

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

WRIT PETITION NO.16046 OF 2024

Ratan Ukarda Bamanian
Widow of Ukarda Bava Bamanian
Age : 70 Years, Occupation : Farmer
R/o - Nagoa, Zolawadi, Diu ...Petitioner

Versus

1. The Dy. Collector, Diu
U.T. Administration of Daman & Diu,
Collectorate, Diu.
2. The Collector,
Collectorate, Diu.
3. The Range Forest Officer
Diu. ...Respondents

***WITH
WRIT PETITION NO.17209 OF 2024***

Givibai Nattu
Widow of Rama Bhikha Bamanian
Age : 90 Years, Occupation : Farmer
R/o - Nagoa, Zolawadi, Diu ...Petitioner

Versus

1. The Dy. Collector, Diu
U.T. Administration of Daman & Diu,
Collectorate, Diu.

2. The Collector,
Collectorate, Diu.
3. The Range Forest Officer
Diu. ...Respondents

WITH
WRIT PETITION NO.16117 OF 2024

Jivibai Karsan Bamanian
Widow of Karsan Bava Bamanian
Age : 70 Years, Occupation : Farmer
R/o — Nagoa, Zolawadi, Diu ...Petitioner

Versus

1. The Dy. Collector, Diu
U.T. Administration of Daman & Diu,
Collectorate, Diu.
2. The Collector,
Collectorate, Diu.
3. The Range Forest Officer
Diu. ...Respondents

WITH
WRIT PETITION NO.16121 OF 2024

Carsane Bavo also known as
Karsan Lakha Bamanian
Son of Bava Ira
Age : 61 Years, Occupation : Farmer
R/o — Nagoa, Zolawadi, Diu ...Petitioner

Versus

1. The Dy. Collector, Diu
U.T. Administration of Daman & Diu,
Collectorate, Diu.
2. The Collector,
Collectorate, Diu.
3. The Range Forest Officer
Diu.

...Respondents

***WITH
WRIT PETITION NO.16271 OF 2024***

1. Lalji Vira Bamanian
Age : 37 years, Occupation : Farmer
R/o : 3434, Kotda sir Aerodram
Nagoa, Bhucharwada, Diu – 362570
2. Chhaganlal Vira Bamanian
Age : 34 years, Occupation : Fisherman
R/o : 3434, Nagoa, Zolawadi,
Bhucharwada, Diu -362570)
(Legal Heirs of Valu Vira Bamanian

...Petitioners

Versus

1. The Dy. Collector, Diu
U.T. Administration of Daman & Diu,
Collectorate, Diu.
2. The Collector,
Collectorate, Diu.

3. The Range Forest Officer
Diu. ...Respondents

***WITH
WRIT PETITION NO.16269 OF 2024***

Deviben Soma
Wife of Soma Nathu Bamania
Age : 53 Years, Occupation : Farmer
R/o — Nagoa, Zolawadi, Diu ...Petitioner

Versus

1. The Dy. Collector, Diu
U.T. Administration of Daman & Diu,
Collectorate, Diu.
2. The Collector,
Collectorate, Diu.
3. The Range Forest Officer
Diu. ...Respondents

Mr. Aumkar Joshi for the Petitioners.

Dr. Sanjay Jain with Mr. Harsh Dedhia for the Respondents.

***CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATE : 16th MARCH 2026

ORAL JUDGMENT (Per Bharati Dangre, J.) :

1. Heard learned counsel for the respective parties and by their consent, we issue Rule, which is made returnable forthwith. Learned Counsel Dr. Jain waives notice on behalf of the respondents.

2. The six petitions before us seek relief against the respondent No.1 i.e. the Dy. Collector, Diu, U.T. Administration of Daman and Diu, Collectorate, Diu, who has passed common order in distinct cases involving the petitioners, on 24th August 2018, by deciding the Summary Eviction Application filed by the Range Forest Officer ('RFO') complaining about their encroachment on forest land, with different specifications situated in Bucharwada, Diu.

