HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 15150/2021

Bhanwar Singh

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Department Of Urban Development And Local Self, Government Of Rajasthan, Jaipur.
2. Director, Department Of Urban Development And Housing, Government Of Rajasthan, Jaipur.
3. Chief Town Planner, Town Planning Department, Government Of Rajasthan, Jaipur.
4. Manish Goyal, Joint Secretary, Department Of Urban Development, Hosing And Local Self, Government Of Rajasthan, Jaipur.
5. Deepak Nandi, Director Cum Special Secretary, Local Self Department, Government Of Rajasthan, Jaipur.
6. Jaipur Development Authority, Jaipur, Through Its Secretary.
7. Jodhpur Development Authority, Jodhpur, Through Its Secretary
8. Ajmer Development Authority, Ajmer, Through Its Secretary

----Respondents

Connected With

D.B. Civil Writ Petition No. 13782/2021

Roshan Vyas

----Petitioner

Versus

1. State Of Rajasthan, Through The Secretary, Urban Development And Housing Department, Rajasthan, Jaipur.

2. The Director, Local Self Government Department, Government Of Rajasthan, Jaipur.

3. The Commissioner, Jodhpur Development Authority, Jodhpur.

4. Municipal Board, Phalodi Through Its Executive Officer.

5. Jaipur Development Authority, Jaipur Through Its Secretary, Jaipur Development Authority, Jaipur.

----Respondents

For Petitioner(s) : Mr. Moti Singh
Mr. Manoj Bohra

For Respondent(s) : Mr. Kailash Vasdev, Sr. Adv.
Mr. Harin P. Raval, Sr. Adv.
Mr. Sandeep Shah, AAG,
Mr. Shrey Kapoor
Ms. Akshit Singhvi
(all through VC)
Mr. Sunil Beniwal, AAG
Mr. Abhimanyu Singh Rathore
Mr. Saransh Vij

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SUDESH BANSAL
(THROUGH V.C.)

JUDGMENT RESERVED ON : 10/12/2021

JUDGMENT PRONOUNCED ON: 09/02/2022

REPORTABLE

By the Court: (Per Akil Kureshi, CJ):

Preamble

1. In **State of Gujarat Vs. Shantilal Mangaldas & Ors., reported in (1969) 1 SCC 509,** the Constitution Bench of the Supreme Court had an occasion to examine the scheme of the Bombay Town Planning Act, 1955 in the context of challenge to the *vires* of Sections 53 and 67 thereof. It was noticed that the Bombay Town Planning Act, 1955 was enacted repealing the

Bombay Town Planning Act, 1915. The objects for framing the Act of 1955 and the difference in the repealed Act 1915 and the new Act were noticed as under:-

> "8. The principal objects of the town: planning legislation are to provide for planned and controlled development and use of land in urban areas. Introduction of the factory system into methods of manufacture, brought about a great exodus of population from the village into the manufacturing centers leading to congestion and overcrowding, and cheap and unsanitary dwellings were hurriedly erected often in the vicinity of the factories. Erection of these dwellings was generally subject to little supervision or control by local authorities, and the new, dwellings were built in close and unregulated proximity with little or no regard to the requirements of ventilation and sanitation. Necessity to make a planned development of these new colonies for housing the influx of population in sanitary surroundings was soon felt. The Bombay Legislature enacted Act 1 of 1915 with a view to remedy the situation.
>
> 9. The Bombay Town Planning Act 27 of 1955 is modelled on the same pattern as Act 1 of 1915, but with one important variation. By Ch. II of the new Act it is made obligatory upon every local authority to carry out a survey of the area within its jurisdiction and to prepare and publish in the prescribed manner a development plan and submit it to the Government for sanction. A development plan is intended to lay down in advance the manner in which the development and improvement of the entire area within the jurisdiction of the local authority are to be carried out and regulated, with particular reference to-
>
> (a) proposals for designating the use of the land, for the purposes such as (1) residential, (2) industries (3) commercial, and (4) agricultural;
>
> (b) proposals for designation of land for public purposes such as parks, play-grounds, recreation grounds, open spaces, schools, markets or medical, public health of physical culture institutions;
>
> (c) proposals for roads and highways;
>
> (d) proposals for the reservation of land for the purpose of the Union, any State, any local authority

> or any other authority established by law in India; and
>
> (e) such other proposals for public or other purposes as may from time to time be approved by a local authority or directed by the State Government in that behalf.
>
> By making it obligatory upon a local authority to prepare a development plan under Bombay Act 27 of 1955 it was clearly intended that the Town Planning Schemes should form part of a single cohesive pattern for development of the entire area over which the local authority had jurisdiction."

2. The Supreme Court noticed the scheme framed under the said Act for formation of final town planning scheme which included rearrangement of the titles in various plots and reservation of lands for public purposes and financial adjustments to be made. It was noticed that the owner who is deprived of the land has to be compensated and the owner who obtains a reconstituted plot in surroundings which are conducive to better sanitary living conditions has to contribute towards the expenses of the scheme. It was observed that this was necessary since on the making of town planning scheme the value of the plot raises and a part of the benefit which arises out of unearned rise in prices is directed to be contributed towards financing the scheme which enables the residents in that area to more amenities, better facilities and healthier living conditions.

3. Town Planning laws similar to the Bombay Town Planning Act, 1955 have been enacted by other State legislations also. In the State of Rajasthan, Rajasthan Urban Improvement Act, 1959 was enacted to make provisions for improvement and expansion of

urban area in the State of Rajasthan. The statement of objects and reasons for framing of this Act reads as under:-

> "Several Urban areas in Rajasthan are in absolutely abandoned and improper conditions. This is due to lack of funds and partly due to absence of proper supervision and chalking out of suitable improvement scheme on modern lines. It is considered necessary with a view to achieving the improvement of such neglected urban areas, to provide for the establishment of improvement trusts to empower them to raise funds to frame improvement schemes, to execute them and to exercise some municipal powers during such executions. The Bill is designed to achieve that purpose. The powers given to the trusts to be constituted there under are wide enough but as they have been sufficiently subjected to the Government Control, they are free from risk of all sorts. The rights of private persons have also been sufficiently protected in as much as all disputes arising between them and the Trusts are to be referred to the District Judge, from whose decision an appeal will lie to the High Court."

4. These legislations were thus framed for systematic urban development and to meet with the challenges faced due to rapid urbanisation. We have begun our judgment with reference to the decision of the Supreme Court in case of **Shantilal Mangaldas (supra)**[1] in order to demonstrate that these town planning laws by whatever name called, contain detailed provisions to facilitate orderly urban town planning along modern lines. The question that comes to our mind is, despite such intricate statutory scheme and well intentioned town planning laws framed by the legislature, has the process of town planning and development in the country truly succeeded? The answer sadly and obviously is in the negative. The combination of factors such as lack of political will, executive

1 (1969) 1 SCC 509

apathy and human greed have frustrated the most well intentioned legislations. Increasingly the cities across the country have witnessed haphazard growth, unplanned development, unauthorised occupations and constructions without permission from civic authorities with virtually no civic amenities like regular water supply, sanitation, street lighting and such others. Such constructions and unauthorised developments have come up in privately owned lands, in public lands, on the sides of the streets and roads and even in low lying areas such as on river banks or lands which once upon a time formed water bodies such as ponds and lakes. There are multiple reasons for this virtual breakdown of the modern town planning. However the prime reason and perhaps the single most important factor which has contributed to this phenomena is the process of rapid urbanisation. For variety of reasons population in large numbers from the rural areas is driven to migration towards urban centers. This unprecedented gravitation of rural population towards towns, cities and urban agglomerations outstrips the supply of affordable urban housing and brings along with it a complex range of problems and challenges. Essentially the failure of the administration to provide affordable housing for lower and middle income group families in urban centers has led to mushrooming of unauthorised, illegal and unplanned growth. The approach of the society to the people living in such slums also often times exhibits a clear cleavage between the haves and have-nots. We wish such slums and *juggies* disappear because they do not make a pretty sight in our cities, in the process forgetting that the workforce for menial jobs,

the cheap labour force working in our factories and our household help without whom all our modern amenities and facilities would become worthless, come from these settlements. We often forget that it is not out of choice that a person occupies land without title, a house with leaking roof and the walls which do not protect his family from cold winds. It is certainly not by choice that these residents stand in long queues to fill up a bucket full of water, or their women bathe in semi open conditions trying to protect their modesty by hiding behind makeshift curtains.

