



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

The Mamlatdar, Diu.	Appellant
V/S		
Shri Prakash Nathu, and The legal Heir/s of Late Smt. Valuben Harji, Both R/o of Near Ghoghla Jogging Track, Ghoghla, Diu	Respondent/s

ORDER

1. **WHEREAS**, this office has received letter No. 19-04-2015/GAD/ 1398 dated 14-10-2016 from Chief Officer, Diu Municipal Council, Diu regarding removal of private houses from the site of jogging track situated at Ghoghla-Diu;

2. **AND WHEREAS**, Chief Officer, Diu Municipal Council, Diu vide his above letter informed that during the visit of Hon'ble Administrator, Daman and Diu, to Diu District in the month of October-2016 had inspected the Jogging track and directed that the private houses from the site of Jogging Track at Ghoghla-Diu should be removed;

3. **AND WHEREAS**, Chief Officer, Diu Municipal Council, Diu further requested to carry out the inspection to remove the private houses if found on Government Land at site and as per vide this office letter NO. 64-11-2016/LND/2816 dated 31-10-2016, this office has requested (1) Mamlatdar, Diu and (2) Enquiry Officer, Diu to furnish detailed field report accordingly;

4. **AND WHEREAS**, Mamlatdar, Diu and Enquiry Officer, Diu along with Surveyor and concerned Talathi inspected site in question jointly; They submitted report vide letter No. 4-1-LND/ENC.12/2016-17/4850 dated 04-11-2016 and letter No. 6-10-84/CTS/DID/2016-17/743, dated 02.11.2016 respectively that as per physical measurement, Smt. Velubai Harji who has constructed residential house covered in area 47 sq.mts. out of which area of approx. 39 sq.mts. belongs to the Government and only 08 sq.mts. belongs to her and further also submitted that as per record of City Survey Office, Diu New City Survey Plot No. PTS. 34/10, admeasuring area 24 sq.mts. is confirmed in the name of Smt. Veluben Harji;

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5. **AND WHEREAS**, this office was requested Mamlatdar, Diu vide letter No. 64-11-2016/LND/3293 dated 13/12/2016 to furnish detailed report about the period of encroachment, present occupancy of the land bearing New City Survey No. PTS-34/10 situated at Jogging Track, Ghoghla, Diu, accordingly, Mamlatdar, Diu vide his letter No. 4/1/LAND/2016-17/5232 dated 28-12-2016 informed that Smt. Valuben Harji is not alive and at present Shri Prakash Nathu is residing on rent along with his family and the said house was constructed long back keeping in mind the report of Enquiry Officer, City Survey, Diu which is already transcribed, it is clear that Late Smt. Velubai Harji has constructed a residential house by illegally encroaching approx. 39 sq.mts. of Government Land at Ghoghla-Diu;

6. **AND WHEREAS**, reports were sought from Mamlatdar, Diu and Enquiry Officer, City Survey, Diu respectively and accordingly report dated 04/11/2016 and 02-11-2016 have been received wherein it is mentioned that **SMT. VALUBEN HARJI**, resident of Ghoghla-Diu has constructed residential house encroaching upon 39 sq. mts. of Government Land bearing New City Survey PTS No. 51/32, situated at Jogging Track, Ghoghla-Diu; The Mamlatdar, Diu vide his letter dated 28-12-2016 has also informed that **SMT. VALUBEN HARJI** is not alive and at present **SHRI PRAKASH NATHU** is residing on rent along with his family;

7. **AND WHEREAS**, vide notice no. 65-01-ILLEGAL ENCR.2016-LND/3636 dated 06.01.2017, which was served through speed post and pasting on the suit land on 10.01.2017 as proven by the panchnama dated 10.01.2017 (which is on record), the legal heirs of **SMT. VALUBEN HARJI** were directed to Show Cause within 10 days from the receipt of this notice as to why action should not be taken as provided under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968 and rules made thereunder for encroaching upon 39 sq.mts of Government Land bearing New City Survey No. PTS-51/32, situated at Jogging Track, Ghoghla-Diu;