By the said order, the petitioners have been declared as encroachers on the government land, and they are directed to remove themselves from the said land, with a further direction that the cost of removal of the encroachment and restoration of the government land shall be recovered from them, if they do not hand over the possession within the time line prescribed.

The aforesaid order has been upheld by the Administrative Tribunal, Diu when the respective appeals filed by the petitioners are rejected by Judgment dated 1st March 2024, passed in distinct appeals filed, by upholding the order passed by the Collector and recording that there is no reason for interference in the same.

3. In the sequence of events which are narrated before us, it is noted, that the RFO, Diu, made an application to the Collector being titled as Summary Eviction Application, by stating that he is holding the said post in the Forest Department, U.T. of Daman and Diu and being a public servant he is authorised to file the application.

The backgrounds/facts are as stated in the application to the following effect:-

“2. The Applicant submits that the Government had decided to constitute 354.60 Ha. of Government land comprising Survey Nos. 150 (Part), 171 (Part), 179, 180(Part), 181 (part), 186 (Part), 188 (Part), 189 (Part), 262 (Part), 263 (Part), 265 (Part) and 279 (Part) situated in Bucharwada Village as Reserved Forest; and thereupon the notification was issued under Sec. 4 of the Indian Forest Act, 1927 (Hereinafter called as the "said Act") vide No. 13-2-77-FOR/(1) dated 27/12/1978 and the same was published in the Official Gazette of 5th April, 1979 (EXHIBIT-I).

3. *The Applicant further submits that the Forest Settlement Officer had issued a Proclamation under Sec. 6 of the said Act vide No. 257/FSO/PRF-93/79-80 dated 25/06/1979 explaining consequences which will ensure on the reservation of the said forest & requiring from concerned persons claims of right, if any, on or over the land comprised within the limits of the area notified under Sec. 4 or on any forest produce therefrom (EXHIBIT-II).*
4. *That neither any claim(s) was preferred before the Forest Settlement Officer nor communicated to the Range Forest Officer, Diu within the stipulated period of time given in the said Proclamation (EXHIBIT-III & IV). The Sarpanch, Village Panchayat, Bucharwada village had also informed that no any claim was received by the Panchayat and conveyed 'No Objection' for constitution of the Reserved Forest (EXHIBIT-V).*
5. *The Applicant submits that in 1987, the Late Shri. Ukarada Bava had illegally encroached upon the Govt. land, i.e. the notified Forest Land bearing Survey No. 179/180 (Part) situated in Bucharwada village by counterfeiting the boundaries and clearing the vegetation. The offence case was registered against him at the time of offence. The Eviction Application was also filed in the Court of the Collector at Diu in 1987 for evicting him. However, no further actions were taken. He has also illegally constructed structures such as well, water tank, pacca hut. The Applicant relies upon the relevant documents (EXHIBIT-VI).*
6. *The original encroacher is reportedly died. The Respondent is the successor of the original encroacher & continued to have illegal possession of 4300 Sq.mt. (approx.) of Forest Land and cultivating the same every year.*
7. *The Applicant submits that the Respondent has violated the provision under Sec. 5, 26 (1) (a) & 63 of the said Act. Diversion of use of Forest Land for non-forest purpose is also prohibited under Sec. 2 of Forest (Conservation) Act, 1980.*

8.

