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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1754 OF 1999

Marie Mignon Mascarenhas & Ors.	... Petitioners
vs.	
The Union Territory of Daman & Diu & anr.	...Respondents

Mr. Vineet B. Naik, Senior Advocate, a/w Bhavik Manek & Ms. Swapna Roopvate i/b. Tushar A. Goradia for the petitioner.
Mr. S. S. Deshmukh for the respondent nos.1 and 2.
Mr. Manish M. Pabale, AGP, for the respondent-State.

**CORAM : A.S.OKA, &
A. K. MENON, JJ.**

DATE : 13th APRIL, 2017

ORAL JUDGMENT (PER A.S.OKA, J.)

1. Heard the learned Senior Counsel appearing for the petitioners and the learned counsel for the respondent nos.1 and 2. The petitioners are the legal representatives of the original sole petitioner.
2. The original petitioner claimed that she is the widow of one of the ex-proprietors of Village Kadaiya situated in the Union Territory of Daman. She claimed to be the sole owner and in possession of the land admeasuring 4.80 Hectares bearing Survey No.280 (for short "the said land") in the said village. She claimed that the said land is a salt land.

3. Under the Daman (Abolition of Proprietorship of Villages) Regulation, 1962 (for short the “said Regulation”) which was promulgated by the Hon'ble President of India in exercise of the powers under clause(1) of Article 240 of the Constitution of India, Regulation 3 provided for abolition of proprietary rights and extinguishment of all rights, title and interest of every proprietor in or in respect of lands in his village and vesting of such rights, title and interest in the Central Government free of all encumbrances.

4. On 24th February, 1970 the Collector of the Daman decided the application for compensation under Regulation 10(1) made by the original petitioner and six others. Paragraph 2 of the said order is relevant which reads thus:-

“2. The applicants are the ex-proprietors of village Caria now known as village Kadaiya, in District Daman. They held an area of 274.35 hectares in Village Kadaiya as proprietors. According to a survey recently carried out by Government, an area of 12.95 hectares consists of hills, quarries and salt pans as shown below:-

<i>Survey No.</i>	<i>H.A.</i>
58	5.64
94	0.92
102	1.18
199	0.08
200 (part)	1.62
303	3.51

The remaining area of 261.40 hectares vested in Government under Section 3 of the Regulation.”

(Underline supplied)

5. By the said order, the compensation was fixed in respect of the area of 261.40 Hectares. Even the original writ petitioner was granted compensation under the said order as the said land is a part of the area of 261.40 Hectares.
6. An application was made by the constituent attorney of the original petitioner on 17th June, 1974 praying that the name of the original petitioner be entered in the land records as occupant Class-I. The said application was made in respect of several lands including the said land. The petitioner is relying upon the Register of Disputed Cases which shows that the said land was ordered to be registered in the name of the original petitioner.
7. The notification dated 23rd October, 1978 in respect of the said land was published under Section 4 of the Indian Forest Act, 1927 (for short “Forest Act”) declaring that it has been decided to constitute the said land as a Reserve Forest. On the basis of the said notification under Section 4, the Forest Settlement Officer published a proclamation under Section 6 of the Forest Act.

A claim as provided under clause(c) of Section 6 was submitted by the original petitioner through her constituent attorney. By the order dated 27th February, 1984 the Forest Settlement Officer, Panji, Goa, passed the following order:-

“The claim of Smt. Olga F. Mascarenhas to a right in or over the land bearing Survey No.280 of Kadaiya Village, Daman District, measuring 4.80 ha. Which constitutes the whole proposed reserved forest Kadaiya-I is admitted under Section 11(1) of Indian Forest Act, 1927.”

8. An appeal against the said order was preferred by the Government of Goa, Diu and Daman under Section 17 of the Forest Act. The said appeal was decided by the Collector of Daman by setting aside the order dated 27th February, 1984. The operative part of the order reads thus:-

“The order dated 27-2-1984 passed by the Forest Settlement Officer, Panaji-Goa is set aside. The suit land bearing Survey no.280 of Kadaiya Village of Daman District comprising of 4.80 ha. Vests in the Government.”

9. A Revision application was preferred by the original petitioner against the said order. The Revision Application was heard by the Administrator. By the order dated 18th June, 1998 the said Revision Application was dismissed. He directed that the entry of the Government be made in the record in respect of the said land.

The order passed by the Collector in Appeal and the order passed in the Revision Application by the Administrator have been challenged in this petition.

