PSI/Diu/Cr.No./38/17/2017/4145 dated 11.08.2017 from the SHO, Diu and attachments (especially copies of some pages of the guest register, bill book, etc.) to that letter clearly show that a hotel is being run in the leased and encroached premises.

11. AND WHEREAS, vide notification no. 65-01-2014-LND/Part File/400 dated 06.05.2016, the powers under Section 40 of GDDLRC have been delegated to Dr Apurva Sharma, Deputy Collector, Diu by the Government;

12. AND WHEREAS, this office issued Notice No. 84/2017/2363 on 14/08/2017 (i.e. within the time limit given by the Hon'ble Administrative Tribunal in its order dated 08.08.2017 in LRA 13/2017) mentioning all details as specified above and served the same to Shri S D Modasia, Advocate of the Respondent by hand on 14.08.2017 itself (signature of the Ld. Advocate is on a copy of the notice served);

13. AND WHEREAS, in the above mentioned order of the Hon'ble Administrative Tribunal, Diu, the Hon'ble Administrative Tribunal had categorically ordered that the service of the notice to any of the advocates of the respondent would be sufficient service;

14. AND WHEREAS, while there was no need to do so once the notice was served to the Advocate of the Respondent, yet so as to ensure that the Respondent gets adequate opportunity and remove all doubt about the service of notice, the notice was also served through speed post bearing number **EG962986177IN** to the Krishna Amusement Park and Nursery Private Limited at Diu and speed post no. **EG962986194IN** to the Rajkot address of the respondent;

Sharma
19/9/2017

15. AND WHEREAS, with the consent of the current Respondent, the Hon'ble Administrative Tribunal at Diu had directed the to file his reply and documents and complete the entire proceeding on or before 28.08.2017;

16. AND WHEREAS, on 28.08.2017, neither anyone on behalf of the respondent nor any duly authorized advocate remained present in person before this authority; Mamlatdar, Diu was present on behalf of applicant; However, the respondents submitted a letter to the inward clerk of Collectorate signed by Shri Sureshbhai Govindbhai Patel, Director of respondent, wherein, the respondent requested for fifteen days time to engage an advocate merely on the ground that this was the first date after remanding the case; to which, Mamlatdar, Diu strongly objected on the following grounds (objections have been recorded on the adjournment application itself):

“As per the direction of the Hon'ble Administrative Tribunal, Diu , in the matter dated 08/08/2017 in LRA No.13/2017, it is clearly mentioned that **no** parties will be entitled to seek adjournment on any ground unless the other side given no objection for the same in the matter.

I have strongly objection for adjournment in matter and request to do further process in absence of respondent.

A notice for heaving has also been served to the advocate of respondent on 14/08/2017. However, they are not present for hearing today.”

17. AND WHEREAS, over and above the objections of the Mamlatdar, it is also pertinent to note that the Hon'ble Administrative Tribunal at Diu in its order dated 08.08.2017 in LRA 13/2017 had clearly specified that service of the notice to the advocate of the respondent will be sufficient; and the notice was already served on 14.08.2017 itself (report of the same is on record); moreover, the Hon'ble Administrative Tribunal had in its order mentioned above also fixed 28.08.2017 as the last date for filing reply/say, if any; the notice was also served through speed post and delivery report of both are on record;

18. AND WHEREAS, notwithstanding all of the above, in interest of justice, the respondent is given one week's time to file reply i.e. by or before 04/09/2017, failing which the respondent would lose his right to file a say;

Sharma
19/09/2017

19. AND WHEREAS, since there was no one on behalf of the Respondent to take the next date of hearing, in interest of justice, a notice informing next date of hearing was sent by speed post bearing no. **EG9629899567IN** and also served through talathi to the suit land and also through whatsapp to Shri Suresh G Patel and next date of hearing was given on 04/09/2017 at 15.00 hours;