5. This preamble was necessary because in these cases we are examining a challenge to the government orders and circulars under which the State Government wishes to regularise at a large scale unauthorised occupations and possessions of land; in many cases with construction. To put it briefly, the case of the petitioners is that these government orders and circulars and the government policy are opposed to the various directions issued by this Court in case of **Gulab Kothari** (to which a detailed reference would be made at appropriate stage) and are also otherwise opposed to several statutory provisions.

Challenge of the petitioners

6. With this preamble we may refer to challenges raised by the petitioners in these petitions. Writ Petition No.13782/2021 is filed by one Roshan Vyas who is a resident of district Jodhpur. He has challenged clause (3) of an order dated 23.04.2021 issued by the Director and Special Secretary, Local Self Department, Government of Rajasthan. Perusal of this order would show that it

is in the nature of a communication from the said authority to various town planning authorities inviting the said authorities to participate in a meeting to be conducted through video conferencing in which various issues would be discussed. Item no.3 which is challenged by the petitioner pertains to the question of regularising *kachchi basties.* This being a mere communication for holding a meeting, we do not think it gives rise to any justiciable issue. The petitioner has also challenged clause (2) of an order dated 20.09.2021 insofar as it pertains to regulariisation or illegal encroachments made on public land. In an additional affidavit dated 29.11.2021 filed by respondent No.3, Commissioner, Jodhpur Development Authority, it is clarified that no *kachchi basti* situated in public utility land such as park, playground, pathways/roads, open land, public land etc., reserved land, forest land, river, drain, pond or restricted area shall be regularised and an order to this effect is already issued on 12.11.2021. Copy of this order passed by the Director and Special Secretary is produced along with the said affidavit. In view of this development, the issues raised by the petitioner would stand resolved. However the petitioner sought to expand the petition by seeking amendments through which various other challenges were sought to be raised. During the pendency of this petition, another petition namely Writ Petition(PIL) No.15150/2021 (filed by Bhanwar Singh) came to be filed and in which the challenge to the government policy raised is more comprehensive. Amendment Application No.2/2021 in D.B. Civil Writ Petition No.13782/2021 in case of Roshan Vyas was allowed on 10.12.2021 and we have

heard the two petitions together for consideration of all issues arising in these petitions. Before going into the pleadings in the case of Shri Bhanwar Singh, we may notice that a Division Bench of this Court in case of Roshan Vyas passed an order dated 06.10.2021 issuing following interim directions:-

> "In the meanwhile, no regularization of unauthorized occupation/construction over the public land, agriculture land or any other land shall be permitted pursuant to order dated 20.09.2021 and the orders issued subsequent thereto by the State Government contrary to the Zonal Development Plan and Sector Plan of any town or city of the State of Rajasthan, if already finalized and notified in conformity with the Master Development Plan. The towns and the cities where the Zonal Development Plan/Sector Plan have not been duly approved in accordance with the law, no process shall be initiated for regularization of any individual construction or the colony developed unauthorizedly pursuant to order dated 20.09.2021 and orders issued subsequent thereto. The relaxation of norms under the order dated 20.09.2021 or any order issued by the State Government subsequent thereto regarding the width of the road, required facility area/open area or the set-backs, shall remain stayed. The directions issued by this Court in Gulab Kothari's case (supra) vide orders dated 20.01.2017 and 15.12.2018 shall be strictly followed. The State authorities shall ensure that no regularization of unauthorized occupation / construction is permitted in defiance of the directions issued by this Court in Gulab Kothari's case (supra).It is made clear that any regularization made in any town or city of the State in defiance of the directions issued by this Court in Gulab Kothari's case (supra), shall be viewed seriously and dealt with sternly."

7. In case of Bhanwar Singh, the petitioner has challenged three Government orders/circulars dated 20.09.2021, 27.09.2021 and 28.09.2021 as being opposed to the judgements in case of Gulab Kothari. He has also challenged a notification dated

24.09.2021, by which certain amendments have been made in the Rajasthan Urban Improvement Act, 1959 (hereinafter to be referred as 'the Act of 1959') authorising Urban Improvement Trust to dispose of lands vested in the trust. He has also challenged a notification dated 24.02.2021 under which the Rajasthan Urban Area Land Use Change (Amendment) Rules, 2021 have been promulgated, and a notification dated 20.09.2021 by which the Rajasthan Municipalities (Surrender of Non-Agricultural Land and Grant of Freehold Lease) (Amendment) Rules, 2021 have been promulgated.

8. The case of the petitioner is that these Government decisions and the corresponding statutory changes are opposed to the judgments and orders of this Court in case of Gulab Kothari and even otherwise illegal and impermissible. The petitioner apprehends that through this mode the Government would authorise large scale illegal occupations and constructions in private as well as public lands in total disregard of the decisions in case of Gulab Kothari, statutory provisions governi]ng the land laws and urban town planning laws as also in contravention of the existing town planning schemes.

Contentions of the respondents

9. On the other hand the stand of the State Government is that these decisions and the statutory changes aim at regularising the occupations of large number of families in the State of Rajasthan who are suffering on account of unclear titles, inaccurate land records and lack of updation of occupation records even though

the same would be fully legal. The State Government has presented a case that no part of the government land or public land would be divested in the process. In the opinion of the respondents these policy decisions are in no way opposed to the directions issued by this Court in case of Gulab Kothari nor are opposed to the public policy. The counsel representing the State authorities have vehemently contended that this Court should not prevent the State Government from framing and implementing its policy in the spheres of socioeconomic reforms.

Facts in detail.

10. To be able to appreciate and deal with the rival contentions we may examine the facts in greater detail. A Division Bench of this Court in case of Gulab Kothari considered various issues concerning haphazard town planning and its adverse impact on modern town development, ecology and environment. The first of a series of orders was rendered on 12.01.2017, reported in **2017(1) DNJ(Raj.) 147 (Gulab Kothari, Editor, Rajasthan, Patrika, Jaipur Vs. State of Rajasthan And Ors.)** (hereinafter to be referred as 'Gulab Kothari-1'). The petition was filed by an editor of leading newspaper in the State making allegations of gross violation of master development plan of Jaipur and other cities by the authorities. It was noticed that the town planning schemes and master development plan were subjected to frequent changes. The Court raised as many as 15 questions for its consideration. These questions included (i) ambit and scope of the power of the State Government and other authorities as regards

preparation of the master development plan and zonal development plan and the modification and revision of such plans during their operative period; (ii) whether peripheral control belt, green belt, ecological zone etc. specified in the notified master development plan form its basic character and feature which cannot be altered and the land forming part thereof cannot be permitted to be put to other uses such as commercial, residential, institutional, industrial purposes etc.; (iii) whether the area reserved for common facilities, parks, open spaces or recreation etc. in a colony developed by the local authority or by the private developers as per the approved plan can be diverted to any other use and if put to such use, should the land be restored in the original position; (iv) whether the pasture land can be permitted to be used for other purposes and if yes, to what extent?

