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

**WRIT PETITION NO. 14766 OF 2018
WITH
WRIT PETITION (STAMP) NO. 37393 OF 2018**

Namu Budhiya Halpati	.. Petitioner
Vs.	
Dy. Collector (HQ) Daman	.. Respondent

Dr. Abhinav Chandrachud I/b Mr. M. M. Badgujar for the Petitioner.
Mr. S. S. Deshmukh for the Respondent.

CORAM : R. M. BORDE & V. L. ACHLIYA, JJ.
DATE : 4th JANUARY, 2019.

P. C. :

1. The Petitioner is objecting the notice issued by the Deputy Collector, Head Quarter, Daman purported to be notice under Section 40(2) of the Goa, Daman and Diu Land Revenue Code, 1968. It has been brought to the notice of the Deputy Collector that the Petitioner has encroached upon the Government land by making of construction for residential use. On the basis of report received by the Deputy Collector, the Petitioner has been directed to remove the encroachment carried out by them on the Government land within 3 days from the date of issue of notice and to restore the land to its original use. It has been further directed that, in the event of failure, appropriate action would be taken for removal of encroachment. It is the contention of the Petitioner that, they cannot be considered as encroachers since they are in authorized possession over

the property. It is further contended that there was no material before the Deputy Collector to form an opinion that the Petitioners are the encroachers and unauthorizedly occupying the Government land. It is necessary for the Deputy Collector before forming any opinion as regards the status of the Petitioner to verify the material and upon reaching the satisfaction to form an opinion as regards the unauthorized occupation of the Petitioner. Our attention is invited to Section 40 of the Act which reads thus:

40. Summary eviction of person unauthorisedly occupying land vesting in Central Government. — (1) If in the opinion of the Collector any person is unauthorisedly occupying or wrongfully in possession of any land —

(a) vesting in the Central Government; or

(b) to the use or occupation of which he is not entitled or has ceased to be entitled by reason of —

(i) any of the provisions of this code, or

(ii) the expiry of the period of lease or termination of the lease for breach of any of the conditions annexed to the tenure, or

(iii) it being not transferable without the previous permission under sub-section (2) of section 24 or by virtue of any condition lawfully annexed to the tenure under the provision of sections 20, 25 or 32,

it shall be lawful for the Collector to summarily evict such person in the manner provided in sub-section (2).

(2) The Collector shall serve a notice on such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land, and if such notice is not obeyed, the Collector may remove him from such land.

(3) A person unauthorisedly occupying or wrongfully in possession of land after he has ceased to be entitled to continue the use, occupation or possession by virtue of any of the reasons specified in

sub-section (1), shall also be liable at the discretion of the Collector to pay a penalty not exceeding two times the assessment or rent for the land for the period of such unauthorised use or occupation.

2. It is the contention of the Petitioner that it was not permissible for the Deputy Collector to form an opinion that the Petitioner is unauthorizedly occupying or wrongfully in possession of the Government land without holding proper enquiry. Since the Petitioner has not been extended an opportunity to place their contentions before the concerned Officer before formation of such opinion such conclusion recorded in notice is bad in law. It is, thus, contended that it was an error on the part of the Deputy Collector to hold that the Petitioner is encroacher and thereafter proceeded to issue notice to remove alleged encroachment within 3 days from the date of issue of the notice and restore the land to its original use. It prima facie appears that on the basis of report received by the Deputy Collector, the notice came to be issued. It does appear that no material has been placed before the Collector for forming of his opinion as regards the status of the Petitioner being the trespassers or in unauthorized occupation of the Government land. It does appear that the contents of the notice are based upon the report received by the Deputy Collector and it cannot be construed that the Deputy Collector has formed his final opinion that the Petitioners are encroachers or unauthorizedly occupying the Government land. It is only after extending the opportunity of hearing to the Petitioner, opinion can be formed by the Deputy Collector and finding in that regard can be recorded by him. The notice dated

27.12.2018, thus, therefore cannot be construed as an final opinion of the Deputy Collector that the encroachers are unauthorizedly occupying the Government land and it shall have to be construed as merely a notice calling upon the Petitioner to state their case before the Deputy Collector. The time frame provided under the notice of 3 days is also quite insufficient and the Petitioner needs to be extended proper opportunity to place their contention before the Deputy Collector. We, therefore, direct the Deputy Collector to allow further time of 30 days from today to the Petitioner to submit their contention/written statement/documents before the Deputy Collector. The notice impugned in this Petition shall not be construed as an opinion of the Deputy Collector as regard the Petitioners being unauthorized occupants over the Government land and only after extending opportunity of hearing to the Petitioner, the Deputy Collector may draw conclusions as regards the nature of occupation of the Petitioner.

3. With clarification as above, the Writ Petition stands disposed of.

4. In the event of passing of any order against interest of Petitioner, the said order shall not be put to execution for a period of 30 days from the date of order with a view to facilitate Petitioner to avail of remedy provided in law.

[V. L. ACHLIYA, J.]

[R. M. BORDE, J.]