20. AND WHEREAS, on the next date of hearing on 04.09.2017, no one on behalf of the Respondent was present; and Mamlatdar, Diu submitted an application requesting to not to give any further opportunity to the Respondent since no one was present on behalf of the Respondent nor any document was presented before this authority despite clear directions of the Hon'ble Administrative Tribunal in its order dated 08.08.2017 in LRA 13/2017 that the final date for the same was 28.08.2017 and the fact that another opportunity on 04.09.2017 was given which was also not availed by the respondent;

21. AND WHEREAS, since there was no one on behalf of the Respondent to take the next date of hearing, in interest of justice, a notice informing next date of hearing was sent post and also served through Talathi to the suit land to Shri Suresh G Patel and next date of hearing was given on 12.09.2017 at 15.00 hours;

22. AND WHEREAS, the Respondent yet again submitted a letter dated 04.09.2017 to the inward clerk of the Collectorate which was received in Dak in the evening after the Roznama in the case had been recorded, wherein the Respondent yet again sought one week's time to engage an advocate; and it is important to note that the one week time was already given during the hearing on 04.09.2017;

23. AND WHEREAS, on 12.09.2017, yet again no one on behalf of the Respondent was present and Mamlatdar, Diu yet again applied to pass an ex-parte order referring to the Hon'ble Administrative Tribunal's order dated 08.08.2017 in LRA 13/2017;

24. AND WHEREAS, the opportunity of the Respondent to file a say was closed and the matter was kept for final arguments on 18.09.2017 in compliance with the order of the Hon'ble Administrative Tribunal's order dated 08.08.2017 in LRA 13/2017;

Sharma
19/9/2017

25. AND WHEREAS, since there was no one on behalf of the Respondent to take the next date of hearing, in interest of justice, a notice no. 84/2017/2934 dated 14.09.2017 informing next date of hearing for arguments was sent by speed post bearing no. **EG982053846IN** and also served through Talathi to the suit land to Shri Suresh G Patel and next date of hearing was given on 18.09.2017 at 15.00 hours;

26. AND WHEREAS, yet again a letter with attached Plaint in RCS 10/2017 before the Civil Judge, Sr Division, Diu against the order of the Hon'ble Administrative Tribunal's order dated 08.08.2017 in LRA 13/2017, was given to the inward clerk of Collectorate by the Respondent wherein the Respondent prayed for keeping the Revenue case no. 84/2017 (i.e. this suit) sine die till the RCS 10/2017 is finalized;

27. AND WHEREAS, on 18.09.2017, Shri Prayag Sharma, Manager, Krishna Amusement Park and Nursery Private Limited and Shri Ramesh Dangodara, Accountant, Krishna Amusement Park and Nursery Private Limited were present on behalf of the Respondent and Shri C D Vaja Mamlatdar, Diu on behalf of the Applicant; the Respondent submitted a two page application mentioning the RCS 10/2017 before the Civil Judge, Sr Division, Diu on strength of which the Respondent requesting that "a. Till the decision of Honorable Civil Court in Reg. Civil Suit No. 10/2017 no further proceedings in case no. 40 of LRC no. 84/2017 may please be stayed and please keep it sie-na-die(pending) and oblige; b. if your honour has any objection please give copy and we deserve our right to argue on this application; c. after decision of the Suit if necessary we reserve our right to file written statement, give evidence and make cross examination of witness of Municipality and make arguments also."