9. *The Applicant submits that the Respondent has encroached upon the Forest Land and the same is continuing; and as such, under Sec. 40 of the Goa, Daman & Diu Land Revenue Code, 1968, he is liable to be evicted & penalized for unauthorized use or occupation of the land; and the left over property, after summary eviction, is liable to be forfeited or removed under Sec. 41 of the said Code.*

10. *The Applicant states that the said Forest Land is situated at Bucharwada, therefore, this Hon'ble court has jurisdiction to take cognizance of the present Eviction Application."*

4. Upon this application being filed, the Collector issued distinct Notices to the petitioners on 8th June 2005 stating thus:-

"NOTICE

WHEREAS, the above named applicant has instituted an eviction application U/S 40 of the G.D.D.L.R.C. because you have encroached upon Forest Land bearing Survey No. XXXXXXXXXXXX area admeasuring XXXX sq. mts. situated at Bucharwada. (copy of plaint is enclosed)

AND WHEREAS, hearing on the said application shall be held on 19/07/2005 at 11:00 a.m. in the Chamber of the Hon. Collector, Diu.

You are hereby directed to appear before Hon'ble Collector, Diu on the day and time mentioned above in person or by duly authorized agent. In default of such appearance, the case will be heard and determined exparte."

5. The petitioners were afforded opportunity to respond and accordingly they filed reply to the said notice, disputing the claim in the said notice though admitting that, on application of Goa, Daman and Diu Abolition of Proprietorship of Lands in Diu Act, 1971, ('the Act of 1971) the title of the entire land got extinguished and the same vested in government, however the Government was never in possession of the suit land, as the Noticee and their ancestors were cultivating the same by taking seasonal crops and many trees were planted, which stand as a testimony to they being in possession.

The factual aspects were also pointed out in their response, to establish that they are in continuous possession of the said land and therefore acquired title over the same as the possession was adverse to the right, title and interest or the share of the true owner, openly, peacefully, continuously, as of right, as owner thereof, and to the knowledge of all including the government and village panchayat, forest for more than 30 years.

6. The affidavits to the aforesaid effect was filed by every Noticee before the Collector.

Ultimately, on 24th August 2018, the Collector decided the application, filed by the RFO, on consideration of the response filed by the respective Noticee (petitioners before us) and on appreciation of the material placed before him, formulated the issues and answered the same in the following manner:-

*“11. **AND WHEREAS**, the following issues merit attention in determining whether it is an encroachment over government forest land or not:*

A. Whether the undersigned is competent to conduct these proceedings?

i) There are two aspects that need examination: First one being whether the undersigned is competent to try cases under Section 40 of Goa, Daman and Diu Land Revenue Code, 1968. With respect to this, the answer is yes, since the powers under Section 40 for summary eviction of encroachment on government land have been delegated to the undersigned vide order no. 65-01-2014-LND/Part file/400 dated 06.05.2016 read along with Section 165 of GDDLRC and the judgment delivered by Hon'ble Supreme Court in Govt. of A.P. v. Thummala Krishna Rao [(1982) 2 SCC 134 has been

distinguished by Hon'ble Supreme Court in "(2010) 2 SCC 461 and has observed that Special Tribunal having powers of Civil Court can decide the question of adverse possession."

- ii) *Moreover, the land is entered in the name of government in land records.*

Even the Section 16 of GDDLRC provides that "Rights to trees, forest, etc. - (1) The right to all trees, jungles or other natural products growing on land set apart for forest reserves and to all trees, brush wood, jungle or other natural product, wherever growing, except in so far as the same may be the property of any person, shall vest in the Government, and such trees, brush wood, jungle or other natural product shall be preserved or disposed of in such manner as may be deemed fit by Government." Thus, Section 16 read with section 40 of the Goa, Daman and Diu Land Revenue Code, 1968 that since the land has always been in the name of Government, then the Collector (powers now delegated to Deputy Collector under Section 40) has been authorized by the legislature to take appropriate action for preservation of the forest by evicting the person unauthorisedly occupying or wrongfully in possession of the Government land and in the present case the land is a Forest land and hence, the scope of powers under Section 40 are extended to the forest land being the Government land.

Thus, the competency of the undersigned is unquestionable with regard to the provisions of GDDLRC."

