



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

The Mamlatdar, Diu.	Appellant
V/S		
Shri Soma Nathu (Tatuno), R/o Nagoa, Bhucharwada-Diu.	Respondent

ORDER

1. **WHEREAS**, this office had received report from Mamlatdar, Diu vide letter no. MAM/DIU/LND-MISC/2017-18/36 dated 10/04/2017 regarding encroachment on government land bearing Survey No.171/0(Part) in rural area and reported that the some persons have constructed Pucca houses and pucca huts for residential use on the Government Land illegally;
2. **AND WHEREAS**, this office had issued Show Cause Notice No. 65-05-Illegal Encr.-2017-LND/6041 dated 27/12/2017 to Shri Soma Nathu (Tatuno), under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968 and Rule made there under to show case within 7 days;
3. **AND WHEREAS**, Respondent stated that since he had not received copy of the letter No.MAM/DIU/LND- MISC/2017-18/36 dated: 10/04/2017 as stated in Show Cause Notice dated: 27/12/2017, hence the Respondent/duly authorised agent was unable to file his reply/objection against the so called report/complaint; and therefore Respondent requested to supply the copy as stated in Show Cause Notice dated: 27/12/2017 and adjourn the matter in the interest of justice;
4. **AND WHEREAS**, the copy of the report was given to the Respondent on the day of hearing on 08/02/2018 in the open court;
5. **AND WHEREAS**, the Respondent has submitted his reply dated 13-03-2018 along with affidavits from a few persons wherein she has stated as under;
 - i) At the outset, it is submitted that the Notice under S.40 of the Code is vague, and without any details. 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. That

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the Notice is illegal, arbitrary, and without jurisdiction, and no action can be taken against the Opponent/Respondent under provision of S.40 of the Code.

- ii) That the Opponent/Respondent had filed Application on dated 08/01/2018 stating that the so-called Letter of the Mamlatdar was not enclosed with the Show Cause Notice and submitted to supply the same, without which it is not possible for the opponent/Respondent to reply the Show Cause Notice, and on this ground an adjournment was sought on that date. However surprisingly, without any reason much less any sufficient reason, it is stated in your Notice dated: 29/01/2018 that the reply dated: 08/01/2018 has not been found satisfactory. This is flagrant violation of principle of natural justice and no fair opportunity has been afforded to the Opponent/Respondent to put up his/her defense. Hence, the Notice and the proceeding initiated under S.40, is unjust, unlawful, without any reasoning, contrary to the principle of natural justice and perverse.
- iii) 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.
- iv) 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. This 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.
- v) 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.
- vi) 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 (i.e. the suit land) of the aforesaid entire 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.
- 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

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Government by way of an enactment. However, the Government has never been in possession of the suit land. The Opponent/Respondent and his/her ancestors have been in settled 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 cultivating the same till date, to the knowledge of all including the Government.

- viii) That the Respondent and his/her 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.
- ix) 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.
- x) Thus the Opponent/Respondent has become the owner of said land by principle of adverse possession and/or by way of law of prescription under Portuguese Laws. Also it is submitted the Opponent/Respondent has not made any recent encroachment, and this proceeding under S.40 of the Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.
- xi) Therefore, the Respondent most respectfully pray that the Notice under S.40 of the Code and the proceeding under S.40 of the Code is without authority, invalid, null and void and illegal and the same requires to be set aside, dismissed, revoked or stopped, in the interest of justice.

6. **AND WHEREAS**, in the above mentioned affidavits, each of which an identical copy of the other with exactly the same words, the deponents have, apparently, separately and individually declared and stated on oath that each shall state the truth and nothing but the truth in the affidavit being filed by way of examination-in-chief as under:-

7. **AND WHEREAS**, the respondent on 14/02/2018 has submitted Affidavit-in-evidence from Mrs. Deviben Soma, aged about 46 years, wife of Mr. Soma Nathu, residing at house No. 3382, Rakhwada Sheri, Nagoa, Zolawadi, Diu, on solemn affirmation declare as under:-

- i) That my husband is fisherman and not available in Diu in his absence I am administering all his properties and managing the same including the suit land.
- ii) I say that the Notice under S.40 of the Code is vague, and without any details. 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. That the Notice is illegal, arbitrary, and without jurisdiction, and no action can be taken against me under provision of S. 40 of the Code.