10. The learned Senior Counsel appearing for the petitioners invited our attention to the decision of the Apex Court in the case of *Gulabbhai Vallabhbhai Desai & Others v/s. Union of India and Others*¹. Before the Apex Court the validity of the said Regulation was challenged. He pointed out the law laid down by the Apex Court. He invited our attention to the findings recorded by the Apex Court in paragraph 18. He pointed out that as a result of the said decision of the Apex Court, the said Regulation was amended by the Daman (Abolition of Proprietorship of Villages) Regulation (Amended) Act, 1968 which came into force with effect from 9th August, 1968. He pointed out that by the said amendment, the definition of “land” under clause (g) of Regulation 2 underwent amendment. He pointed out that firstly while deciding the application under Regulation 10(1), the issue of vesting could not have been decided by the Collector. He submitted that the Collector has not taken into consideration the aforesaid amendment to the said Regulation, and therefore, the observation made in paragraph 2 of the order of the Collector

1 *AIR 1967 SC 1110*

regarding vesting of the remaining area of 261.40 Hectare under Regulation 3 is not conclusive and in fact the issue of vesting has to be tested on the basis of the amended Regulation. He invited our attention to the orders of the Appellate Authority and the Revisional Authority. He submitted that while deciding in the appeal which arose out of the order of the Forest Settlement Officer, the finding on the nature of the said land could not have been recorded. He submitted that the issue of the vesting in accordance with the Regulation 3 of the said Regulations could not have been gone into by the Appellate Authority and the Revisional Authority which were exercising the powers under the Forest Act. Therefore, the order of vesting of the said land could not have been passed by the Appellate Authority and could not have been confirmed by the Revisional Authority. He, therefore, submitted that no interference ought to have been made by the Appellate Authority with the order dated 27th February, 1984.

11. In the alternative, he submitted that this Court may remit back the matter to the Forest Settlement Officer, Panaji, Goa, as petitioners desire to challenge the order dated 24th February, 1970 by filing an appropriate proceedings. The learned counsel appearing for the first and second respondents supported the impugned orders.

12. We have carefully considered the submissions made across the bar. Under the said Regulation “proprietor” is defined under clause (h) of Regulation 2 which reads thus:-

“proprietor' means a person who holds any village or villages granted to him or any of his predecessors-in-interest by the former Portuguese Government by way of gift, sale or otherwise and includes his co-sharers”.

13. The “land” is defined under clause (g) of the amended Regulation 2 which reads thus:-

“land' means land held or let either for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans and includes –

- (i) benefits to arise out of such land, and*
- (ii) things attached to such land or permanently fixed to anything attached to such land.”*

14. Section 3 of the said Regulation which provides for abolition of the proprietary rights reads thus:-

“Notwithstanding anything contained in any contract, grant or other document or in any law for the time being in force, on and from the appointed date, –

- (i) all rights, title and interest of every proprietor in or in respect of all lands in his village or villages shall be deemed to have been extinguished; and*

(ii) all such rights, title and interest shall stand transferred to and and vest in the Central Government free from all encumbrances, and every mortgage, debt or charge on any such right, title and interest shall be a charge on the amount of compensation payable to such proprietor under this Regulation;

(iii) Where under any agreement or contract made before the appointed date any rent or other dues for any period after the said date has been paid to or compounded or released by a proprietor, the same shall, notwithstanding such agreement or contract, be recoverable from the proprietor and may, without prejudice to any other mode of recovery, be realised by deduction from the compensation payable to the proprietor under this Regulation.”

15. Regulation 9 provides that a proprietor whose right, title and interest in respect of his lands vest in the Government under Section 3 shall be entitled to compensation as specified therein.
16. Now, we turn to the order dated 24th February, 1970 passed by the District Collector. This order was passed under Regulation 10(1) of the said Regulation on the application made by the original petitioner and six others for grant of compensation. Clause (2) of the said order clearly records that out of total area held by the applicants in the said application (including the original petitioner) an area of 12.95 consists of hills, quarries and

salt pans. By excluding that area, the Collector held that remaining area of 261.40 Hectares vested in the Government in view of the Regulation 3. Accordingly, the Collector proceeded to determine the compensation payable in respect of the area of 261.40 Hectares (which includes the said land).

17. The original petitioner relied upon the order recorded in the Register of Disputed Cases. All that the order records is that the said land be registered in the name of the original petitioner in the revenue record. The said order concerns only with making of a mutation entry in the Revenue record, and therefore, the said order cannot decide the issue of title and or issue of vesting. Revenue entries cannot decide the issue of title.
18. In the order dated 27th February, 1984 the Forest Settlement Officer has mentioned that he was dealing with the claim filed in accordance with clause(c) of the Section 6 of the Forest Act. While dealing with the said claim, he ought to have held an enquiry in accordance with Section 7. Perusal of the said order shows that the Chief Forest Surveyor and Demarcation Officer of Conservator of Forest Office, Panji, Goa, had given a written statement on 5th February, 1983 that there is no documentary evidence to prove that the said land belongs to the Government

or the Forest Department. A reliance was also placed on the order passed in the Compensation Proceedings on 27th February, 1984. The Forest Settlement Officer has mentioned that the claim of the original petitioner in respect of the said land was admitted under Section 11(1) of the said Act.

