

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2477 OF 2017

Dadra And Nagar Haveli	
Sahakari Khand Udyog Mandali, Silvassa	...Petitioner(s)
<i>Versus</i>	
Kamu Lakhama Kulat	...Respondent(s)_

WITH
Writ Petition NO. 2478 OF 2017

The Chairman Dadra And Nagar Haveli	
Sahakari Khand Udyog Mandali, Silvassa	...Petitioner(s)
<i>Versus</i>	
Soma Mangal Kurkutiya	...Respondent(s)

WITH
Writ Petition NO. 2479 OF 2017

The Chairman Dadra And Nagar Haveli	
Sahakari Khand Udyog Mandali, Silvassa	...Petitioner(s)
<i>Versus</i>	
Suresh Mangala Gonaria	...Respondent(s)

WITH
Writ Petition NO. 2480 OF 2017

The Chairman Dadra And Nagar Haveli	
Sahakari Khand Udyog Mandali, Silvassa	...Petitioner(s)
<i>Versus</i>	
Dasama Chandu Dhangad	...Respondent(s)

WITH
Writ Petition NO. 2481 OF 2017

The Chairman Dadra And Nagar Haveli	
Sahakari Khand Udyog Mandali, Silvassa	...Petitioner(s)
<i>Versus</i>	
Bhikala Sitra Gorat	...Respondent(s)

WITH
Writ Petition NO. 2482 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Suresh Deviya Andhder ...Respondent(s)

WITH
Writ Petition NO. 2483 OF 2017

The Chairman Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Manchhu Navasa Dhagada ...Respondent(s)

WITH
Writ Petition NO. 2484 OF 2017

The Chairman Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Ramila Manchhu Tumada ...Respondent(s)

WITH
Writ Petition NO. 2485 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Ratnu Jethiya Bhimara ...Respondent(s)

WITH
Writ Petition NO. 2486 OF 2017

Dadra And Nagar Haveli ...Petitioner(s)
Versus
Raghu Arjun Gorat ...Respondent(s)

WITH
Writ Petition NO. 2487 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Raman Arjun Gorat ...Respondent(s)

WITH
Writ Petition NO. 2488 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Janu Dhakal Kakad ...Respondent(s)

WITH
Writ Petition NO. 2489 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Ishaviti D/o Dhakal Dhangda ...Respondent(s)

WITH
Writ Petition NO. 2490 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Jatru Posala Page ...Respondent(s)

WITH
Writ Petition NO. 2491 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Dhakal Chita Dhangada ...Respondent(s)

WITH
Writ Petition NO. 2492 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Devaji Jethiya Dongarkat ...Respondent(s)

WITH
Writ Petition NO. 2493 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Pravin Manchu Dhangada ...Respondent(s)

WITH
Writ Petition NO. 2494 OF 2017

Dadra And Nagar Haveli
Sahakari Khand Udyog Mandali, Silvassa ...Petitioner(s)
Versus
Ramesh Jethita Bhimara ...Respondent(s)

Ms. Prabha Badadare, Advocate for the petitioner.
Mr. Pramod Narayan Joshi a/w. Ms. Vrishali Raje, Advocate for the respondents.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 2nd August, 2018.

P.C.:

Rule. Rule made returnable forthwith. By consent of both the parties, all the Writ Petitions are heard together and disposed of by a common order at the stage of admission, as similar issues are involved in all these Writ Petitions.

2. In all these Writ Petitions, the order dated 15th December, 2016 passed by the learned Principal District Judge, Dadra and Nagar Haveli at Silvassa thereby granting interim relief in favour of the present respondents, who are original plaintiffs, is challenged.

4. The respondents/plaintiffs claim that they are tribals and have been occupying different portions of lands in some portion of Survey No. 287/1 and Survey No. 287/2. Survey No. 287/1 is a very big land and it was a forest. On 22nd December, 2000, the land was allotted by the Collector of Dadra and Nagar Haveli to the petitioner for running a sugar factory in exchange of private land. This being the forest land, the Collector of Silvassa on 4th July, 2001 passed NA order in respect of entire survey. In 2007, the tribals, who were staying there, filed many Writ Petitions and challenged the NA order. However, this Court by order dated 24th June, 2008 has rejected to entertain those Writ Petitions on the ground that no sufficient cause was shown for condoning the delay and while rejecting made passing observation that the petitioners, i.e., present respondents have encroached upon the land which belongs to the Government. Thereafter, the present respondents filed various suits in 2014 before the learned Civil Judge Junior Division, Dadra and Nagar Haveli at

Silvassa. The learned Judge while hearing interim application at Exhibit 5 rejected the interim relief to the respondents/plaintiffs by its common order dated 19th December, 2015. So, all the respondents filed respective Miscellaneous Appeals. After hearing both the sides, the learned Principal District Judge has passed an order dated 15th December, 2016 setting aside the order passed the trial Court and granted interim relief in favour of the respondents.

5. The learned counsel for the petitioner has submitted that the land was declared NA on 4th July, 2001, initially it was Government land. As rightly observed by the learned trial Judge, the present respondents have failed to produce any documents to show that they are either owners or in possession of the suit lands. The learned counsel has submitted that the respondents have nothing to show specifically which portion of the land they are occupying. They have no title in the land and, therefore, the respondents cannot be protected. The learned counsel placed reliance on the judgment of the Supreme Court in the case of **Maria Margarida Sequeria Fernandes & Ors. vs. Erasmo Jack de Sequeria (Dead) through LRs. Reported in AIR 2012 SC 1727.**

6. The learned counsel for the respondents supported the order passed by the learned Principal District Judge and relied on the judgment of Hon'ble Supreme Court in the case of **Rame Gowda (Dead) by LRs. vs. M. Varadappa Naidu (Dead) by LRs. And Anr., reported in (2004) 1 SCC 769.**

7. Considered the submissions, perused the order passed by the trial Court and so also the order of the Principal District Judge, Dadra and Nagar Haveli, Silvassa.

8. In the case of **Maria Margarida Sequeria Fernandes** (*supra*), the appellant was undisputedly owner of the suit property and her brother Erasmo was staying there as a caretaker of the suit property and there was a dispute between them on the point of possession. The Hon'ble Supreme Court held that the caretaker, servant or agent acquires no interest in the property irrespective his or her long standing possession and it cannot be protected against the real owner. In the present case, the facts are different.

9. In the case of **Rame Gowda** (*supra*), the Hon'ble Supreme Court has held that the person in peaceful possession is entitled to

retain his possession and in order to protect such possession, he may even use reasonable force to keep out a trespasser. The Hon'ble Supreme Court has further held that -

“It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions.

10. The order passed by the learned Principal District Judge is well reasoned. He has considered all the aspects of the matters and the contentions raised by the learned counsel for the petitioner. The learned Judge has also considered the observations made by the Division Bench of this Court while disposing of the Writ Petitions by order dated 24th June, 2008 wherein it is mentioned that the petitioners, i.e., present respondents appear to be encroachers. It appears that as the respondents/plaintiffs are tribals, they are in occupation of the forest land since last many years and on account of conversion of forest land into NA land on 4th July, 2001, their occupation is questioned by the new allottee, i.e., present petitioner.

The suits filed by the respondents are pending, however it is a stage of interim relief and the view taken by the learned Principal District Judge cannot be faulted with. I am inclined to maintain the order. Writ Petitions are dismissed.

11. The trial Court to proceed with the suits. Parties to cooperate. The suits are to be expedited preferably within one year.

(MRIDULA BHATKAR, J.)

Vidya
Suresh
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by Vidya Suresh
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2018.08.03
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