

U.T. ADMINISTRATION OF DAMAN AND DIU,  
OFFICE OF THE COLLECTOR,  
DIU

Case No.65-03-illegal const-2015-LND/3566

Dated: - 02-02-2018

Read: - A complaint from Shri Arif Musabhai Movar resident of H. No.220-A, Hajjawada, Diu forwarded through letter F. No. U.13034/10/2015-CPD/DD/DNH dated Government of India, Ministry of Home Affairs (UT Division), North Block, New Delhi, Dated 15th Nov 2015.


**JUDGMENT**

This order will dispose the complaint of Shri Arif Musabhai Movar received by this office by a letter F. No. U.13034/10/2015-CPD/DD/DNH, dated Government of India, Ministry of Home Affairs (UT Division), North Block, New Delhi, Dated 15th Nov 2015, regarding sale transaction of Government Land Worth crores of rupees, located at Diu City (Union Territory).

Brief facts of the case are as follows:

The property No. PTS-121/54 admeasuring 475 sq.mts. was provisionally entered in name of Government as per City Survey record. However, it was regularized to Shri Kumudlal Harakhchand Chudasama vide Sanad dated 20/12/1978 by the Collector, Diu. The Enquiry Officer, City Survey, Diu has confirmed the said property in the name of Niranjana Kumudlal alias Smt. Niranjana Cumaldas as Class-II occupant vide order Sr. No. 2306/89 dated 04/08/1989. Then after, Smt. Niranjana Kumudlal alias Niranjana Cumaldas has gifted the said property to Shri Vijay Cumaldas vide registered gift deed Sr. No. 125/2009 dated 30/03/2009. Subsequently, on the basis of the Gift Deed, Shri Vijay Cumaldas has sold the property to Shri Mansuclal Carsane and Smt. Ansuya Bai Mansuclal by way of Sale Deed registered under Sr. No. 484/2014 dated 15/12/2014. As per the Sale Deed presented, the Enquiry Officer, City Survey, Diu re-confirmed the said land in the name of Shri Mansuclal Carsane and Smt. Ansuya Bai Mansuclal by way of mutation process under Section 96 of Goa, Daman & Diu Land Revenue Code, 1968.

Gift Deed and Sale Deed mentioned the said property as Class-I instead of Class-II which cannot be transferred without prior permission of the Collector, Diu.

 The office has received a letter F. No. U.13034/10/2015-CPD/DD/DNH, dated Government of India, Ministry of Home Affairs (UT Division), North Block, New Delhi, Dated 15/November/2015, through the Administrator, UT of Daman & Diu Secretariat, Moti Daman alongwith complaint of Shri Arif Musabhai Movar, House No.220-A Hajjawada Diu, UT Of Daman and Diu regarding sale transaction of Government Land Worth crores of rupees, located at Diu City (Union Territory). Hence this case;

Upon this the reports were called from various departments. It is clear fact on the record that the subject land was allotted to the grantee Shri Kumudlal Harakhchand Chudasama, Khusalpara-Diu for construction purpose vide Sanad dated 20-12-1978 under Section 21 of Land Revenue Code, 1968 and Rules made there under on a certain

terms and conditions as mentioned in the Sanad itself. Apart from other condition, the condition Nos. (iv) to (vii), Rule No. 15 and its conditions shown therein are crystal clear and firm in its status that every grant under this part shall be subject to the provisions of Land Revenue Code and Rules made thereunder specially the Rule 15 (a) of the Goa, Daman and Diu Land Revenue (Disposal of Government Lands) Rules, 1971. However, neither the grantee nor the alleged purchaser obtained the prior approval of the Collector, Diu while disposing the land. Thus prima-facie complaint appears to be genuine and needs further discrete inquiry on my part as for such alleged violation of the conditions of the grant, the Rule 15(e) of the Goa, Daman and Diu Land Revenue (Disposal of Government Lands) Rules, 1971 empowers the Collector, Diu to resume and to take possession of the land and under such circumstances the grantee shall be liable to be evicted from the land.