11. The Division Bench considered these questions in light of Urban Improvement Trust Act and other statutory provisions. It was observed that under the scheme of the Act the urban areas in respect of which master plan is once prepared, the sanctity thereof has to be maintained and all improvement schemes of various zones and development work to be undertaken by the local authorities or the private entities must conform to the land use specified under such master plan. It was observed that though the Act does not provide for modification of the master plan during its operative period, such power to modify or revise the plan are inherent. It was held as under:-

> "77. Thus, it can be safely concluded that the power conferred upon the State Government under

sub-section (2) of Section 25 of the Act to grant approval to the Authority to make modification into the Plan not covered by the provisions of sub-section (1) is not absolute and no modification in the Plan suggested by the Authority is permissible to be approved by the State Government, which is not in furtherance of the planned development of Jaipur Region in most efficient manner. Suffice it to say that power to modify the Master Development Plan conferred upon the Authority with the prior approval of the State Government in no manner empowers it to effect the modification of the Plan in deviation of the original legislative intent underlying the enactment i.e. the planned and orderly development of Jaipur Region."

12. It was further held and observed as under:-

"87.Thus, there cannot be any quarrel with the proposition that the Master Plan, which is a policy document for guiding the future development of the city or town in the planned manner and to arrest undesirable and unplanned growth, is not a static document, which cannot be modified or revised as and when considered necessary in the larger public interest in furtherance of planned development of the urban area in respect whereof it is made operative. But then, the Master Development Plan prepared to master the future development in the city or town democratically, after due deliberation and consideration of suggestions and objections from the public at large, cannot be permitted to be set at naught at the whim and fancy of the authority concerned just to serve the interest of individuals. Obviously, the object of the planned development shall be achieved by rigorous and successful implementation of the Master Development Plan and not by deviation therefrom with impunity.

88.We are firmly of the opinion that once the Master Development Plan is brought into being, vigilant implementation thereof should be the rule and any deviation therefrom an exception and therefore, the power vested with the Authority or the State Government for modification thereof should be exercised sparingly in furtherance of the planned development in the larger public interest and not otherwise.

The status of peripheral control belt /greenbelt/ ecological zone specified in the notified Master

Development Plan, permissibility of use of the land forming part of peripheral control belt/ecological zone/green belt specified in the Master Development Plan for the purposes other than those specified during its operative period and thereafter, at the time of revision thereof at the end of its tenure and further the scope of alteration/modification thereof (Question No.2)

13. The conclusions of the Division Bench were culled out in paragraph 205 as under:-

"205. In the result, having regard to the aforesaid conclusions arrived at, we issue the following directions:

(i)The Development Authorities and the State Government shall ensure that Master Development Plan of a city or town prepared under the relevant statutes is a comprehensive and self explanatory document providing for preservation, conservation and development of eco-sensitive zone/ecological zone/green area, peripheral control belt, natural scenery, city forest, wildlife, natural resources and landscaping as also allocation of land for different uses such as residential, commercial, industrial, institutional, cultural complexes, tourist complexes, open spaces, garden, recreation centres, amusement parks, zoological gardens, animal sanctuaries, dairies and health resorts etc.

(ii)Simultaneously with the preparation of Master Development Plan or immediately thereafter as contemplated by Section 4 of the UIT Act and Section22 of the Act No.25 of 1982 and other relevant statutes, the authority concerned shall proceed with the preparation of Zonal Development Plan for each zone clearly specifying the location and extent of the land uses proposed in the zone for such thing as public buildings and other public works and utilities, roads, housing, recreation, parks, industry, business, markets, schools, public and private open spaces etc.

(iii)The sanctity of Master Development Plan or the Zonal Development Plan finally sanctioned shall be maintained and all development schemes of the various zones and the development work to be undertaken by the local authorities or private entrepreneurs or anybody else during the operative period thereof, shall conform to the land uses as

specified under the Master Development Plan or Zonal Development Plan, as the case may be.

(iv)Once the Master Development Plan is brought into being, vigilant implementation thereof shall be the rule and any deviation therefrom an exception and therefore, the power vested with the authority or the State Government for modification thereof during its operative period shall be exercised sparingly in larger public interest, to achieve the basic object thereof i.e. planned development of the concerned region, city or town and not to sub-serve interest of an individual.

(v)The eco-sensitive zone/ecological zone/green area specified in the Master Development Plan once established shall not be altered or put to other uses during the operative period of the Plan and even while undertaking the revision of the Plan or preparation of the new Plan.

(vi)Even the area which is shown in the various Master Development Plans as Green Zone/Green Area marked as G-2 abutting G-1 developed as buffer to promote a continuum to G-1 shall not be permitted to be used for the activities other than those specified, unless and until, the State Government after objective consideration arrives at a categorical conclusion that the public interest involved in diversion of the land for other use outweighs the object sought to be achieved in permitting its restrictive use specified. In any case, change of the land use of the Green Zone/Green Area (G2) shall be as an exception to serve the larger public interest, to achieve the basic object thereof i.e. planned development of the concerned region, city or town and not to subserve the interest of an individual.

(vii)During the operative period of the Master Development Plan, the land use in the peripheral control belt for the purposes other than those specified shall not be generally permitted. But if the change of the land use in the peripheral control belt is considered inevitable in the larger public interest and not to serve the interest of an individual, the change of the land use for the activities other than those specified, should only be permitted to sub-serve the legislative intent of planned development for promotion and enhancement of the quality of life of the citizens and not otherwise.

(viii) No isolated change in the land use of the land falling within the peripheral control belt shall be permitted without inclusion thereof in accordance with the procedure laid down, in the land use plan of urbanisable area shown in the Master Development Plan, the development wherein has to be further regulated by Zonal Development Plans notified.

(ix) Further, the development activity within the peripheral control belt for the purposes aforesaid, shall not be permitted without assessment of environment impact and ensuring the fulfillment of requirement of the open spaces/green spaces for the existing population settled in the different zones of the city. The authorities shall be under an obligation to provide for buffer zone to ensure the availability of minimum requirement of green space/open space per city dweller.

(x) The State Government while permitting the change of the land use in the peripheral control belt or the Green Zone (G-2)/Green Area(G-2) shall maintain complete transparency, the applications made for the change of land use as also the orders passed thereon, shall be uploaded on the website of Department of Urban Development & Housing so also on the website of the concerned local authority. The order permitting the change of land use shall be an speaking order reflecting the fulfillment of the parameters laid down as aforesaid.

(xi) The open spaces, green spaces, common facilities, playgrounds, gardens, parks, recreational areas specified in the Master Development Plan or Zonal Development Plan shall be protected during the operative period of the Plans and even thereafter, while undertaking revision thereof or preparing a new Plan and the same shall not be diverted to the use other than those specified.

(xii)The local authorities and the State Government are directed to take appropriate steps in accordance with law, for restoration of the user of the open spaces, green spaces, common facilities, playgrounds, gardens, parks, recreational areas specified in the Master Development Plan or Zonal Development Plan or the Layout Plan of the colonies developed by the local authorities or the private colonisers in all the six major cities and other towns of the State, which stand diverted to other unauthorised use.

