

Bombay High Court Smt. Sugandha Manik Kane And Ors. vs The Conservator Of Forests With ... on 4 February, 1998 Author: R Khandeparkar Bench: R Khandeparkar ORDER R.M.S. Khandeparkar, J. 1. A short question that arises in the present petition for determination is whether on promulgation of survey, the inquiry under Section 14 (3) of the Goa, Daman and Diu Land Revenue Code, 1968 (hereinafter referred to as "the Code") in respect of a land in such village, town or city is barred? 2. The facts which are relevant for the decision in the matter are that the Range Forest Officer of Canacona, sometimes in April, 1981 brought to the notice of the respondent No. 3 herein that though the department of forest is in possession of the land surveyed under No. 43 of Maulinge of Cotigao Village of Canacona Taluka, which covers huge part of forest land, the same is shown in the survey records in the name of Boruskar family of Borus Loliem and, therefore, the inquiry under Section 14(3) of the Code was necessary. Pursuant to the said application, notice under Section 14 (3) of the Code was issued, to which the petitioners herein objected to by filing their written statement. When the matter came up for inquiry before the Dy. Collector and S.D.O. at Quepem, the petitioners herein orally raised preliminary issue regarding jurisdiction of the authority to hear the matter on account of the fact that the survey of the Village of Maulinge of Cotigao was already promulgated and, therefore, there was no question of holding any inquiry under Section 14 (3) of the Code. The Dy. Collector, on the ground that there is presumption available under Section 105 of the Code, upheld the objection and dismissed the application of the Range Forest Officer, regarding the need for holding inquiry. Being aggrieved, the respondents No. 1 and 2 preferred appeal before the Administrative Tribunal. It appears that the appeal was filed beyond the period of limitation, however; the Tribunal, after condoning the delay allowed to appeal and set aside the order of the Dy. Collector and remanded the matter for necessary inquiry under Section 14 (3) of the Code, in view of the application filed by the Range Forest Officer. It is against this Judgment of the Tribunal that the present petition has been filed, raising the point above stated. 3. Shri Zellar D'Souza, learned Advocate appearing for the petitioners drawing my attention to Section 96 of the Code and Rules 6 and 7 of the Goa, Daman and Diu Land Revenue (Record of Rights and Register of Cultivators) Rules, 1969 (hereinafter called as the "said Rules"), submitted that once record of rights in respect of a land are promulgated after conducting necessary inquiry in terms of the Rules 6 and 7 of the said Rules, it is not permissible for the Collector or any other authority appointed under the Code to hold inquiry under Section 14(3) of the Code, even though any application is filed on behalf of the Government for such inquiry. He further submitted that in terms of Sections 94 and 95, the Government is enjoined with the powers to take all measures for preparation of land records in respect of all the land in the State and Section 95 clearly provides that such records should contain the particulars regarding names of the persons who are occupants of the land including tenancy rights and other rights claimed by the parties. Further Section 96 provides that the person acquiring right either by way of succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise

should report to the Talathi about acquisition of such rights and pursuant to such report, the records are to be updated by the Talathi. Further Rule 6 of the said Rules provides that the Talathi, on the basis of the information under Sections 96 and 97 or such information as he may collect by making local inquiry, has to prepare a draft index in Form ill. Other sub-rules of the said Rule 6 clearly provide for detail and comprehensive procedure to be followed by the Talathi and other revenue Officers while finalising such land records and ample opportunity is provided for every one to putforth their objections in respect of such records before the same are finalised. The Legislature in its wisdom has provided a detail procedure giving ample opportunity to each and every one to putforth their claim regarding the land which is subject matter of survey and also to prove their claim before the Survey Officer and it is only after analysing the claim and hearing the parties that such records are finalised. Considering the fact that the detail procedure has been prescribed for, before finalisation of the record of rights, it cannot be presumed that such record of rights could be reopened by any person and for that matter including the Government at any time after such finalisation. Drawing my attention to Sections 103 and 113 of the said Code, learned Advocate submitted that the Legislature in its wisdom has provided that application under those provisions can be filed at any point of time. No such provision is made in Section 14 (3) of the Code. If it was the intention of the Legislature that an inquiry under Section 14 can be held at any point of time, then the Legislature would have provided so in Section 14 (3) itself. Plain reading of Section 14 (3), therefore, does not suggest in any manner that inquiry under said Section can be held even after promulgation of survey records. 4. Shri C. A. Ferreira, learned Addl. Government Advocate, on the other hand, submitted that Sections 94 to 97 are comprised in Chapter VIII of the said Code, which deals about such records. The provisions thereunder do not include records regarding title of Government or Government land. While elaborating his submission in this regard, referring to Section 95 the learned Addl. Government Advocate submitted that said Section provides, in detail, as to what particulars are to be maintained in survey records, but the same do not make any reference to the Government land or Government title to such lands. He further submitted that Section 96 speaks about acquisition of right by the parties and not relating to the existing rights either in favour of the private parties or Government. It is the duty of the person acquiring the right to inform about the same within 3 months to the Talathi. No duty is cast on any person to inform to the Talathi about the existing right in his favour regarding any land. As regards the scope of the word 'otherwise' in Section 96 as well as of the words 'such information' in Rule 6 of the said Rules, learned Addl. Govt. Advocate submitted that while interpreting those terms, one cannot forget the principle of 'ejusdem generis' and, therefore, the word 'otherwise' in Section 96 would mean any right which is acquired by the person in one of the modes specified in the said Section or some such other similar mode. It does not refer to the existing right in any manner. Similarly, the scope of inquiry by Talathi cannot be enlarged beyond the scope of Section 96 itself. The Rule 6 clearly provides that the Talathi has to prepare the Index on the basis of the information re-

