

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 1185 OF 2016

David da Silva of Mumbai	}	
and Anr.	}	Petitioners
versus		
Union of India and Ors.	}	Respondents

Mr. Sunip K. Sen with Mr. Vishwajit Sawant and Mr. Z. A. K. Najam-ES-Sani i/b. Raza AK Najam ES Sani for the petitioners.

Mr. Rajesh G. Singh for the respondents.

Lt. Cdr. Alok Gaud - Work Officer of respondents present.

CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

DATED :- MAY 6, 2016

P.C. :-

1) After this petition was placed before us, in the presence of the officer, Mr. Singh hands over an original letter addressed to the petitioners and in the following terms:-

"Tel : 29992400 Extn 2490
Fax : 022-28445390

Reply shall be addressed to
The Commanding Officer

INS Hamla
Marve, Malad (W)
Mumbai - 400 095

05 May 16

David da Silva
 Mark Haven, 2nd Floor
 PJ Ramchandani Marg
 Mumbai - 400 039

**CLARIFICATION WITH RESPECT TO CTS 5 AT
 MARVE, MALAD (W), MUMBAI**

1. INS Hamla holds three parcels of land at Marve Village on lease from State Government namely Survey No. 50 A, 58 and 59 with corresponding CTS numbers 53, 3 and 14 respectively. A case for survey and demarcation of these land parcels was initiated by this unit and after due process a notification scheduling survey of these land parcels on 08 Mar 16 was issued by City Survey Office, Goregaon on 22 Feb 16 (Encl 1). As per the notice the survey of the land parcels was conducted subsequently on 08 Mar 16. Post completion of survey the boundaries of all the three land parcels were mapped by City Survey Officials on 20 Apr 16.

2. On 20 Apr 16, the City Survey Officials while indicating the boundaries of CTS 14 confirmed that as per their records the area under the parking lot is a part of CTS 14. Since, CTS 14 is held by INS Hamla the possession of the plot was taken over by the Navy to safeguard it against further encroachment.

3. Post receipt of your complaint alleging an error in the demarcation the unit requested you to apply for a joint survey. However, you opted for legal recourse and therefore the unit requested the City Survey Officer, Goregaon for a fresh demarcation citing your claim on of CTS 5 (Encl 2).

4. Based on the application by this unit another notice was issued by the City Survey Office on 25 Apr 16 for fresh demarcation of CTS 3, 14 and 53 on 04 May 16 (Encl 3). As per the notice the new demarcation was undertaken by City Survey Officials on 04 May 16 and the error in the boundary demarcation of CTS 5 and CTS 14 was revealed and rectified by them.

5. Post demarcation of CTS 14 on 04 May 16, the unit has vacated the area falling under CTS 5 to maintain status quo ante.

Sd/-

(Hari K. Nair)
 Commander
 Executive Officer
 for Commanding Officer

Encls:- As above”

2) Mr. Singh submits that the petitioners were called or rather invited at site by this letter and for a joint survey and demarcation. At no stage was there any intent to threaten or pressurise the petitioners far from interfering with their rights in respect of the property. On account of a genuine and bonafide error, Navy took possession of the land claimed by the petitioners. In the presence of the officer, Mr. Singh tenders an unconditional apology for this act to the court.

3) Time and again, the Hon'ble Supreme Court has cautioned that none, including the Government, is above law. If any land, which is claimed by the government, has to be acquired or anybody has to be dispossessed therefrom, then, due process of law has to be followed. No act of force is justified. Repeatedly, such acts are highly deprecated by the Hon'ble Supreme Court of India. The Indian Navy is no exception. If it wants to claim any land or assert any right, title or interest therein, it must follow due process of law. Once the INS Hamla has apologised, we close the chapter.

4) Mr. Singh assures the court that the Navy has removed itself from the subject property/land and if at all it desires to proceed against the petitioners, it will do so in accordance with law. It will not enter upon the property except

by due process of law. We accept all these statements of Mr. Singh, made in the presence of the officer, as undertakings given to this court.

5) Since the Navy has vacated the plot, nothing more is required to be done. We take the above reproduced letter on record and mark it as 'X' for identification. The writ petition is disposed of. No costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)