7. With specific reference to the the Act of 1971, the Collector held that the land survey and settlement was carried out in the year 1974-75 i.e. before the land was proposed to be declared as 'Reserved Forest' in the year 1978 and yet no one filed any claim on the land in question in the wake of provision that Section 40(3) of the Goa, Daman and Diu Land Revenue Code, 1968 ('Land Revenue Code, 1968'), which itself established that the Noticee were not in possession of the land as claimed by them for three generations. It is also recorded that there was no proof shown by the Noticee as to how there livelihood depended on the said land and in order to reach a conclusion that the land is a government forest land, the Collector recorded that it is so recorded in the government records and none of the respondents or their predecessors even filed any application to prove their occupancy, if any and in fact no one has applied for registration of the crops in the Crop registration (Crop Registry) and has not deposited any revenue as per the norms of the Land Revenue Code, 1968. As per the Mamlatdar of Diu, during the period 1955 to 1985, no private person was in use and occupation of the said land.

No steps were even taken by the Noticee to get the land recorded in their name and in the wake of the facts that have emerged, the respondents in the proceedings were declared to be illegal encroachers on the land and therefore, were directed to be evicted from the land which they claimed to be in possession. It is also further recorded that the land being a government forest land, and the respondents/noticee being encroachers and they having failed to present any coherent, cogent and factually correct claim of adverse possession, as it lacks iota of documentary evidence, it was conclusively held that the respondents have encroached on and in fact damaged government forest land and therefore it was a fit case for eviction.

8. This order is upheld by the Tribunal after a long contest as even before the Tribunal, written submissions were submitted by the evictees and the Collector also presented its case of eviction by claiming that the land vested in the Collector.

9. Relying upon the aforesaid sequence of events, the contention advanced by Mr. Joshi, representing the petitioners is that the proceedings under the Indian Forest Act, 1927 ('Act of 1927') were initiated and in fact Section 4(1) Notification was issued under the Act of 1927, by the Lt. Governor of Goa, Daman and Diu, by declaring that it has been decided to constitute the said land as to 'Forest Land' and the Forest Settlement Officer was appointed to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as per Chapter II of the Act of 1927.

10. Inviting our attention to the Schedule, it is pointed out that Bucharwada Government Forest was described as the forest with an area of 354.60 sq.meters and it is also contended that, this was followed by a notification under Section 6 of the Act, but it is specific contention that there is no vesting in the government under Section 20 of the Act of 1927, as only after such a notification being issued, the

land covered under the publication of Section 6, is declared as 'Reserved Forest' but this process not having been completed, it is urged before us that the initiation of proceedings by the RFO by taking recourse to Section 40 of the Land Revenue Code, 1968 resulting into the order of eviction of the present petitioners, and it is completely illegal.

11. The learned counsel Dr. Jain representing the respondents however has pointed out to us, that the two routes are distinct and according to him, the proceedings for eviction are initiated by the Collector and even concluded by the Collector as the impugned order dated 24th August 2018 is passed by the Deputy Collector, Diu in exercise of power under Section 40 of Land Revenue Code, 1968 and though it makes a reference to the provisions of Forest (Conservation) Act, 1980 as well as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the action initiated is exclusively under Section 40. According to Dr. Jain, the Act of 1971, clearly declare that with effect from 20th March 1971,

when the Act came into force, all rights, title and interest of every proprietor in/or respect of all lands held by him is deemed to have been extinguished and all such rights, title and interests stood transferred and vested in the 'Central Government' free from all encumbrance and therefore, from the said day, whosoever was the proprietor of the said land, it vested in the Central Government.

He would also place before us a compilation of documents reflecting the land under question and the subject matter of the petitions being recorded as Government Land and therefore it is his submission that if anyone is occupying the said land, after the said Act came into force, he is an 'Encroacher' as the right, title or interest of the proprietor in respect of the said land has extinguished and the land stand vested in the Central Government free from all encumbrances. It is therefore the contention of the learned counsel for the Diu Administration that the proceedings are initiated by the Deputy Collector, Diu and on the fact of encroachment being put to his notice, by the RFO, who is also a public authority and the Collector, exercising the power under Section 40 of the Land Revenue

Code, 1968, which is a procedure for Summary eviction of person unauthorisedly occupying the land vesting in Central Government has followed the procedure and has evicted the unauthorised occupants i.e. the present petitioners, as they were not entitled to hold the said lands.