This office has issued 04 Show Cause Notices to (1) Shri Niranjana Cumuldas, Diu (2) Shri Vijay Cumuldas, Diu (3) Shri Mansuclal Carsane and (4) Smt. Ansuya Mansuclal. The reply submitted by the above four persons are with similar contents and they have denied with the restrictions imposed in Class-II land bearing survey No. PTS 121/54, area admeasuring about 475 sq.mts. situated at Vekaria Road, Diu by saying that the concerned land is not Class-II and there is no any iota evidence to show the said property is Class-II property in any Government records including Land revenue records of City Survey, Diu. They have demanded for any proof pointing the said property as class II.

Hearing in the Court of Collector, Diu was fixed on 22/02/2017 at 15.30 hours, on 15/03/2017 at 15.30 hours, on 26/04/2017 at 15:30 hours, on 16/05/2017 at 15:30 hours, on 27/07/2017 at 15:30 hours, on 24/08/2017 at 16:00 hours, on 08/09/2017 at 16:00 hours, on 26/09/2017 at 16:00 hours, on 29/09/2017 at 16:00 hours, on 12/10/2017 at 16:00 hours, on 23/11/2017 at 16:00 hours on 05/12/2017 at 16:00 hours on 14/12/2017 at 16:00 hours, on 18/12/2017 at 16:00 hours, on 03/01/2018 at 16:00 hours, on 31/01/2018 at 16:00 hours, and on 01/02/2018 at 16:00 hours.

The following questions are to be addressed:

1. The nature of property in question confirmed by way of encroachment is Class I or Class-II ?
2. Policy of UT govt. regarding the confirmation of encroached lands ?
3. Can a person make gift deed of Class-II property? If yes under which law ?
4. Can a person make gift deed of Class-II property without the permission of Collector ?


There are authentic evidences available with this office which clearly reveal that the land originally belonged to the Government and the same was confirmed on 20-12-1978 to Shri Kumudlal Harakhchand Chudasama, Khusalpara, Diu vide Form XIV-Agreement under Rule 41 (a) (iv) with certain restrictions mentioned in terms and conditions of the Sanad.

Further, the Judgment/Order passed by the Enquiry Officer, City Survey, Diu mentioned that "Site inspected on dated 08-06- 1989 at 10:00 a.m. with Survey staff. Inspection note recorded in the presence of Sh. Vijay Kumudlal. Boundaries shown and made some changes in P.T. Sheet in the afternoon session at 3:30 p.m. Shri Vijay Kumudlal remained present and statement on oath recorded. He deposed that the said land originally belonged to the Government and the said land was allotted to his late father Shri Kumudlal Harakhchand Chudasama vide Sanad dated 20-12-1978 by the Collector".

The advocates of the respondents argued that Sanad/Agreement in Form XIV under Rules 41 (a) (iv) of Land Revenue Code dated 20-12-1978 is an agreement between the Central Government through the Collector, Diu, on one part and Shri Kumudlal Harakchand on the other part where the Government is the grantor while Kumudlal is the Grantee. The Central Government granted this land to the grantee i.e. Kumudlal, the occupancy rights U/s 38 of the Code on payment of occupancy price of Rs.475/-. He further argued that the said land was confirmed vide confirmation order dated 04-08-1989 in the name of Smt. Niranjana Cumuldas, widow of Cumuldas Harakchand by the then Enquiry Officer, City Survey, Diu where there is no mention of Class-II Property.

The Advocate for the respondents argued that at no point in any document, there is any mention of Class-II property and hence this case holds no merits and the same should be closed in the interest of justice.