8. **AND WHEREAS**, this office has issued Notice to Shri Prakash Nathu, and the legal Heirs of Late Smt. Valuben Harji for personal hearing under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968 vide no. 83/2017/451 dated 11.05.2017, which was also served through speed post and pasting at the site the proof of which is the panchnama dated 15.05.2017;

9. **AND WHEREAS**, the respondent, Smt. Nayanaben Prakash Bamania wife of Shri Prakash Nathu, who is tenant staying at the encroached site stated and gave in writing that the person who gave the house on rent has migrated abroad and that the notice be served to the legal heirs of that person in London; She

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further stated that her husband is a sea man and has gone on ship and will return after 9 months;

10. **AND WHEREAS**, the arguments made by the respondent, Smt. Nayanaben Prakash Bamania, are unacceptable as the lady and her husband are the current occupants of the encroached land and they have been served Notice adequately and the notices have also been pasted on the site on 10.01.2017 and 15.05.2017 as per report of the concerned Talathi and Mamlatdar, Diu;

11. **AND WHEREAS**, hearing in the Court of Dy. Collector, Diu was fixed on 17.05.2017 at 15:00 hours, and on 23/05/2017 at 15:00 hours ;

12. **AND WHEREAS**, in the interest of justice, final opportunity was given on 23.05.2017 to the respondent to defend their case failing which they would be evicted from the said government land;

13. **AND WHEREAS**, the respondent neither personally nor through his duly authorize advocate was remained present during hearing on 23.05.2017;

14. **AND WHEREAS**, the absence of the respondent even after giving final opportunity is therefore a just ground for evicting the person from the encroached government land;

15. **AND WHEREAS**, the most important point is that the respondents have not submitted an iota of evidence to show that they have not encroached on the said government land or that their occupation of the said government land is legal;

16. **AND WHEREAS**, it is surprising that a person encroaching on government land has the audacity to sublet the said encroachment;

17. **AND WHEREAS**, a person who has already emigrated from India to London, as per the present encroacher, deserves to be evicted forthrightly;

18. **AND WHEREAS**, the current occupant of the encroachment is the person who is the main party to the suit since she and her husband are the current encroachers, and they have been given sufficient opportunity to defend their matter;

19. **AND WHEREAS**, the proceedings under Section 40 of the Goa, Daman and Diu Land Revenue Act, 1968 are summary in nature, keeping which in mind, the above proceedings are sufficient as per the said Act;

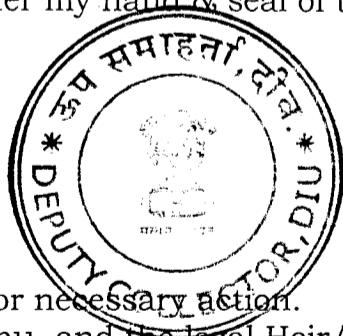
20. **AND WHEREAS**, Honourable **Supreme Court of India** has unequivocally in **Jagpal Singh & Ors vs State Of Punjab & Ors** on **28 January, 2011**

directed that, "before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the **speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing** (emphasis added). Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession";

21. **AND WHEREAS**, keeping in mind that the above said land is on the main road of Diu district and on the jogging track, areas which are for public use, the above directions regarding speedy eviction after a brief hearing are applicable to this case as well;

22. **NOW THEREFORE**, keeping the above facts, reasons and judgment in view, I, **Dr. Apurva Sharma, DANICS, Deputy Collector, Diu** 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 **PTS No.51/32(P), situated at Ghoghla, Diu** 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 land revenue, and direct Mamlatdar, Diu to do the needful immediately;

23. Given under my hand & seal of this Court on twenty third day of May, 2017.



Sharma
23/5/2017
(DR. APURVA SHARMA), DANICS
DY. COLLECTOR, DIU

To:-

1. Mamlatdar, Diu for necessary action.
2. Shri Prakash Nathu, and the legal Heir/s of Late Smt. Valuben Harji, Both R/o of Near Ghoghla Jogging Track, for compliance.
- ✓ 3. NIC, Diu to upload it on the official website.
4. Guard File.

Copy to:

Collector, Diu for information please

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23/5/2017
(DR. APURVA SHARMA), DANICS
DY. COLLECTOR, DIU