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- iii) That I and my family and ancestors are in settled possession of the suit land since more than 6 decades (i.e. since the Portuguese Regime). That no encroachment is made over the suit land after the coming into force the provisions of Land Revenue Code, and hence she believe that this proceeding is bad under the law and not maintainable.
- iv) 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. This 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.
- v) 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.
- vi) That Themulrasf Ardeshir and Homi Ardeshir were not residing at Diu District and this entire land being vacant and idle, and her ancestor being very poor persons and not having any source of livelihood, for livelihood of the family, since the year 1955, my ancestors entered into part (i.e. the suit land) of the aforesaid entire land, and occupied the suit land, and started cultivating the same and ever since, she and 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.
- 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. She and her ancestors have been in settled 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 cultivating the same till date, to the knowledge of all including the Government.
- viii) That I and my ancestors are cultivating the suit land, taking seasonal crop of Bajri during monsoon and also other crops and vegetables like 'Dhanabhaji', 'Pandadi', 'Bengan', 'Mirchi', 'Onions' etc. during other seasons. Not only this, but I and my ancestors have planted many trees, the age of many of the trees is more than 50 years.
- ix) 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.
- x) That I or my ancestors have not entered or occupied the suit land recently, but the same is in their possession since more than 6 decades (60 years).
- xi) That, therefore, I has became the owner of suit land by principle of adverse possession and/or by way of law of prescription under Portuguese Laws, and this

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proceeding under S.40, of the Land Revenue Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.

xii) Whatever stated hereinabove on facts are as per her personal knowledge, and whatever stated on legal aspects are as per legal advice I has obtained and I believe the same to be true;

8. **AND WHEREAS**, on 14/02/2018 respondent has submitted Affidavit-in evidence from Mr. Lakhman Bava Solanki, aged about 75 years, Son of late Mr. Bava Nathu Solanki, residing at house No. 3450, Mani Road, Nagoa, Zolawadi, Diu, on solemn affirmation declare as under :-

i) That I personally know the Opponent/Respondent.

ii) That I was born and brought up at Nagoa and I am a permanent resident of village Nagoa since his birth.

iii) That I has personally seen the suit land and I am a having personal knowledge about the possession and nature of possession of the Respondent over the suit land, as he is a local resident of village Nagoa and also he has many occasions to personally visit the suit land and surrounding vicinity.

iv) That the agricultural land of village Nagoa, including the suit land, was having Old Survey Numbers 146 and 147, and these entire lands were originally owned by Themulrasf Ardeshir and Homi Ardeshir.

v) That I know that both Themulrasf Ardesnrr and Homi Ardeshir were not local residents of Diu area, but there were residing in other cities.

vi) That since the year 1955, the ancestors of the Opponent/Respondent has entered 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 and are possessing and enjoying and cultivating the suit land as owner, openly, peacefully, continuously, as of right, and to the knowledge of all.

vii) That many other villagers of village Nagoa have also similarly occupied other part of the entire lands originally owned by Themulrasf Ardeshir and Homi Ardeshir, in the year 1955.

viii) That since the year 1955 till Today, he has only seen the Respondent and his/her ancestors in possession and occupation of the suit land; and cultivating the suit land, taking crops, and also fruits from fruit bearing trees.

ix) Whatever stated hereinabove in his Affidavit is true and correct to his personal knowledge.

9. **AND WHEREAS**, the respondent on 14/02/2018 has submitted Affidavit-in evidence from Mr. Bagoane Lacmane, aged about 70 years, Son of late Mr. Lacmane Natu, resideing at house No. 3532, Radhe Krishna Temple, Nagoa, Zolawadi, Diu, on solemn affirmation declare as under :-

i) That I personally know the Opponent/Respondent.