(xiii) The different land uses as specified in the Master Development Plan or Zonal Development Plan, as the case may be, form basic character of the Plan and the land use as specified shall not be permitted to be changed without alteration /modification of the Plan after following the procedure laid down under the relevant statute. The change of the land use to be permitted by way of modification of the Plans must be in furtherance of the planned development of the city or town in the larger public interest and not to sub-serve the interest of an individual.

(xiv) In the residential colonies developed as per the layout plan approved, where the plan does not provide for mixed user, no residential land in such colonies shall be permitted to be used for commercial or any other uses.

(xv) The Development Authorities and the State Government shall take appropriate steps for specifying the locations in the Master Development Plan and the Zonal Development Plan for development of multistorey buildings.

(xvi) In the existing residential colonies which are developed with the infrastructure facilities keeping in view the number of family units to be settled in the houses to be constructed in such colonies, no multi storey buildings shall be permitted to come up adversely affecting the rights of the residents settled therein.

(xvii) The local authorities and the State shall frame the township policy ensuring that no small colony comes up in small area with no infrastructure facilities precipitating a situation wherein the residents are condemned to live a miserable life. As laid down by the Hon'ble Supreme Court in Bondu Ramaswamy's case (supra), instead of permitting small colonies coming up in small areas, the local authorities and the State Government shall make sincere efforts to undertake the exercise for approval of integrated layout of residential and other schemes either by acquisition of the land or undertaking the exercise of land pooling.

(xviii) The local authorities and the State Government shall ensure that the norms laid down for providing green belt on both the sides of the highways in the width of 100 ft. after the right to way is strictly followed. Further, the appropriate steps shall be taken for removal of the unauthorised

construction raised, if any, in violation of the norms laid down.

(xix) The local authorities and the State Government shall take immediate steps to check the encroachment and unauthorised constructions over the public ways and footpaths. The encroachment made on the footpath and public way by way of putting stairs, ramps, hoardings or fencing etc. In various cities and towns of the State shall be removed in accordance with law, expeditiously.

(xx) The local authorities shall enforce the building by-laws strictly and no construction shall be permitted in deviation of the approved plan. The construction of the building shall be regulated by the concerned officials of the local authorities at all stages and if any deviation is found, the immediate measures shall betaken to stop the construction and undo the deviation.

(xxi) No deviation from the norms laid down under the building by-laws shall be permitted. The unauthorised construction raised violating the building line and the set backs norms laid down under the Building By-laws or otherwise by the concerned local authority, shall not be permitted to be compounded in any circumstances.

(xxii) The suggestions made by the AAG for strengthening the enforcement of Building By-laws in the municipal areas and to check the unauthorised constructions as reproduced in para no.42 of this order, shall be enforced by all the local authorities of the State.

(xxiii) The norms prescribed for compulsory parking in the commercial buildings and other than commercial buildings constructed within the municipal area of the various cities shall be enforced strictly and the buildings shall not be permitted to commence its functioning unless the completion certificate is issued by the authority concerned after being satisfied about compliance of the provisions incorporated under the relevant statutes for compulsory parking. In the existing buildings where the parking spaces have not been provided as per the sanctioned plan or which have been converted to other use, shall be restored within the time frame to be notified by the local authority, failing which such buildings shall be sealed and appropriate penal action shall be taken against the defaulters in accordance with law.

(xxiv) Unauthorised development or change of land use shall not be compounded in exercise of the power conferred under Section 33A of the Act No.25 of 1982, Section 34 of the Act No.2 of 2009 and Section34 of the Act No.39 of 2013, as the case may be, unless and until such unauthorised development or change of land use sought to be compounded falls within the parameters of permissible modification of the plan as contemplated under sub-sections (1) &(2) of Section 25 of the Act No.25 of 1982 and other relevant statutes and such modification to the Plans is actually carried out by following the procedure laid down.

(xxv) No change of land use in terms of sub-section(2) of Section 73B of UIT Act or regularisation of unauthorised change of land use in terms of sub-section (3) of Section 73B of UIT Act, shall be permitted without modification of the Master Development Plan or Zonal Development Plan, as the case may be, in accordance with the procedure laid down. Further, no modification of the Plans for the said purpose shall be permitted by the State authorities unless such modification is expedient in the larger public interest to achieve the basic object of planned development.

(xxvi) The Development Authorities and the State Authorities shall take appropriate steps to ensure that the industrial area is located away from the residential area and shall provide for green areas between the industrial area and the residential area to buffer the residential areas.

(xxvii) The State shall constitute a high power committee consisting of inter alia the experts of the field, to frame the Relocation Scheme with regard to shifting of hazardous industries/industrial areas located in close vicinity of the residential colonies, after conducting survey in all the major cities of the State. The report of the committee with the recommendations to take the appropriate measures for shifting of industries so as to save the citizens from ill-effects of industrial activities, shall be placed before this court.

(xxviii) The State is directed to furnish complete details regarding availability of the pasture land in various districts of the State of Rajasthan as on the date of commencement of the Act of 1955; the diversion of the user of the pasture land permitted after commencement of the Act of 1955 and the land

set apart as pasture land after commencement of the Act of 1955. The State shall also furnish the district wise details of unauthorised occupation over the pasture land.

(xxix) Pending consideration of the issue with regard to the diversion of the pasture land for other uses by this court, the State Government is directed to take appropriate steps to check and remove unauthorised occupation over the pasture land by unscrupulous persons in various villages of the State forthwith.

(xxx) The State Government is directed to produce the original record of the proceedings taken for permitting the change of the user of the land measuring 1222.93 hectares situated between Kho-Nagoria to Goner Road, covered by the Master Development Plan of Jaipur, 2011 from ecological zone to residential and mixed land use, by way of zonal layout plan of Sector 34 and Sector 35 for perusal of this court on the next date of hearing. No permission for raising construction on the aforesaid land shall be granted by the concerned local authority and the status quo as it exists today shall be maintained qua the open land in the aforesaid area till further orders.

(xxxi) The State Authorities shall take effective steps for conservation and preservation of natural resources i.e. hills, forests, rivers, other water bodies and catchment area. Further, the State Authorities shall undertake a drive to remove all encroachments made over the natural resources noticed hereinabove and the unauthorised activities operating thereon and shall restore such natural resources by taking appropriate action including the cancellation of allotment made in defiance of provisions of Section16 of the Act of 1955.

(xxxii) The respondents local authorities and the State Government shall comply with the directions issued as aforesaid within a period of four months.

(xxxiii) The compliance report shall be filed by the respective local authorities and the State Government before the next date of hearing.

(xxxiv) The Chief Secretary, Government of Rajasthan, the Principal Secretary, Urban Development & Housing Department, Government of Rajasthan and the Secretary, Department of Local Self Government, Government of Rajasthan shall

ensure the compliance of the directions issued by this court as aforesaid.

(xxxv) The interim order dated 9.12.10 passed by this court shall stand modified in terms of the directions issued as aforesaid."

14. This decision of Gulab Kothari-1 was carried in appeal before the Supreme Court. The Supreme Court placed the matter back to the High Court to be considered by a bench of three Judges. A further detailed order was passed by the Larger Bench of three Judges on 15.12.2018, **reported in 2019 (1) WLC (Raj.) 645** (hereinafter to be referred as 'Gulab Kothari-2'). Paragraph 54 of the judgment contains directions which reads as under:-

"54.In view of the discussion above, we modify/clarify the directions issued by Division Bench of this court vide order dated 12.1.17 to the extent indicated below and issue further directions:

(a)The directions issued by this court vide directions No.(ii) &(iii) directing preparation of Zonal Development Plan for each zone simultaneously with the preparation of Master Development Plan or immediately thereafter, are reiterated and the modification of the said directions as prayed for, is declined.