The advocate to the respondents also took my attention to the Government circular no.RD/LND/DIU/108/74-76 dated 23-03-1976 and Circular no. RD/LND/DIU/150/77 dated 30-06-1977 which gave the guidelines regarding regularization of encroachments. The first circular no.RD/LND/DIU/108/74-76 dated 23-03-1976 gave the broad outline of the encroachment regularization. Accordingly, two divisions were made. The first guideline is regarding encroachment of agricultural land which reads as under:-



"1. Encroachment of Govt. lands for agriculture: Those persons, who have encroached upon Government land for agricultural purpose, prior to the enforcement of the Land Revenue Code, should be granted under section 20 read with section 21 of the code as occupant Class II. This will enable these persons to hold the land in perpetuity, but they will not able to transfer the land without prior permission of the Government. In accordance with Rule 12 of the Goa, Daman and Diu Land Revenue (Disposal of Government Lands) Rules, 1971, subject to other conditions, the extent of allottable land in these cases may be restricted to one economic holding which means the followings:

- i. one hectare of paddy land, or
- ii. one hectare of land used for coconut garden, or
- iii. one hectare of land for areca nut garden,
- iv. one hectare of land used for cultivation of sugarcane, or
- v. one hectare of land under perennial irrigation, or
- vi. Two hectares of any other land."

Second guide line is regarding regularisation of encroachment of the land used for construction of houses which reads as under:-

"II. Encroachment on Government land used for construction of houses: The Government has decided that the encroachments made prior to the enforcement of the Land Revenue Code on Govt. lands for construction of houses, may be regularized up to the maximum limit of 600 Sq. Mts. and the occupancy price may be determined in terms of sub-rule 3 of Rule 25 of the Goa, Daman and Diu Land Revenue (Disposal of Government Lands) Rules 1971. The conditions referred to in clauses (a) (i) and a (ii) of rule 41 should be waived in all such cases in exercise of the powers under section 28 of the Land Revenue Code. However individual cases should be submitted for Govt.'s approval separately, through the Revenue Department."

Soon after the government circular no. RD/LND/DIU/108/74-76 dated 23rd March 1976, the Government on 30th June 1977, issued a fresh circular no. RD/LND/DIU/150/77 clarifying few things in relation to its abovementioned circular dated 23rd March 1976. The extract of circular is as follows:

1. Under Revenue Department's circular cited above (Circular no. RD/LND/DIU/108/74-76) Government's decision was conveyed to the effect that those persons who have encroached upon Government land for agricultural purposes or for the purposes of construction of houses, prior to the enforcement of the Goa, Daman and Diu Land Revenue Code i.e. 1.3.1971, should be regularized by granting such lands under section 20 read with section 21 of the Goa, Daman and Diu Land Revenue Code as Occupant Class-II on payment of occupancy price. This will enable these persons to hold the land in perpetuity, but they will not be able to transfer the land without prior, permission of the Government. It was also decided by the Government that the conditions mentioned in clauses (a) (i) and (a) (ii) of Rule 41 of Rule, 1971, should be viewed in all such cases in exercise of the powers under section 28 of the Goa, Daman and Diu Land Revenue Code. However, each such case should be submitted for Government's approval separately, through the Revenue Department.
2. Since the terms and conditions of regularization of encroachments done prior to enforcement of the Goa, Daman and Diu Land Revenue Code are more favorable than these done thereafter, there would always be a temptation to show the latter encroachments as if these were done prior to the enforcement of the Goa, Daman and Diu Land Revenue Code i.e. before 01.03.1971.
3. As such, Government has now decided that a survey of such lands be conducted so that extent of the problem could clearly be determined in terms of number of encroachers and the area encroached and also a time-limit should be fixed by which all such encroachers would be required to get their encroachments regularized in pursuance of the above referred Government decision.
4. In order to determine whether a particular encroachment is done prior to or after the enforcement of the Goa, Daman and Diu Land Revenue Code, Government has now fixed the time-limit up to 31st July, 1977, by which all the remaining cases



wherein the encroachments have been made prior to the enforcement of the Goa, Daman and Diu Land Revenue Code i.e. 1.3.1971, should be repeated to the Collector. No application to regularize encroachment prior to the enforcement of the Goa, Daman and Diu Land Revenue Code should be entertained after expiry of the time-limit fixed above.

5. Receipt of this circular may kindly be acknowledged and further necessary action taken in the matter.

From the office order mentioned above it is clear that the land in question which was regularized by Sanad in 1979 is Class-II land.

