

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7756 OF 2019**

Kantaben Ramji
S/o Ramji Sidi Charaniya
V/s
..... Petitioner.

The Collector,
Collector Building, Diu & Ors.
..... Respondents.

**WITH
WRIT PETITION NO. 7760 OF 2019**

Shri Karsan Vira Bamanian
S/o Vira Jina Bamanian
V/s
..... Petitioner.

The Collector,
Collector Building, Diu & Ors.
..... Respondents.

**WITH
WRIT PETITION NO. 7820 OF 2019**

Shri Soma Varjang Solanki
S/o Varjang Nathu Solanki & Ors.
V/s
..... Petitioners.

The Collector,
Collector Building, Diu & Ors.
..... Respondents.

Mr. Kamlesh P. Mali for the Petitioners in all the above Writ Petitions.
Mr. Shrishailya S. Deshmukh for the Respondents in all the above
Writ Petitions.

CORAM: NITIN W. SAMBRE, J.

DATE: 25th July, 2019

P.C.:-

1] Since a common issue is raised in all these Petitions, for the convenience, facts in Writ Petition No.7756 of 2019 are taken into

consideration for disposal of the Petitions.

2] In all these Petitions, order passed at Exhibit-5 by the Tribunal, thereby rejecting the prayer of the Petitioner for grant of temporary injunction is the subject matter of challenge.

3] At the outset, learned Counsel for the Respondents submits that on 12/07/2019 possession from the Petitioners of land in question is already taken by the Forest Department and since the land Survey No.39/0 (P) being barren land, same is already fenced and is being put to use for Forest.

4] Since the statement is made by learned Counsel for the Respondents on instructions, same is taken on record.

5] In the aforesaid background, submissions of the learned Counsel Mr. Mali, appearing on behalf of the Petitioners are, in 1986, proceedings were initiated against all these Petitioners and the order dated 14/11/1986 came to be passed, thereby declaring the Petitioners as encroachers on the aforesaid survey number. He would urge that the said order was never communicated to the Petitioners and the same is found to be a basis for issuance of notice on 27/09/2017. According to him, based on the aforesaid, Respondents initiated separate eviction proceedings in which the Petitioners sought

protection of their possession over the land in question, particularly in the backdrop of pleadings that the Petitioners are in possession of the land in question for more than 100 years. This prayer of the Petitioners is rejected by the order impugned.

6] If the submissions of the learned Counsel for the Petitioners are appreciated, the fact remains that Respondents have come out with a defense that order of declaring the Petitioners as encroachers and they being directed to hand over possession, is taken to its logical end by taking over possession of the property. Apart from above, though the order dated 14/11/1986 is produced on record and as such within the knowledge of the Petitioners, there is no challenge raised against the said order. Apart from this, there is no prayer before the authority below for restoration of possession. That being so, there is no substance in the Petition. All these Petitions, as such, fail and stand dismissed.

7] However, Petitioners are at liberty to move for amendment to the claim for grant of restoration of possession.

(NITIN W. SAMBRE, J.)