(b) The prayer for modification of directions Nos. (v), (vi) & (vii)is declined, however, it is clarified that the Green Zone delineated in the Master Development Plan-2011 of Jaipur Region has to be protected and the diversion of the area earmarked as Ecological Zone/Green Zone to other use as contained in Jaipur Master Development Plan-2025, which runs contrary to the directions issued by this court, shall not be made operative. Further, the diversion of the land use delineated in the Master Development Plan-2011 for Ecological Zone/Green Area proposed to be diverted for other use under Master Development Plan-2025 is directed to be restored as Ecological Zone/Green Area and no activities other than those which are permitted in the Ecological Zone/Green Area shall be open to be permitted therein by the State Authorities/Development Authorities.

(c) The prayer for permitting the construction of multi-storey buildings in existing residential colonies, which are developed with infrastructure facilities keeping in view the number of family units to be settled in the houses to be constructed in such colonies is declined and the directions as contained in direction no.(xvi) of order dated 12.1.17, are reiterated.

(d)The prayer for modification of directions no.(xx) & (xxi) so as to permit compounding of unauthorised constructions violating the building line and the set back norms laid down under the Building Byelaws or otherwise by the concerned local authority, in terms of Rules of 1966, is declined. It is clarified that only the deviations from the building plan duly sanctioned, which in no manner otherwise violate the norms laid down under the Building Byelaws regulating the constructions in the local area could be permitted to be compounded and not the deviations which affect the rights of other inhabitants settled in the local area, such as, height of the building, projections, set backs, absence of parking area etc.

(e) The respondents are further directed not to permit conversion of land use/regularisation of unauthorised colony or individual unauthorised constructions until and unless the Zonal Development Plan and Sector Plans for the local area concerned governed by Master Development Plan are prepared, finalized and notified in accordance with law. Further, the conversion of the land use or regularisation of unauthorised development shall not be permitted unless the unauthorised development undertaken fulfills the norms laid down for requisite infrastructure facilities and amenities and conforms to the Master Development Plan/Zonal Development Plan/Sector Plans/Schemes duly notified."

15. While thus the decisions in case of Gulab Kothari held the field, the State Government desired to regularise certain land occupations and land uses. Three successive orders/circulars were issued by the Government for this purpose. On 20.09.2021 the State Government issued an order which provided that camps

would be organised by the Government for making preparations for issuing *pattas* to the residents for which online applications will be received. This order lays down broad guideline for grant of such *pattas.* Some of the provisions of this order came to be deleted and some were modified later on by amendment order dated 05.10.2021. In the present state this order after the amendment of 05.10.2021 provides as under:

"**Government of Rajasthan**
Department of Urban Development

Sr.No.P.17(1)UDD/Abhiyan/2021 Date: 20.09.2021

ORDER

Under the Prashasan Sheharon Ke Sang Abhiyan-2021, preparatory camps are to be organised from 15.09.2021, in which the information about the Approved Plan, Approved Master Plan, Zonal Development Plan, Sector Plan, Lay-out Plan, Application forms, Rates etc. is to be given by the Local Bodies to the general public. In these camps preparation regarding issuing of Pattas to be done. Preparation is to be done in these camps, after receiving online applications, issuing demand letters and depositing the amount. The formats of the lease deeds are available on the website www.shahar2021.rajasthan.gov.in. So that maximum number of Lease deeds can be issued on the first day of the main campaign on 2nd October.

1. In relation to such agricultural land whose layout plans are already approved in past:-

(i) According to the census of the year 2011, the lease deeds of the unapproved colonies in cities with a population of more than 1 lakh are to be given only after the zonal plan is approved. But the colonies whose layout plans are already approved, have to be accomodated in the zonal plan considering them as commitments. Therefore, in pre-approved Layout Plans, lease deeds can be issued as per the order dated 15.01.2021.

(ii) In case where the Plans approved before/after 17.06.1999, developed on agricultural land, in which order under 90-B has been issued, the prescribed rates of 90B will be applicable. In the schemes prior to 17.06.1999, in

which orders under 90A has been issued, the rates prescribed by the notification of 31.07.2012 will be applicable. In the schemes after 17.06.1999, in which order under 90A has been issued, the rates should be taken as per prescribed rates of notification dated 13.02.2020. During the campaign period from 15.09.2021, 15% interest will not be payable from the first camp. If demand letter has been issued earlier but the amount has not been deposited, then demand letter should be issued again at the present rate (without interest).

(iii) As many number of times the plots may have been sold on the basis of unregistered documents in the approved schemes before 17.06.1999, the lease deed should be given to the last buyer as per order dated 11.02.2020, after taking an additional amount of 15% of the premium rate from the final buyer.

(iv) The lease should be given to the purchaser in the approved schemes after 17.06.1999, in cases where the plots are sold on the basis of registered documents then by paying an additional amount of 10% of the premium rate and in the cases where the sale has taken place on the basis of unregistered documents may be on many times then by taking an additional amount of 50% of the premium rate as per the order dated 11.02.2020.

(v) In the approved schemes in which the khasra has been superimposed, if there is a difference in the Khasra number of the plot owned by the applicant and the Khasra number on the basis of super-imposition then as order of 90B/90A has been issued for both Khasras, the lease should be given assuming the superimposition error.

(vi) In the approved schemes, if the area of the plot is more than the ownership document of the applicant then the amount of excess land should be be taken as per the Notification dated 30.11.2017.

(vii) In cases where the lease deed has been given after the permission of 90B /90A as per approved plans then on the increase in the area of such plots, a new supplementary lease deed or a new lease deed by surrendering the old lease may be issued by allotting excess land after taking 50 percent of the reserve price in the scheme of private developers and 25 percent of the reserve price in the schemes of other colonies/ cooperatives society/schemes.

(viii) If the plots are not created/constructed on site as per approved schemes then keeping the ratio of the facility area as per the approved layout plan, revised

Layout Plan may be approved and lease deed can be given after approving the revised layout plan.

(x) According to the plot of the approved layout plan and the plot submitted by the applicant for lease deed if there is sub-division/reconstitution, then the lease deed should be given after depositing the amount at the rate of Rs.10/- per square meter. Simultaneously, the sub-division/reconstitution of such layout plan should also be marked in the approved plan.

2. Colonies developed on such agricultural lands whose sector layout plans are approved.

(i) The lease deed/allotment letter ssued after 17.06.1999 by the cooperative societies is not legally valid. According to point 25(3)(xi) of the order dated 06.01.2016 in the layout plan submitted in the Local body and prepared suo-moto by Local Bodies, it should be ensured that the scheme is before 17.06.1999 or after 17.06.1999. The lease deed can be issued after approval of layout plan by the Local Empowered Committee in cities having population more than 1 lakh, according to the zonal plan and according to the master plan in the city of population up to 1 lakh by keeping the ratio of 70:30 in the scheme before 17.06.1999 taking action under section 90A(8) and taking action under section 90A(5) and 91 for schemes after 17.06.1999 keeping the ratio of 60:40 in the scheme.

(ii) In case of construction (one unit and boundary wall) is done on less than 25 percent of the plots in the colonies, if the facility area is less than 30/40 percent then the facility area can be increased after decreasing the area of plots carved out in the submitted plan and survey.

(iv) Sector layout plan can be prepared by including one and more than one colonies. If the outer limits match, then there will be no need to superimpose the khasra. It will be necessary to determine all four boundaries of the area to be sanctioned.