12. On consideration of the rival contentions we find sufficient substance in the submissions advanced by Dr. Jain, that though the petitioners have made an attempt to demonstrate that the land/s which they alleged to be in possession is a 'Reserved Forest', we find that as there is no notification issued under Section 20 of the Act of 1927, it cannot be said to be 'Reserved Forest'. However, in the wake of perusal of Section 3 of the Act of 1971, read with the Mutation Entries that are placed before us, which show that the land is reflected as Government Land, we find the Collector to be completely justified in initiating the procedure for eviction of the persons who are unauthorisedly occupying the said land which is vested in the Central Government as Section 40(1)(a) of the Land Revenue Code,

1968, permit the Collector to undertake the process of eviction, if in his opinion, any person is unauthorisedly occupying or wrongfully in possession of any land vested in the Central Government or Government and it is imperative for him to issue 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.

13. On perusal of the records and proceedings it is evidently clear before us that the notice came to be issued to the petitioners under the signature of the Collector and even the reply/written submissions filed by the petitioners are addressed to the Deputy Collector, Diu, who is the authority who issued notice and ultimately, the order of 24th August 2018 is also passed by the Collector by invoking Section 40 of the Land Revenue Code, 1968, with respect to the different portions of land in Bucharwada, Diu on the premise that the land/s belonged to the Central Government and the petitioners are encroachers.

Though we find that the attempt was made to declare it as a 'Reserved Forest', the same is not yet so declared as there is no final notification issued under Section 20 of the Act of 1927.

However, we must record that under Section 4 of the Act of 1927, the notification is issued, whenever it is decided to constitute any land as Reserved Forest and the State Government shall issue the notification reflecting such a declaration and to be followed by a proclamation issued by the Forest Settlement Officer, with a final notification having been issued under Section 20 of the Act of 1927, declaring such land to be a Reserved Forest.

Though we find that the process under Section 4 was initiated *qua* the said land/s which is the land, vested in the Central Government in the light of provisions of Goa, Daman and Diu Abolition of Proprietorship of Lands in Diu Act, 1971, the procedure could not be taken to its logical end and therefore it did not attain the status of a Reserved Forest and therefore, we do not find any merit in the contention of the learned counsel for the petitioners.

14. Though the counsel for the petitioners have made serious attempt to submit before us that the petitioners are entitled to continue their cultivation, we find that with the clear finding being recorded by the Collector, which is upheld by the Administrative Tribunal, Diu, directing that they have failed to produce any documents as regards the cultivation of the said land, and since apparently they did not made any application to the Assistant Civil Administrator for restoration of the land, we are not pronouncing upon the entitlement of the petitioners to continue their cultivation of the lands based upon their claim.

We are informed that the possession of the lands of the petitioners has already been taken on 9th June 2025.

We leave it open to the petitioners to make an appropriate application under Sections 7 and 8 of the Act of 1971, and the Authority shall then decide the application on its own merits.

We however, clarify that we have not pronounced upon the said issue and it is only upon an application being made, it is for the respondents-Authority to consider the same strictly in accordance with

Sections 7 and 8 of the Goa, Daman and Diu Abolition of Proprietorship of Lands in Diu Act, 1971.

15. With the limited window of liberty being conferred, finding no merit and substance in the grievance of the petitioners, by upholding the judgment dated 1st March 2024 passed by the Administrative Tribunal, Diu and the order dated 24th August 2018 passed by the Dy. Collector, Diu, we dismiss all the above writ petitions. Rule is discharged.

MANJUSHA DESHPANDE, J.

BHARATI DANGRE, J.