

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5872 OF 2023

Moan Bhulabhai Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11642 OF 2023

Faquir Valobo S/O Valobo Gopar ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11638 OF 2023

Mahesh Haribhai ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11627 OF 2023

Pramod Naranbhai Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11624 OF 2023

Haresh Naran Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11641 OF 2023

Ramesh Mangal Halpati & Ors. ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11634 OF 2023

PRASHANT
VILAS
RANE

Digitally signed by
PRASHANT VILAS
RANE
Date: 2024.01.20
16:19:32 +0530

Ramilaben Mohan ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11639 OF 2023

Diwaliben Harjibhai Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11631 OF 2023

Dhirubhai Dhanjibhai Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11623 OF 2023

Dineshbhai Krishnabhai Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11637 OF 2023

Ganga Ramu Lakshmiben Naranbhai ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11635 OF 2023

Hoomi Revia D/o Ravia Bhagwan ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11622 OF 2023

Bhuliben Dullabhbhai Tandel ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH
WRIT PETITION NO. 11632 OF 2023

Kesharben Chhaniyabhai Dhodiya ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH
WRIT PETITION NO. 11630 OF 2023

Haresh Budia ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH
WRIT PETITION NO. 11644 OF 2023

Quessar Arji ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH
WRIT PETITION NO. 11629 OF 2023

Debuji Bula ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH
WRIT PETITION NO. 11626 OF 2023

Mukeshbhai Gopalbhai ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

Mr. Kamallesh P. Mali, for the Petitioner.
Mr. Hiten Venegaonkar a/w Mr. Shantanu Thorat, for Respondent.

WITH
WRIT PETITION NO. 6624 OF 2023

Daxesh Natwar Tandel ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11625 OF 2023

Mangliben B. Mitna ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11640 OF 2023

Uttambhai Mitna ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11636 OF 2023

Pravinben Kapil Mitna ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11633 OF 2023

Jaymala J. Mitna ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 6533 OF 2023

Manoj Mangal Varli ... Petitioner

Versus

The Collector, Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11628 OF 2023

Gauriben Anilbhai Mitna ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH

WRIT PETITION NO. 11645 OF 2023

Ashokkumar Babubhai Halpati ... Petitioner

Versus

The Collector, HQ Daman & Anr. ... Respondents

WITH
WRIT PETITION NO. 11643 OF 2023

Sheela Narsih Mitna ... Petitioner
Versus
The Collector, HQ Daman & Anr. ... Respondents

Mr. B. G. Tangsali i/b Ms. Prabha Badadare, for the Petitioner.
Mr. Hiten Venegaonkar a/w Mr. Shantanu Thorat, for Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 18 January, 2024

P.C.

1. This batch of petitions are filed challenging similar notices issued by the Deputy Commissioner (HQ) Daman, whereby the petitioners have been called upon to remove the encroachment from the Government land. Illustratively, we refer to one of the notices as issued and annexed to the first petition (Writ Petition No.5872 of 2023) which reads thus:

“Whereas, it is brought to the notice of the undersigned by way of report of Enquiry Officer, City Survey, Daman that you Mohanbhai Mandapwala, R/o. Sangiya Sheri, Nani Daman, have encroached upon Government land admeasuring 34.00 sq. mtrs., situated at near Between PTS-22/79 & 31/79-A, Nani Daman by way of constructing GODOWN.

Whereas, this act of yours is in clear violation of Section 40(2) of the Goa, Daman & Diu Land Revenue Code, 1968 and Indian Penal Code 1860, as well as several other laws.

Therefore, I, Mohit Mishra, Deputy Collector, Daman in exercise of powers vested in me under Section 40(2) of the Goa, Daman & Diu Land Revenue Code, 1968, read with Notification No. COL/DMN/PER-Dy.Col./01/290 dated 29/05/2007, do hereby directed you to vacate the Government land admeasuring 34.00 sq. mtrs., situated at near Between PTS-22/79 & 31/79-A, Nani Daman within 15 days of this notice, failing which:

- a) You shall be removed from the said land at your own risk and cost and,
- b) You shall also be liable to pay a penalty of two times the assessment of rent for the land for the period of your unauthorized use or occupation.

2. We are informed by the learned counsel for the petitioners that during the pendency of the present proceedings although the impugned notices call upon the petitioners to vacate their respective premises and clear their encroachment within 15 days of the said notice, action could not be taken, as also there was an ad-interim relief granted by this Court on these petitions, hence further action could not be taken on the impugned notices.

3. Be that as it may Mr. Venegaonkar on instructions states that the Designated Officer of the Union Territory Administration is in the process of hearing the petitioners and would consider all the documents in respect of each of the petitioners so as to ascertain whether the petitioners would have any “legal right” whatsoever to occupy the Government land and to put up construction and to pass an order in each of the cases in accordance with law.

4. Considering the contentions of the petitioners as made in the petition, in regard to the petitioners occupation of the land in question is concerned, in our opinion, all these are issues which are disputed question of facts, which cannot be gone into in the proceedings of a writ petition under Article 226 of

the Constitution of India. We accordingly dispose of this petition in terms of above observations, however keeping open all contentions of the parties on the hearing now proposed to be granted by the Designated Officer to the petitioners and appropriate orders which may be passed on such hearing.

5. The process of hearing the petitioners and to pass appropriate orders be completed within a period of six weeks from the date, a copy of this order is made available.

6. Needless to observe that till an order is passed and communicated by the Designated Officer in the case of each of the petitioner, and in the event the order being passed is adverse to any petitioner for a period of 15 days thereafter, the respondents are directed not to take any coercive action on the basis of the impugned notice.

7. Disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)