ceived by him under Sections 96 and 97 or such information, as he may collect by making local inquiry. The inquiry has obviously to be relating to the right acquired by the parties over immovable properties in the locality. Therefore, 'such information' has necessarily to mean the right acquired by the person by one of modes specified under Section 96 or by such other similar mode. Added to this, the inquiry under Section 14(3) is to be conducted either by Collector or by some other Officer appointed by the Government whereas the inquiry under Rule 6 of the said Rules is to be conducted by any Revenue Officer and it is promulgated by the Dy. Collector only after hearing the appeals against the decision in such inquiries held by the Revenue Officer. According to learned Addl. Govt. Advocate, therefore the scope as well as the authority hearing matters under Section 14 (3) is different from the scope of Section 96 read with Rule 6 and the authority holding inquiries thereunder. 5. Upon hearing the learned Advocate for the parties and on perusal of the records, it is seen that Section 14 (3) of the Code reads that : "3. Where any property or any right in or over any property is claimed by or on behalf of the Central Government or by any persons against the Central Government and the claim is disputed, such dispute shall, after due notice has been given and after holding a formal inquiry, to decide by the Collector or a Survey Officer." Plain reading of the said section discloses that in case of any claim over any land by the Government or any claim by any person over the Government land can be inquired into by the Collector or Survey Officer by holding inquiry in terms of the said Section. The provisions contained in the said Section, on the face of it, do not disclose any period of limitation having been prescribed for filing application for holding inquiry in terms of the said Section, It nowhere provides as to whether such application should be filed either before promulgation of survey or thereafter. The said sub-section is followed by Sub-section (4) which provides that any person aggrieved by the decision in the said inquiry or even in the appeal or revision, can institute a Civil Suit to contest the order within a period of one year from the date of such order. Sub-section (5) of Section 14 further provides that no party shall be entitled to institute such Suit after the period of one year from the date of such order; only exception being made in case of lack of notice of such order to the party. In other words, the Legislature in its wisdom clearly provided limitation for finality to the order passed in inquiry or in appeal or revision against the order passed in such inquiry in the absence of suit being filed within the prescribed period of limitation. But no such limitation is prescribed for initiating inquiry under Section 14 (3) of the Code. 6. Chapter VIII of the Code deals with land records. Section 94 thereunder provides for preparation of record of rights. It provides that it shall be lawful for the Government to take all measurements for the preparation and maintenance of land records, including the record of rights and maps, and all other matters connected therewith or incidental thereto, in accordance with such rules and directions as may be made in this behalf. Section 95 speaks about the record of rights. It provides for the particulars which are to be included in the record of rights and such particulars include survey numbers, sub-division numbers, area, assessment of the land and the tenure on which it is held, names of all persons who are occupants, Gov-