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- ii) That I is born and brought up at village Nagoa and I am a permanent resident of village Nagoa since his birth.
- iii) That Since I became of understanding age, and as far as I can remember, I have see the ancestors of the Opponent/Respondent in possession of the suit land, and cultivating the same.
- iv) That ever since, the Opponent/Respondent and his/her ancestors are in possession of the suit land and are possessing and enjoying and cultivating the suit land as owner, openly, peacefully, continuously, as of right, and to the knowledge of all.
- v) That since my childhood till today, I have only seen the Respondent and his/her ancestors in possession and occupation of the suit land, and cultivating the suit land, taking crops, and also fruits from fruit bearing trees.
- vi) Whatever stated hereinabove in his Affidavit is true and correct to my personal knowledge;

10. **AND WHEREAS**, the respondent on 14/02/2018 has submitted Affidavit-in evidence from Mr. Kanji Bava, aged about 67 years, Son of late Mr. Bava Bhoja, residing at house No. 3377, Main Road, Nagoa, Zolawadi, Diu, on solemn affirmation declare as under:-

- i) That I personally know the Opponent/Respondent.
- ii) That I is born and brought up at village Nagoa and I am a permanent resident of village Nagoa since his birth.
- iii) That since his childhood, he has saw the ancestors of the Opponent/Respondent in possession of the suit land.
- iv) That as per his knowledge, since 1955, the Opponent/Respondent and his/her ancestors are in possession of the suit land and they are possessing and enjoying and cultivating the suit and as owner, openly peacefully, continuously, as of right, and to the knowledge of all, and ever since till date, they are taking seasonal crop of Bajri during monsoon and also other crops and vegetables like 'Dhanabhaji', 'Pandadi', 'Bengan', 'Mirchi', 'Onions' etc. during other seasons, and also fruits from fruit bearing trees.
- v) Whatever stated hereinabove in his Affidavit is true and correct to his personal knowledge.

11. **AND WHEREAS**, the respondent on 14/02/2018 has submitted Affidavit-in evidence from Mr. Deva Rama, aged about 63 years, Son of late Mr. Rama Hira, residing at House No.3370, Nagoa, Zolawadi, Diu, on solemn affirmation declare as under:-

- i) That I personally know the Opponent/Respondent.
- ii) That I am born and brought up at village Nagoa and I am a permanent resident of village Nagoa since my birth.


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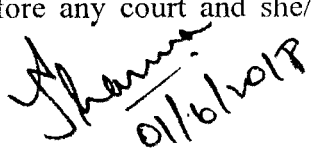
- iii) That since my childhood, I have seen the ancestors of the Opponent/Respondent in possession of the suit land.
- iv) That during his childhood, I and my siblings and friends used to visit the suit land and play there. That the Opponent/Respondent and his/her ancestors are in possession of the suit land since about more than 60 years and they are possessing and enjoying and cultivating the suit land as owner openly, peacefully, continuously, as of right, and to the knowledge of all, and ever since till date, they are taking seasonal crop of Bajri during monsoon and also other crops and vegetables like 'Dhanabhaji', 'Pandadl', 'Bengan', 'Mirchi', 'Onions' etc. during other seasons, and also fruits from fruit bearing trees.
- v) Whatever stated hereinabove in his Affidavit is true and correct to his personal knowledge.

12. **AND WHEREAS**, the Mamlatdar submitted his Written Statement / Written Arguments against written Statement/Reply to Notice in the said matter wherein the Applicant therein submitted the facts as under:-

- i) The said land bearing survey No.171/0 situated at Nagoa, Bhucharwada, Diu is belongs to Government since prepared the records of rights and it is mentioned as Government land in entry No. 406 in the register of Form No.9 and also in the index register of lands (Form No.3) and no other name was entered in "other rights" column neither Tenant nor cultivator at that time. Copy of the Form No.3 and Form No.9 are enclosed herewith as annexure- I & II.
- ii) Total area of the said land is 01.43.00 Ha. Ars i.e. 14300 Sq.Mtrs. and out of that 00.73.40 Ha. Ars. i.e. 7340 Sq.Mtrs. lands are Sandy land and other are Rocky Land i.e. uncultivable land as per the records. A copy of I & XIV is enclosed herewith as annexure-III.