(v) If Government land is included in the layout plan, then after demarcation of Government land, the lease deed of the plots located on Government land may be given after depositing the amount at the rate of Government land. But Lease Deed can be issued after depositing the amount leaving the land reserved for roads, park and public facilities and land which can be used independently.

(vi) Proportionately total area of all Khasras of layout plan as per Khasra Trace or site falling within the four boundaries is more as mentioned in Jamabandi then layout may be approved and lease deed may be given after depositing the excess land amount as per Government land rate.

3. Granting lease deed on the basis of provisional lease deed/Form(D)

After approval of 90A, layout plan under Township Policy-2010 the Local Body may issue free hold or 99 years lease deed on the basis of provision Allotment Letter or Form (D), after registering the Letter or Form (D) or Nominee or Assignee Letter issued for sale of plots as per approved layout plan by the land holder/developer taking onetime lease amount of 10 years / 08 years. The rates of laxity in registration in such cases are being issued separately.

4. Regarding non-submission of records of colonies by some private developers

Even after allotment of plots by many private developers over the years, the records/lists have not been submitted to the Jaipur Development Authority. Repeated applications have been made by such plot holders to Jaipur Development Authority and State Government. Therefore, it has been decided in this regard that if the records of the layout plan and plot holders are not deposited in the urban body by the private developer by 30.10.2021 in such cases then after this date, the concerned plot holders directly or by forming a development committee (Registration will not be required), submit the details of land alongwith the available documents to the Jaipur Development Authority. Accordingly, the Jaipur Development Authority will prepare a layout plan after conducting a survey and such plot holders will be issued lease deeds during the Abhiyan period (till 31.03.2022). Such action will also be taken in the Prithviraj Nagar Yojana of Jaipur.

5. Lease deed of plot in the schemes of the Local Bodies

(i) In the plots allotted by the Local Bodies by auction and lottery at a fixed rate, the original amount has not been deposited in time as prescribed in demand letter or allotment letter and deposited late but the amount of interest and penalty has not been deposited. In such cases of Abhiyan Period (From 15.09.2021 to 31.03.2022) in which principal amount is deposited but interest and penalty is not deposited, the possession

should be given to them by giving lease deed/lease at the local level itself, providing 100% rebate in interest and penalty.

(ii) No matter how many times the plots/houses allotted by the Local Bodies have been sold through unregistered documents even before the issue of lease deed by the Local Bodies, the lease deed/ lease should be given in favour of the final buyer. The rates of relaxation in registration are being issued separately.

6. Waiver of interest penalty in the houses of Economically Weaker Sections, Lower Income Group, High Income Group (EWS/LIG/MIG-A/ MIG-B/HIG)

The houses/plot of EWS/LIG/MIG-A income group have been allotted by the urban body and Rajasthan Housing Board. In which, due to non-payment of principal amount and installments on time, the burden of interest and penalty has increased a lot. The exemption was granted by departmental order dated 12.05.2021, now, during the Abhiyan period (From 15.09.2021 to 31.03.2022), Allotment/Lease Deed/ Lease should be given at the local level by providing 100% rebate in the interest penalty on depositing the outstanding amount and the amount of the outstanding installments in onetime in the said housing/plot of the housing board and the residences of the MIG-B and HIG of the Housing Board.

7. Rebate in resumption charges if construction is not done within stipulated period

According to the condition of the lease deed/leases issued by the Local Bodies, it is necessary to construct in the stipulated period. Land Disposal Rules 1974 and Permission and Allotment of Agricultural Land for Non-Agricultural Purpose Rules 2012, in both cases, if construction is not done during the construction period mentioned in the lease deed then during the Abhiyan Period (from 15.09.2021 to 31.03.2022), the extension of the construction period may be given after depositing the amount at the rate mentioned in the order dated 01.09.2021, by giving a rebate of 60 percent on the arrears.

8. Regarding grant of new lease deed from leasehold to freehold, name transfer, sub-division/reconstitution and change of land use

(i) The 99 years lease deed issued by the Local Bodies should be given a freehold lease by depositing onetime lease of 10 years or after depositing onetime lease of

8 years, lease free certificate has been obtained in those cases by depositing the lease amount of 2 years in onetime, freehold Patta may be issued. After surrendering the old lease deed to the Local Body, a new freehold lease should be issued mentioning the registration of the old lease deed.

(ii) After lease deed/lease issued by the Local Bodies on the basis of registered sale/WILL/Gift etc., a new lease of freehold should be given by taking the prescribed amount, as per notification dated 04.01.2021 taking the lease amount of 10years/2 years in onetime, surrendering the old lease. Issue releases in newspapers in cases of registered sales letters and WILLS.

(iii) The decision of sub-division/reconstitution of plots is taken after the lease deed / lease issued by the Local Body in those cases also, after surrendering the old lease deed/lease, a new freehold lease should be given by taking the lease amount for 10 years/2 years.

(iv) After the decision of change of land use, the old lease should be surrendered and a new freehold lease should be given after taking the lease amount for 10 years/2 years.

Note: In the cases of point number 8, relaxation in rates of registration is being issued separately."

16. The amendment order dated 05.10.2021 contains an important note which reads as under:

> "**Note**:- **Area under Roads, park, public facility and setback area shall not be regularized/allotted in reference of above order and all orders issued under Prashasan Sheharon Ke Sang Abhiyan-2021."**

17. The State Government issued a circular on 27.09.2021 which contained guidelines and relaxations for accelerated disposal of the cases for granting of *pattas.* These guidelines and relaxations envisage recognition of certain documents as proof of the title for the lands of different categories as under :

> "2. Proof of Right for the above categories of lands will be determined as follows

(क) Lease deed/Registry/donations/Registered book or any other documents issued during princely time by Raja/ Jagirdar/ Thikanedar and lease deed other documents received from State Archive/record of District Collector.

Or

(ख) Custodian's Lease/Allotment Letter

Or

(ग) Documents of privately owned land/building as recorded in City Survey of Parkota area.

Or

(घ) State Grant's lease deed/allotment letter/sale deed/कब्जा नियमन issued by the municipal body in the past.

Or

(ङ) Lease deed/allotment letter/ authorization letter etc. Issued by the Panchayat which has been included in urban area.

Or

(च) Sale Deed /Family Partition/ Will disposed between 01.01.1992 to 17.06.1999 on the basis of which the applicant has the right or possession of the property. Dated 01.01.1992 to the year 17.06.1999 before the performance.

Or

(छ) Order and decree passed in favour of the ownership of applicant by a Competent court in relation to the committee.

Or

(ज) Construction approval issued by the Municipal body before 17.06.1999.

Or

(झ) In case of non availability of any of the above mentioned document of point no.(क) to (ज) the proof of right can be determined on the basis of any two of

the following documents along with post possession depending upon the property concerned:-

i.) Electricity / Water Bill before date 01.01.1992 as proof of possession

ii.) Voter List of the time before date 01.01.1992.

iii) Receipt of house tax for the time before 01.01.1992 or making in the record of the Municipal Body.

iv.) Any other entry recorded in the Municipal records of the time before the date of 01.01.1992, in which right of the applicant of the property is known.

v.) Affidavit of two persons above 60 years of age from the neighbourhood showing the undisputed right of possession of the applicant's property before the date 01.01.1992.

vi.) On the address of the applied house, received before the date 01.01.1992 by post and notice of any government department or undertaking or quote or official document in which the land and ownership in question has been mentioned.

vii) Pre dated 01.01.1992 proof shuda rent deed which can be produced by the landlord in his favour.