28. AND WHEREAS, Mamlatdar, Diu strongly objected to the same since ample opportunity had been given to the respondent to file say and argue the matter(objections are recorded on the application of the respondent itself);

29. AND WHEREAS, a detailed order on the application was passed and the application was rejected in toto on the following grounds:

- a. The Honorable Civil Judge, Senior Division at Diu had not passed any stay order in RCS 10/2017;


19/9/2017

- b. If the Respondent in this case was aggrieved by the order of the Honorable Administrative Tribunal dated 08.08.2017 in LRA 13/2017, then the appropriate authority would have been the Honourable Bombay High Court;
- c. Sufficient opportunity had been given to the Respondent to file say in this matter and to argue his case, which he has failed to avail;
- d. 18.09.2017 was fixed by the Honorable Administrative Tribunal as the final date for arguments vide its order dated 08.08.2017;
- e. The persons present on behalf of the Respondent on 18.09.2017 were unable to even answer basic questions posed by this Authority, let alone argue the matter; if the Respondent wanted to argue on this application, then 18.09.2017 was the opportunity which he failed to avail;
- f. This Authority is bound by the directions issued by the Honourable Administrative Tribunal who made this case time bound with consent of both the parties;
- g. The dates 28.08.2017 and 18.09.2017 were both fixed with consent of the Respondent;

30. AND WHEREAS, hearing in the Court of Dy. Collector, Diu was fixed on 28/08/2017 at 15:00 hours, on 04/09/2017 at 15:00 hours; on 12/09/2017 at 15:00 hours, and on 18/09/2017 at 15:00 hours ;

31. AND WHEREAS, it is pertinent to note that the main argument of the Respondent in his appeal LRA 13/2017 before the Hon'ble Administrative Tribunal was that he had not been given ample opportunity of being heard despite the fact that multiple hearings were kept as mentioned in paragraph 1 of this order;

32. AND WHEREAS, like the last time around, this time also, the Respondent has not stayed present before this authority;

33. AND WHEREAS, it is also pertinent to note that the Respondent had approached the Hon'ble Bombay High Court against the order dated 30.06.2017 within one day itself and that too on a Sunday, and further filing a RCS 10/2017 before the Hon'ble Civil Judge, Sr Division while not filing any written say or remaining present before this authority shows

Shama
19/9/2017

that the failure of the Respondent to submit any documents, evidence or say in this matter before this authority is deliberate and intentional;

34. AND WHEREAS, Honorable Supreme Court in the case of **M.C. Mehta v. Kamal Nath, 1997(1) SCC 388**, in paragraph 35 held as under: *"The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibility, who under the pressures of the changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not for the Courts. If there is a law made by Parliament or the State Legislatures, the Courts can serve as an instrument for determining legislative intent in the exercise of powers of judicial review under the Constitution. But, in the absence of any legislation, **the executive acting under the doctrine of public trust cannot abdicate the natural resource and convert them into private ownership or commercial use.** The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public and in public interest to encroach upon the said resources."*

In view of the above judgment of the Hon'ble Supreme Court, it is clear that not only has the public resource i.e. the Swarnjayanti lake been encroached for private profit, it has also been damaged by the construction activities and filling up of the lake as evident from the satellite images;

35. AND WHEREAS, Honourable Supreme Court of India in Jagpal Singh v. State of Punjab, (2011) AIR (SC) 1123 categorically stated the following:

"15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari vs. Kamala Devi, AIR 2001 SC 3215 (followed by the Madras High Court in L. Krishnan vs. State of Tamil Nadu, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be

Jhanna
19/9/2017

allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

*19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. **The time has come when these malpractices must stop.***

In the above mentioned order, it is pertinent to note that the Hon'ble Supreme Court has prohibited any auctioning of the ponds and all such orders are declared as illegal and are to be ignored. Thus, as per this order, **the very lease deed dated 12.04.2001 is null and void after this order of the Hon'ble Supreme Court.**

Further, it is pertinent to note that the Respondent is occupying 55,945(fifty five thousand nine hundred and forty five) square meters extra area when he had bid only for 782 (seven eighty two) square meters.

36. AND WHEREAS, the Hon'ble Supreme Court in its order in **M.C. Mehta v. Kamal Nath, 1997(1) SCC 388** elaborated upon the public trust doctrine and the responsibility of the State with respect to public resources such as lakes and hence it is reproduced below:

"The court summed up the powers of the state are trustee in the following words:-

*"Thus, the public trust is more than an affirmation of state power to use public property for public purposes. **It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust....."***



The current use by the Respondent is in no way consistent with the doctrine of Public trust as enunciated above and thus in violation of the order of the Hon'ble Supreme Court of India.