ernment lessees or mortgagees of the land; names of the tenants, if any, of the land; names of the persons holding an encumbrance or any other charge or right on the land; nature and extent of the respective interest of such persons and the conditions or liabilities, if any, attaching thereto; the rent, if any, payable for the land. The said section further provides that the record of rights shall be maintained up-to-date in accordance with the provisions of Sections 96 and 97 of the Code. Section 96 speaks about acquisition of rights to be reported to the Talathi by the person acquiring right. The relevant portion of this Section reads as under :— “96. Acquisition of rights to be reported. Any person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, mortgagee, landlord, tenant or Government lessee of any land, shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition and the said Talathi shall at once give a written acknowledgment of the receipt of such report to the person making it : Provided that. . . . Provided further that. . . . Provided also that where a person claims to have acquired a right with the permission of the Collector where such permission is required under the provisions of this Code or any law for the time being in force, such person shall on being required by the Talathi so to do produce evidence of the order by which such permission is given. . . .” Section 97 speaks about register of mutations and Register of disputed cases. It provides that the Talathi shall enter, in a register of mutations in such form as may be prescribed, every report made to him under Section 96 or any intimation of acquisition or transfer under Section 102. Section 98 speaks about register of cultivators and crops. Section 99 empowers Revenue Officer of Talathi to collect information regarding acquisition of such rights. Section 100 prescribes fine for neglect to afford information. Section 101 empowers the Revenue Officer to take assistance of hired labourers under Section 58 to prepare the maps and records. Section 102 requires the registering authority to inform about creation, assignment or extinguishment of any title to the land in favour of any person. Section 103 provides for correction of clerical errors, in the record of rights by Collector. Section 104 provides for preparation of maps in accordance with the record of rights. Section 105 gives presumptive value to the entries in record of right and in the register of mutation, prepared in accordance with law. Section 106 provides bar of suits against the Government or any officer of the Government in respect of a claim to have an entry made in any record or register that is maintained under the said Chapter or to have any such entry omitted or amended. Section 107 provides that till preparation of such records, the already existing record of rights shall be deemed to be in force. Section 108 provides that the maps and other records shall be open for inspection by the members of public on payment of prescribed fees. Section 109, which is last section in the said Chapter, provides for power to transfer the duty of maintaining maps and records to settlement officers from the Collector. 7. Section 96 in the said Chapter VIII, as rightly submitted by learned Addl. Govt. Advocate, speaks about acquisition of rights only. It does not speak about existing right or obligation of any person to inform about such existing rights to the Talathi. It is only when a person acquires right, by way

of succession, survivorship, inheritance of partition, purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, mortgagee, landlord, tenant or Government Lessee of any land that such person should inform about the acquisition of such right. Section 96 does provide that the person acquiring any right in the manner specified thereunder, as well as 'otherwise' to inform about the same to the Talathi. According to the Rule of 'ejusdem generis' the word 'otherwise' has to be understood, as rightly submitted by the Addl. Govt. Advocate, as mode of acquisition of right. It is only when a person acquires right in some mode other than specified in Section 96 of the Code that the person is obliged to inform the Talathi about the same. It does not speak about existing right in favour of any person and for that matter, including the Government. In fact, Section 96 and for that matter any other Section under Chapter VIII, does not relate in any manner to the Government land or the claim of the Government against any land. Record of rights which is contemplated under Chapter VIII is relating to the rights of the persons other than the Government. No doubt, when the particulars are prepared under Section 95, it may also include the information regarding the Government or, the Government claims over the land. But that, by itself, will not be in any manner of any assistance to interpret Section 14(3) as being restricted to the period prior to promulgation of the survey. 8. Rule 6 of the said Rules does not provide that Talathi before preparing the draft of the index in Form III has to collect information by making local inquiry, but such inquiry cannot be beyond the scope of Sections 96 and 97. In other words, the information that is required to be collected by the Talathi is in relation to the properties claimed by private persons or belonging to the private persons. The local inquiry by Talathi under Rule 6 does not include the claim of the Government or in relation to the Government land. This is clear from the said Sub-rule (1) of Rule 6 itself, which reads as under :- "6. Preparation of Index of lands.-(1) The Talathi shall on the basis of the information received under Sections 96 and 97 or such information as he may collect by making local inquiry prepare a draft of the index of land in the village in Form III." This rule clearly provides that Talathi has to prepare index on the basis on the information received by him under Sections 96 and 97 of such information collected by him on local inquiry. When it says 'such information' it has necessarily to refer to the information regarding mode of acquisition of right to immovable property. Since the preparation of the record of rights is to be made in terms of Sections 94 and 96, under Chapter VIII and the same refers to the land belonging to the private persons or claim of the private persons over the land and it does not include the Government land of claim of the Government over any land, the question of conducting inquiry under Rule 6, beyond the scope of Chapter VIII does not arise. Once it is so understood, it becomes clear that the inquiry under Section 14(3) cannot be restricted to the period preceding promulgation of the record of rights, 9. As Section 14(3), on the face of it, does not provide for any such restriction, which is sought to be subscribed on behalf of the petitioners, on plain reading of Chapter VIII, with Rules 6 and 7 of the said Rules, does not, in any manner, suggest any such restriction on inquiry under Section 14(3). The submission on behalf of the petitioners, therefore, cannot be accepted. In fact,

any such interpretation of Section 14(3) would amount to reading something in Section 14(3) which has not been provided for by the Legislature in its wisdom. The inquiry under Section 14(3), pursuant to the claim by the Government, can therefore be held even after promulgation of record of rights in respect of any land. 10. As no other point is canvassed in the petition, the same is liable to be dismissed. It is accordingly, hereby dismissed. Rule-is discharged. No costs.