(ण) Complete chain of applicant's ownership documents from lease deed/registry or donation letter issued by Raja Maharajas/Jagirdars etc..

(ट) Complete chain of applicant's ownership documents conversion order to allotment letter issued by authorised officer.

(ठ) If the Gair Mumkin Abadi is registered as a privately owned non agricultural land, then the complete chain of applicant's ownership documents."

18. This circular also provides the parameters to be applied for the properties on the basis of special characters of old *abadi* areas which include the lease deed issued under Section 69-A to be sufficient proof of ownership. It however provides that lease deed shall not be issued in certain cases such as encroachment on public road, facility area, encroachment or construction on ramps,

varandah area or the terrace of the varandah. The circular further provides in clause (4) that freehold leases of the following lands shall not be granted:-

> "(i.) Restricted areas mentioned in Rule 3 of Rajasthan Municipalities (Surrender of Non-Agricultural Land and Grant of Freehold Lease)Rules, 2015.
>
> (ii.) Land, Land under Acquisition as of the day the provisions of the existing law relating to land acquisition.
>
> (iii.) Land falling within the limits of a railway boundary, a national highway, a state highway, or a road maintained by the local authority specified in any Act or Rules of the Central or State Government.
>
> (iv.) The land of part of any local body schemes.
>
> (v.) Land vested in Municipal body under section 90A & 90B.
>
> (vi.) Surveyed/notified Kacchi basti land.
>
> (vii.) The Abadi Developed on the land of any other government department/any undertaking department acquired land.
>
> (viii) Land given on rent and short term lease license by Municipality/Trust/Development Authority.
>
> (ix.) Such lands, buildings, properties of former kings/maharaja/royals family, which are under covenant or otherwise owned or used by state government or is rented.
>
> (x.) If the tenant has occupied on any private land/property, then the lease will not be issued to that tenant.
>
> (xi.) Land falling within limits prescribed for any archaeological site/monument by any order of the Court, Archaeological survey of India and Archaeological Department, Rajasthan.
>
> (xii) Land belongs to or vests in the Central Government or State Government or statutary or non statutory bodies, authorities or companies established by or under control of the Central

Government or State Government, as the case may be, except land vests in the Municipality.

(xiii) Land belong to deity and waqf."

19. Clause 12 of the general notes provides as under:-

"12. The lease under section 69-A will be issued as per the use shown in the master plan/zonal plan. But in the old market area where traditionally commercial activities are in operation (shop on lower floor and residence on upper floor) in residential use mixed use lease deed can be issued."

20. On 28.09.2021 the State Government issued an order regarding works to be performed by the urban local bodies during *'Prashasan Sheharon Ke Sang Abhiyan, 2021* (hereinafter to be as referred as *'Abhiyan')*. This order envisages that the *Abhiyan* would be executed in three phases. In the first phase preliminary preparation camps will be organised at the local body level; in the second phase resolution camps will be organised at the local body level; and in the third phase follow-up camps will be organised in which remaining applications will be disposed of. Paragraph 3 of this order pertains to the guidelines regarding the main tasks to be executed in the *Abhiyan* and provides that new lease deed would be granted by surrendering the ownership rights in the non-agricultural or *abadi* land located in the urban areas for which detailed provisions have been made. Paragraph 4 pertains to giving lease deed under the State Grant Act. Paragraph 5 pertains to giving lease deed in the colonies developed on the agricultural land. Paragraph 6 envisages granting exemption from payment of stamp duty under certain circumstances. Paragraph 7 pertains to

grant of interest waiver. Paragraph 10 envisages grant of lease deed in public interest on the lands acquired by housing board and the local bodies where residential colonies and other developments have come up. It may be noted that this clause had come up for detailed discussion during the course of arguments. When the arguments were still in progress, the respondents filed an affidavit dated 10.12.2021 and declared as under:-

> **"3. I state that the State Govt. while reviewing the progress of the scheme/policy dated 28.09.2021 has decided not to give effect to the Clauses 10 of the Scheme/Policy for the present. This said provisions will not be acted upon at present. The State reserve its rights to take appropriate lawful decisions in this behalf on review if so decided."**

21. Thus paragraph 10 of the order dated 28.09.2021 no longer survives. We would proceed on such basis. Paragraph 11 makes provisions for grant of lease deeds where settlements on the lands acquired under Ceiling Act or the Rajasthan Land Owners' Property Acquisition Act and other similar laws have come up. As per this clause, the leases would be granted by collecting charges at specific rates. Paragraph 12 pertains to leases on *Nazul* properties.

22. Paragraph 18 of the said order deals with lease deeds of *kachchi basties* in urban areas and provides as under:-

> **18. In relation to the Allotment of notified Katchi Basties in urban areas-**
>
> (i) During the previous Abhiyan 2012, the cut-off date for grant of lease deed to the surveyed/non-surveyed residents in the Katchi Basties was kept as 15.08.2009, it will be kept as it is.

(ii) The lease deeds issued earlier for the Katchi Basties have been kept non-transferable, which can be transferred after 10 years from the date of issue of the lease deed.

(iii) The rates of allotment of Katchi Basties have been kept the same as before.

(iv) The developed Katchi Basties shall be de-notified, powers of which are delegated to the Empowered Committee of the Local Body.

(v) The rates for the plots of Katchi Basti have been] kept as prescribed earlier. 110 square yard residential in which 15 square yard can be commercial, which is as follows:-

Area	Rate (Municipal Corporation Area)	Rate (Municipal Council Area)	Rate (Municipality Area)
1 to 50 SqYd	Rs.20 per SqYd	Rs.15 per SqYd	Rs.10 per SqYd
51 to 110 SqYd	Rs.40 per SqYd	Rs.30 per SqYd	Rs.20 per SqYd

23. Paragraph 23 pertains to power of allotment of strip of land and envisages allocation of adjoining land subject to certain ceiling. Clause (b) of this paragraph reads as under:-

> "(b). Allotment of excess area of plots-
>
> In certain cases in the schemes of the Local Body, the actual area of the plots allotted/sold by auction is more on the site than the allotted area of the plot. The main reason for this is the difference between the survey done while planning and demarcation. Such excess area is allotted at the reserve price and allotment is done at auction rate in the auctioned plots.
>
> Now the area of such excess plots will be allotted during the Abhiyan period at the following rates:- (Order dated 01.09.2021):-
>
> (i) 100% of the reserve rate in the schemes of Local Body,
>
> (ii) 50% of the reserve rate in private khatedari schemes."

24. Paragraph 38 of this order provides that lease deeds shall not be given in forest land, low lying area or oran land and other restricted areas.

25. On 12.11.2021 the Government issued further clarifications regarding issuance of pattas of kachchi bastis which reads as under:

"In view of the order issued by Hon'ble High Court Jodhpur Chief Bench in D.B. Civil Writ Petition No. 13782/2021 dated 06.10.2021 and D.B. Civil Writ Petition (PIL) No. 15150/2021 Dated 28.10.2021, the following facts are clarified regarding issuance of Pattas of Kutchi Basti in Prasahan Saharon ke Sang abhiyan-2021.

a- According to the order of the Hon'ble High Court in Durga Vihar Vikas Samiti Vs. State Government Petition No. 1159/05, the State Government issued the Kutchi Basti Regulation Policy, 2005 dated 30.9.05; According to which the Hon'ble High Court has given permission to regularise the kutchi Basti by order dated 24.07.06.

b- The Hon'ble Supreme Court has also given the relaxation to decide the regulation by making a policy for Kutchi Basti in the decision dated 30.8.11 passed in Special Leave Petition No. 16668/08 Unwan Municipal Corporation, Jaipur vs Lekhraj Soni. According to the policy framed by the State Government in the year 2005 lease deed are to be issued in Kutchi Basti after regularization

c- In the above decision of the Hon'ble Supreme and High Court, it has been allowed to regulate the occupation of Kutchi Basti. In this sequence, the state government has issued pattas to about 65000 families and now the remaining pattas are to be given to the occupiers of the surveyed/marked Kutchi Basti. The cut off date of possession for regulation is 15.8.09. The said regulation gives shelter to poor families, which is a public welfare work.