37. AND WHEREAS, the various violations of the conditions of the lease as mentioned above are also very important in deciding this matter;

38. AND WHEREAS, from the evidence on record, and the lack of even an iota of evidence to the contrary, the opinions mentioned in paragraph 7 are held as facts and are proven beyond all reasonable doubt on strength of the unchallenged reports as mentioned in paragraphs 5 and 6 above and reasons mentioned in paragraphs 8, 9 and 10 above;

39. NOW THEREFORE, keeping in mind the above facts, submissions, reasons, judgments of higher judiciary and Order dated 08/08/2017 passed by the Hon'ble Principal District Judge, Diu in view, I, **Dr. Apurva Sharma, DANICS, Deputy Collector, Diu** hold the following:

- a. M/S Krishna Amusement Park and Nursery Private Limited (KAPNPL hereinafter) has encroached upon the government land bearing PTS No. 109/7 (Part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters as the land was never leased out to the lease;
- b. KAPNPL has breached the terms and conditions of the lease by constructing illegal and unauthorized structures on the government land bearing PTS No. 109/7 (Part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters;
- c. KAPNPL has breached the terms and conditions of the lease by running a hotel at Government Land PTS No. 109/7 (Part) admeasuring 782 (seven hundred eighty two) square meters and PTS No. 109/7(Part) admeasuring 55,945 (fifty five thousand nine hundred and forty five) square meters;
- d. The lease deed itself is in violation of the orders of the Hon'ble Supreme Court of India and hence null and void;
- e. The Respondent has damaged the environment by filling up and damaging the lake at various places as evident from the satellite images;

Sharma
19/9/2017

40. AND FURTHER, in exercise of the powers conferred to me under section 40 of Goa, Daman and Diu, Land Revenue Code, 1968 do hereby order the eviction of the respondent & removal of the encroachment from Government Land Bearing new City Survey Plot No. P.T.S. 109/7(PART) as per map enclosed as Annexure I admeasuring 55,945 (fifty five thousand nine hundred forty five only) square meters [the 782 square meters of land of PTS no. 109/7(Part) (map enclosed as Annexure-II), which is inside the above mentioned land, leased out as per lease deed dated 12.04.2001, situated at Gandhipara, Diu is not affected by this order since it is protected by the stay order of the Hon'ble Administrative Tribunal at Diu in LRA 04/2012 dated 07.06.2017] enclosed by National Highway 251 Diu-Vanakbara road in the north, Diu-Fudam government road in the south, Government road on the west side and PTS no. 111/21, 111/12 and 111/13, on eight day from this order and also order that the cost of removal of the encroachment from the said Government Land and restoration of the Government Land shall be recovered from the respondent in the form of arrears of land revenue, and direct Mamlatdar, Diu to do the needful and take possession on eighth day from this order.

Given under my hand & seal of this Court on twentieth day of September, 2017.



Y Sharma
19/9/2017
(DR. APURVA SHARMA, DANICS)
DY. COLLECTOR, DIU

To:-

1. Mamlatdar, Diu for necessary action.
2. Shri Sureshbhai G. Patel, Authorised Director of Krishna Amusement Park and Nursery Private Limited, Gondal Road, Rajkot
3. M/S Krishna Amusement Park and Nursery Private Limited, PTS no. 109/7(part), Gandhipara, Diu
- ✓ 4. NIC, Diu to upload it on the official website.
5. Guard File.

Copy to:

Collector, Diu for information, please.

Y Sharma
19/9/2017
(DR. APURVA SHARMA, DANICS)
DY. COLLECTOR, DIU

Enclosed: As above (especially map showing the exact encroachment made by the respondent)