13. The Applicant/Appellant herein, submits its written arguments before this Hon'ble Court against written statement/Reply submitted by an opponent/respondent Shri Soma Nathu who h as encroached the said Government land bearing Survey No. 171/0(Part) area admeasuring 4242 Sq.Mts. situated at Nagoa, Moje-Bhucharwada of District Diu as under;

- (i) Whatever stated in para -1 & 2 of written statement/reply by the opponent/respondent is not acceptable and it is not pertained to the appellant/applicant.
- (ii) Whatever stated in para -3 of written statement/reply by the opponent/respondent is not acceptable, because in reply of herself/himself an opponent says that she/he was in settled possession of the suit land since long i.e. since Portuguese regime. But as per records available in the office of the Mamlatdar, Diu, it is revealed that he/she has not claimed his/her possession before any court and she/he has not


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tried to enter her/his name in the records of right neither as tenant nor as cultivator till the issuance of the said notice.

- (iii) Whatever stated in Para 4, 5 & 6, in that since the year 1949 Themulrasf Ardeshir and Homi Ardeshir owned these land bearing old survey No. 146 & 147. by public will dated 30/12/1942. And the said entry was registered in and Registration office, Daman and suit land is part of the said whole land. An opponent himself/herself mentioned that Themulrasf Ardeshir and Homi Ardeshir were owning the said land and they came into picture by way of will. And these both were not residents of Diu area and the former was resident of Mumbai and thought the opponent/respondent being very poor persons and not having ,livelihood of their family and due to that since the year 1955, the ancestors of the opponent/respondent had entered into part (i.e. Suit land) and cultivating suit. land etc. Now in Para 3 of the reply an opponent/respondent says that he/she was in settled possession since more than 6 decades (i.e. since the Portuguese Regime) and in Para -6 she/he said that since 1955 his/her ancestors entered in to the suit land. This two contradictory statement made by an opponent/respondent in his/her written statement/reply of the notice and by way of wrong submission an opponent/respondent is trying to misguide this Hon'ble court.
- (iv) Whatever stated in Para - 7 in written statement/reply by the opponent that 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 encroachment. And respondent claims that he/she was in possession of the said land. Now, if respondent says that he/she was in possession and due to enactment Government came into picture, then my submission is that on 5/04/1973 The Hon'ble Asst. Civil Administrator had published the notice and asking for claim if any in land of moje Cimbor, Bhucharwada, Ghoghla & Vanakbara but no one from the respondent had filed their claim during that prescribed time period. A copy of the said public notice is enclosed herewith as annexure-IV. So, by way of this, respondent is creating hurdle in proceeding of the Government process.
- (v) Whatever stated in Para-8 of written statement/reply by the opponent is that he was farming since long and taking seasonal crop as well as vegetables. But as per the procedure and to prove their occupancy no one respondent has approached to the concern village authority to register their crop in crop Register and also they have not deposited any revenue (Mehsul) for the said till the date of filing this claim.
- (vi) Whatever stated in Para - 9 & 10 of written statement/reply by the opponent that many villagers were occupied entire lands since 1955 and some of them have built up their huts, but these all are illegal and encroached the said Government land.
- (vii) Whatever stated in Para-11 of written statement/reply by the opponent that the said respondent is becomes the owner of the said land by principle of adverse

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possession and by way of law of prescription under Portuguese Laws. If one moment We believe this then again question is that since 1955 and after that an enactment of Abolition of Proprietorship of Lands in Diu Act, 1971 this Respondent had never approached before any authority to prove his/her ownership under any provision.

- (viii) Apart from the above mentioned details whatever evidence submitted along with his/her submission are manipulated and fictitious and against that I submits herewith;
- (ix) By way of Affidavit dated 14/02/2018 Lacmane Bawa has declared on oath in Para 6 of his affidavit that" That since the year 1955, the ancestors of the opponent/Respondent had entered 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 and they are possessing and enjoying and cultivating the suit land as owner, openly, peacefully, continuously, as of right and to the knowledge of all"

Now, question arise in that in the year 1955 this Lacmane Bawa was at the age of approx. 13years and he has files that "ancestors of opponent/respondent had entered in the suit land and he doesn't know the name of ancestors, then how his affidavit is valid and true as far as concern to prove an authenticity of occupancy? And another most important thing is that Mr. Lakhman Bawa is also one of the claimant in this suit land as a respondent, then how his declaration is valid in this case?