19. Now we turn to the impugned order in appeal made by the Collector. The appeal was preferred by the then Government of Daman & Diu. It was observed that the judgment and order of the Collector dated 24th February, 1970, a conclusion was recorded that the area of 261.40 Hectares vested in Government under Section 3 of the said Regulation. It was observed that the said order was accepted by the original petitioner. In fact, while setting aside the order dated 27th February, 1984 of the Forest Settlement Officer, the Collector observed that the Forest Settlement Officer had no authority to decide on the classification of a land. In the Revision Application preferred by the petitioners and the others, reliance was placed on Regulation 3 and it was observed that the right, title and interest of the original petitioner in respect of the said land vested with the Government.

20. We may note here that the order dated 27th February, 1984 was made by the Forest Settlement Officer in an enquiry under

Section 7 of the Forest Act as the petitioner through her constituted attorney had filed objections. While holding an enquiry under Section 7, the Forest Settlement Officer went to the extent of holding that the claim of the original petitioner was admitted under sub-section (1) of Section 11 of the Forest Act. He was under an obligation to hold an enquiry under Section 7 of the Forest Act.

21. As the claim of the original petitioner could not have been accepted under Section 11(1) of the Forest Act, we could have understood if the order of the Forest Settlement Officer was set aside and the matter was remitted to the Forest Settlement Officer. But we find that the Appellate Authority referred to the order dated 24th February, 1970. Thereafter, it proceeded to hold that the said land vested in the Government. In our view, while deciding an appeal under Section 17, the adjudication of the ownership rights claimed by the State could not have been made, as it was found that there was no proper enquiry held by the Forest Officer. In fact both the Collector and the Administrator ought to have directed a proper enquiry under Section 7 of the Forest Act. Therefore, in our view, the impugned orders of the Collector and Administrator are erroneous.

22. As stated earlier, in the order dated 24th February, 1970 there is a categorical finding recorded that the said land along with other lands vested in the Government under Regulation 3 of the said Regulations. Therefore, the compensation in respect of the said land was awarded, under the said order. The contention of the learned Senior Counsel appearing for the petitioner is that under the amended Regulation brought into force on 9th August, 1968, the definition of “land” has been modified for making it consistent with the decision of the Supreme Court in the case of Gulabbhai Vallabbhai Desai. He states that in view of the amendment, the observation made in the order dated 24th February, 1970 regarding vesting in the Government cannot be conclusive.

23. We must note here that the order dated 24th February, 1970 has been passed after the amendment made to the Regulations on 9th August, 1968. Secondly, if the vesting in the Government of the said land had already taken place by virtue of the operation of Regulation 3, the said vesting cannot be affected because of the subsequent amendment to the Regulation. There is no provision in the amended Regulation of divesting where vesting has already taken place by virtue of Regulation 3.

24. Though we find that the order of the Appellate Authority and the order of the Revisional Authority are erroneous, we cannot restore the order of the Forest Settlement Officer, Panaji, Goa, inasmuch as, according to us, the said order is also illegal. Therefore, we have no option but to direct the Forest Settlement Officer to make an enquiry in accordance with law on the basis of the claim submitted by the original petitioner in terms of clause(c) of Section 6 of the Forest Act.
25. As a statement has been made by the learned Senior Counsel appearing for the petitioner that the petitioner intends to challenge the order dated 24th February, 1970 and especially the finding therein regarding vesting in paragraph 2, we propose to direct the Forest Settlement Officer not hear the parties for a period of six months from today to enable the petitioner to adopt appropriate remedy for challenging the order dated 24th February, 1970. The learned counsel appearing for the first and second respondents submits that now the remedy is hopelessly time barred. It is for the said respondents to raise the said contention as and when the remedy is adopted by the petitioner. We are not making any adjudication on the said issue either way.

26. Accordingly, we pass the following order:-

- (i) The orders dated 27th February, 1984 (Exhibit G), 14th August, 1985 (Exhibit I) and 18th June, 1998 (Exhibit J) are hereby quashed and set aside and the matter is remitted back to the Forest Settlement Officer, Panaji, Goa to hold an enquiry as contemplated by Section 7 of the Forest Act on the basis of clause(c) of Section 6 of the Forest Act;
- (ii) We direct the Forest Settlement Officer to issue a notice to the parties of the enquiry to be held under Section 7 of the Forest Act;
- (iii) The enquiry under Section 7 shall not be commenced by the Forest Settlement Officer for a period of six months from today to enable the petitioner to adopt a remedy for challenging the order dated 24th February, 1970;
- (iv) All the objections of the first and second respondents to the remedy, if any, adopted by the petitioners are kept open;
- (v) We make it clear that we have made no adjudication on the issue of alleged vesting;
- (vi) Rule is accordingly made absolute on the above terms.
- (vii) All concerned to act upon an authenticated copy of the judgment and order.

(A. K. MENON, J.)

(A. S. OKA, J.)