Only after the said confirmation the property was alienated in the form of gift deed by Smt. Niranjana Cumuldas in favour of her son Shri Vijay Cumuldas on 30-03-2009. After this only Sh. Vijay Cumuldas sold this property to Sh. Mansuclal Carsane and his wife Smt. Ansuya Mansuclal by a registered Sale Deed dated 15-12-2014. After the sale was effected, the defendants applied for NA permission which was also granted by the office of the collector vide SANAD No.65-10-2015-LNDI/285 dated 22-07-2015.

Be that as it may, the question now arises that whether there is any embargo to alienate such land which are regularized in encroachments or it becomes a freehold property. The applicant took my attention to Rule 15(a) the Goa, Daman & Diu Land Revenue (Disposal of Government Lands) Rules, 1971 which is reproduced below:

*"Section: 15(a):-Terms and conditions of grant: Every grant of land under this Part shall be Subject to the provisions of the Code and these rules; and in particular, to the following conditions, that is to say- the grantee shall not mortgage, sell, assign or otherwise transfer the land or any portion thereof, except. With the prior sanction of the Collector;"*

Going by the Land Revenue code 1968 and Rules, it is amply clear that such Class-II lands cannot be divested without prior permission of the Collector. The alienation of the property may happen in various forms and bequeathing by way of gift deed is one of them. In the instant case the property was divested by way of gift deed but violating the express provisions of the rules as well as the conditions in the Sanad dated 20-12-1978 where in point (vi) it is specifically mentioned that the grantee shall abide by the provisions of the code and all rules and orders for the time being in force thereunder in so far as they apply to the occupation of the said land. One of the rules is that the property cannot be transferred without the prior permission of the Collector. Hence, as per the UT policy, the Class-II land cannot be transferred in any form without the prior permission of the Collector which was not followed in the present case.

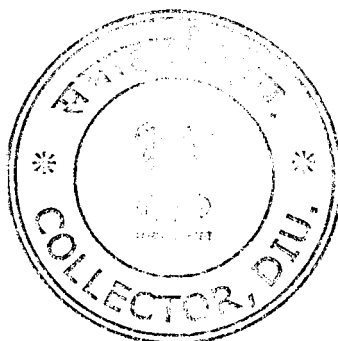
Coming to the question whether there is any provision in the LRC or any other law for the time being in force which allows the making of gift deed of Class-II property. The respondents have not been able to show any law in force which allows making of gift deed of the Class-II property and thereby alienating the property without the permission of Collector. In absence of any specific law, the general law that Class-II property cannot be transferred without the prior permission of the Collector will hold good and any violation of the provision will make the transfer void ab initio.


## ORDER

I, Hemant Kumar, Collector, Diu in exercise of the powers vested in me under section 20, 21 and section 40 of Goa, Daman and Diu, Land Revenue Code, 1971 and under Rule 41 (a) (iv) disposal of government land both for agricultural and non-agricultural purposes do hereby order the disposition of land bearing survey No. PTS-121/54, area admeasuring about 475 sq.mts. situated at Vekaria Road, Diu is Class-II land and hence, disposition of the land by way of Gift Deed to the respondents Shri Vijay Cumaldas & thereafter the sale of the same land to Mr. Mansuclal Carsane is hereby cancelled.

The decision is given without going further into the matter that the same land can be taken back from the grantee or penalties be imposed for violation the conditions of the Sanad granted by government of U.T. Administration. The applicant may initiate any other action against the grantee in separate proceedings if found necessary.

Given under my hand & seal of this Court on 08 day of February, 2018.



  
08/02/18  
(HEMANTKUMAR)  
COLLECTOR, DIU

To,

1. The Mamlatdar, Diu for necessary action.
2. The Enquiry Officer, Diu for necessary action.
3. Sub-Registrar, Diu for necessary action.
4. Shri Mansuclal Carsane and Smt. Ansuyaben Mansuclal, Both R/o of Opp. Govt. Quarter, Near PWD Office, Diu.
5. Shri Vijay Cumaldas, and Shri Niranjanaben Cumaldas, Khusalpara, Diu for compliance.
- ✓ 6. NIC, Diu to upload it on the official website.
7. Guard File.

  
08/02/18  
(HEMANTKUMAR)  
COLLECTOR, DIU