14. By way of Affidavit dated 14/02/2018 Bagoane Lacmane has declared on oath in his affidavit that" That since I became of understanding age and as far as I can remember, I have seen the ancestors are in possession and cultivating land" the opponent/Respondent and his/her ancestors are in possession of the suit land and they are possessing and enjoying and cultivating the suit land as owner, openly, peacefully, continuously, as of right and to the knowledge of all"
15. Now, question arise in that in the year 1955 this Bagoane Lacmane was at the age of approx. 8 years and he has files that "ancestors of opponent/respondent are possessing the suit land, but Bagoane Lacmane doesn't know the name of ancestors of opponent/respondent, then how his affidavit is valid and true as far as concern to prove an authenticity of occupancy? And another most important thing is that Mr. Bagoane Lacmane is also one of the claimant in this suit land as a respondent, then how his declaration is valid in this case?
16. By way of Affidavit dated 14/02/2018 Kanji Bawa has declared on oath in Para 3 & 4 of his affidavit that" That since the year 1955, the ancestors of the opponent/Respondent had entered 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 and they are possessing and enjoying

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and cultivating the suit land as owner,' openly, peacefully, continuously, as of right and to the knowledge of all"

17. Now, question arise in that in the year 1955 this Mr. Kanji Bava was at the age of approx. 5 years and he has files that "ancestors of opponent/respondent has entered in the suit land and he doesn't know the name of ancestors then how his affidavit is valid and true as far as concern to prove an authenticity of occupancy? And another most important thing is that Mr. Kanji Bava is also one of the claimant in this suit land as a respondent, then how his declaration is valid in this case?
18. By way of Affidavit dated 14/02/2018 Deva Rama has declared on oath in his affidavit that" That since I became of understanding age and as far as I can remember, I have seen the ancestors was in possession and cultivating land" the opponent/Respondent and his/her ancestors are in possession of the suit land and they are possessing and enjoying and cultivating the suit land as owner, openly, peacefully, continuously, as of right and to the knowledge of all"
19. Now, question arise in that in the year 1955 this Deva Rama was at the age of approx. 1 year and he has files that "ancestors of opponent/respondent was possessing the suit land, but Mr. Deva Rama doesn't know the name of ancestors then how his affidavit is valid and true as far as concern to prove an authenticity of occupancy? And another most important thing is that Mr. Deva Rama is also one of the claimant in this suit land as a respondent then how his declaration is valid in this case?
20. The Opponent/Respondent has enclosed copy of Property Transfer Certificate with type copy of the same as evidence. But in that the executor neither mentioned about the Crop cultivation details and nor about the occupants.
21. Therefore, the appellant/applicant most respectfully submits and prays that whatever reliefs, asked by respondent/opponent in their application/reply/written statement in this case is vague and not as per the prevailing Law and the said Opponent/Respondent have encroached over this suit land and also constructed huts illegally and without any permission. So, in the interest of justice passed suitable order to remove the same and vacant the said land with immediate effect.
22. **AND WHEREAS**, Advocate for the Opponent/Respondent submitted his written notes of arguments as under :-
 - i) That the Opponent. Respondent has received Notice under S.40 of the Goa, Daman and Diu Land revenue code (hereinafter referred to as "the code" for brevity) with allegation of illegal encroachment on Government Land, directing the Opponent/Respondent to vacate the said land.
 - ii) The Opponent/Respondent has filed the detailed Reply/ written statement to the aforesaid notice, and in support of the reply, affidavit of Opponent/Respondent is produced along with affidavits of witnesses.

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iii) The facts in respect to the suit property and the defense of the Opponent/Respondent is as under :-

- 1) That the Opponent/Respondent is in settled decades (i.e. since the Portuguese Regime), since many years prior to coming into force the provision of and 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 the face the provisions of LRC, and hence this proceeding is bad under the law and not maintainable.
- 2) 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 decribed in favour of Themulrasf Ardeshir and homi Ardeshir in the land Registration Office, Daman, Underd No. 2164 at Page NO.I01 of Book B-4th modern. The suit land is part of this entire land.
- 3) That both Themurasf Ardeshir and Homi Ardeshir were not residents of Diu area, the former was resident of Nasirabad and the later was resident of Nasirabad.
- 4) That Thernulrasf 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 stat-ted 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.
- 5) That thereafter, on application of abolition of proprietorship of lands in Diu Act, title of original owner-s unto or upon 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. The Opponent/Respondent and his/her ancestors have been in settled possession of the suit land adverse to the right, title, interest or snare of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and cultivating the same till date, to the knowledge of ail including the Government.
- 6) That the Respondent and his/her 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 as well as

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other development in the suit land inclosing hut well etc., if any, is given in the Written Statement / Reply as well as Affidavit of the Opponent.

- 7) That many other villagers of village Nagoa have also similarly occupied ether part of the entire lands, during the same period in the year 1955.
- 8) Thus the Opponent/Respondent has become the owner of said land by principle of adverse possession and/or by way of law of prescription under Portuguese Laws.
- iv) 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 that the Opponent/Respondent has not made any recent encroachment. Thus there is a bonafide dispute of title raised by the Opponent, and this proceeding under S.40 of the Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.
- v) Also, the said Notice under S.40 of the Code is vague, and without any details. The Notice and the proceeding initiated under S.40, is unjust, unlawful, without any reasoning, contrary to the principle of natural justice and perverse. The Notice also lacks details with regards to the description of tile land for which the same is issued and its boundaries and area/extent. That the Notice is therefore illegal, arbitrary, and without jurisdiction, and no action can. be taken against the Opponent/Respondent under provision of S.40 of the Code.
- vi) 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 :-
 - (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.That this proceeding under S.40 of the Land Revenue Code, being of a summary nature, is illegal, wholly without jurisdiction and not maintainable.
- vii) 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 unauthorized occupation. Hence this Hon'ble Court could not and should not have proceeded with this case under S.40 of the code and hence the show cause notice as well as proceedings taken by this Hon'ble Court (i.e. the Deputy Collector) is illegal, without authority, null and void abilities and without jurisdiction.
- viii) Therefore, taking into consideration the overall facts as well as the provisions of law, this proceeding under S.40 of the. Code is without authority, invalid, null and

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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.

13. **AND WHEREAS**, hearing in the Court of Deputy Collector, Diu was fixed on 08/02/2018 at 16:00 hours, on 15/02/2018 at 16:00 hours, on 13/03/2018 at 16:00 hours, on 26/03/2018 at 16:00 hours, and on 12/04/2018 at 16:00 hours;

14. **AND WHEREAS**, the following issues merit attention in determining whether it is an encroachment over government land or not:

a. Whether the undersigned is competent to conduct these proceedings? 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."** Moreover, the land is entered in the name of government in land records. Thus, the competency of the undersigned is unquestionable with regard to these proceedings.

b. 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:

i. STATE OF A.P. vs. B. VENKATAMMA AND ORS. Reported in 2004 (5) ALD 605

ii. 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:

i. 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.

ii. 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.

iii. Thirdly, both the cases are of Honourable Andhra Pradesh High Court, whereas Diu district falls under the jurisdiction of Honourable Bombay High Court.

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- iv. 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.
- c. Moreover, Mamlatdar, Diu has submitted 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. 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.
- e. The Honourable Supreme Court of India observed in **R.Hanumaiah & Anr vs Sec.To Govt.Of Kar.Rev.Dept.& ... on 24 February, 2010**: “17. Mere temporary use or occupation **without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government**(emphasis added). In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized 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.”

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From the above judgment and facts elaborated in paragraph number 14 (c) and (d), 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.

- f. Further, the affidavits submitted by the witnesses of the respondent are all identical and cyclostyled copies of each other. The time period mentioned in each of them is 50-60 years, which means that the youngest witnesses must have been between 1 (one) year and 6 (six) years old, an age at which it is impossible to recall anything. This only shows that the affidavits are prepared without application of mind which renders them effectively meaningless. Further, only the last page of each affidavit is signed, which begs explanation.

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.

- g. 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 judgement, 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.*"

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.

- h. Further, the witnesses of the Respondent are all interested parties since they have also encroached upon government land in the vicinity of the Respondent's land. Honourable Supreme Court of India has held that such evidence should be examined more carefully than others. On examination of the affidavits, the contradictions and shortcomings as mentioned by the Mamlatdar in his written submissions have been found to be true and thus, on these grounds as well, the affidavits stand rejected.
- i. 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.

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01/6/18