In the context of the above facts, the following guidelines are issued to the urban local bodies:

01. leases should not be given in Such identified Kutchi Basti which are in reserved facility areas (such as parks, play grounds, road, open land, public land etc.), reserved land, forest land, river, drain, Ponds and other restricted area.

02. Lease deed have been issued in the past to the families residing in notified/surveyed kutchi settlements till date 15.08.2009. In the current campaign, action should be taken to issue lease deed to the remaining families residing above with cut off date of 15.08.2009.

03. Lease deed should be issued only according to the norms of Kutchi Basti Policy-2005.

04. Cut off date of possession of occupants for issue of lease deed in Kachchi Basti is 15.08.2009 and the minimum road width is 15 feet.

05. The following rates are effective for grant of lease deed:

Area (in square yards)	Regulation rates (in per square yards)		
(In square yards)	Municipal Corporation area	Municipal Council area	Municipal Board area
1 to 50	20 Rs.	15 Rs.	10 Rs.
51 to 110	40 Rs.	30 Rs.	20 Rs.

Note-

- This rate will be double for families/individuals other than BPL.
- The amount of the above regulation rate will be recovered in one time.
- Pattas issued in Kachchi Basti will be issued on the basis of 99 year lease.
- The lease deed will be issued on these leases after recovering the amount of regulation and 1% of the lease amount in one time.

This order is approved by competent level."

26. In order to operationalise these policy decisions of the Government certain statutory changes have been made. Under a notification dated 27.03.2020, the Rajasthan Urban Improvement (Amendment) Act, 2020 came to be promulgated. Through this amending act certain amendments have been made in the Rajasthan Urban Improvement Act, 1959. Clause (xi-a) is inserted in Section 2 which contains the definition of term "zonal development plan as to mean a plan prepared and approved in the

manner as may be prescribed". Existing Section 4 of the Act has been replaced and now reads as under:-

> "**4. Contents of master plan.-** The master plan shall define the various zones into which the urban area having the population of more than one lac may be divided for the purposes of its improvement and indicate the manner in which the land in each zone is proposed to be used and shall serve as a basic pattern of framework within which the improvement schemes and the zonal development plans of the various zones may be prepared:
>
> Provided that the preparation of zonal development plan shall not be mandatory for urban areas having population of less than one lac."

27. As per this provision thus the master plan would define various zones into which the urban area having population of more than one lac would be divided. Proviso to Section 4 provides that preparation of zonal development plan shall not be mandatory for urban areas having population of less than one lac.

28. The State Government under a notification dated 24.02.2021 promulgated the Rajasthan Urban Area Land Use Change (Amendment) Rules, 2021 to facilitate change of land use in certain cases which provides *inter-alia* that change of land use will not be required if agricultural land for non-agricultural purposes conforms to the master plan/zonal development plan/technical parameters/scheme.

29. Vide notification dated 20.09.2021, the Rajasthan Municipalities Act, 2009 was also amended vide the Amendment Act of 2021. Sections 68-A and 69-A were inserted which read as under:-

"68-A. Land to vest in the Muncipality and its disposal.- (1) Notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956 (Act No.15 of 1956), the land as defined in Section 103 of that Act, excluding land referred to in sub-clause (ii) of clause (a) of the said section and Nazul land placed at the disposal of a local authority under section 102-A of that Act in municipal area shall, immediately after establishment of the Municipality under section 5 of this Act, be deemed to have been placed at the disposal of and vested in the Municipality which shall take over such land for and on behalf of the State Government and may use the same for the purposes of this Act, and may dispose of the same subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe:

Provided that the Municipality may dispose of any such land-

(a) without undertaking or carrying out any development thereon; or

(b) after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider expedient to impose for securing development according to plan.

(2) No development of any land shall be undertaken or carried out except by or under the control and supervision of the Municipality.

(3) If any land vested in the Municipality is required at any time by the Development Authority or the Urban Improvement Trust, as the case may be, for carrying out its functions, or by State Government for any other purpose, the State Government may by notification in the Official Gazette, place such land at the disposal of the Development Authority or the Urban Improvement Trust or any department of State Government, as the case may be, on such terms and condition as may deemed fit.

(4) All land acquired by the Municipality, or by the State Government and transferred to the Municipality, shall be disposed of by the Municipality in the same manner as may be prescribed for land in sub-section (1).

69A. Acceptance of surrender of rights in certain lands and issue of free hold patta - (1) Any person who holds non-agricultural land within the jurisdiction of the Municipality otherwise than under a lease or licence issued by the Municipality may, in the prescribed manner, surrender his rights in such land in favour of the Municipality for the purpose of obtaining free hold rights from the Municipality, the Municipality may accept such rights and may issue free hold patta.

(2) Any person who holds any order or patta issued under any other law may also surrender his rights in such land in favour of the Municipality for the purpose of obtaining free hold rights from the Municipality, the Municipality may accept such rights and may issue free hold patta. In case such land is on lease hold basis the free hold patta shall be issued on depositing one time lease money as may be prescribed.

(3) On acceptance of rights by the Municipality under sub-sections (1) and (2), all the rights of the holder in the said land shall vest in the Municipality and the Municipality shall, subject to the other provisions of this Act and the rules made thereunder and on payment by the holder such fee or charges as may be determined by the State Government, issue free hold patta to the holder of the said land.

(4) The free hold patta issued under sub-section (3) shall be subject to all the covenants and encumbrances which were attached to the land and existed immediately before acceptance by the Municipality of the rights under sub-sections (1) and (2)."

Contentions of the counsel :

30. On the basis of such material on record learned counsel Mr. Moti Singh for the petitioner laid the charge. He raised following contentions:-

(i) The Government decisions are in conflict with the judgments in case of Gulab Kothari and the directions contained therein. He referred to the relevant provisions of the impugned

circulars/orders of the Government and the discussions of this Court in case of Gulab Kothari's judgment in order to demonstrate that the Government scheme and policy cannot be i]mplemented in view of the restrictions imposed by this Court in the said judgments.

(ii) That the Government policy is even otherwise illegal. The policy envisages regularisation of landholdings by the encroachers on the private as well as public lands. It also envisages regularisation of construction which has been carried out without any permission from the local authority whatsoever. Both these steps would be taken even if the land use is opposed to the approved plans. Any such permission by the Government would lead to haphazard and unplanned growth of the towns and cities in the State and which even otherwise would be opposed to the Urban Improvement Act and other land laws.

(iii) That the proposed regularisation scheme of the State Government would be damaging to the environment and ecology also.

In addition to extensively referring to the passages of Gulab Kothari's judgment, Shri Moti Singh has also relied on following decisions:

(i) A Division Bench judgment dated 13.11.2018 in the case of **Kanti Lal vs. State of Rajasthan and others, D.B. Civil Writ No.7509/2016**, in which it was observed that the traditional water sources have to be protected and should be left open for the benefit of public at large.

(ii) The Supreme Court judgment dated 25.11.2019 in the case of **Jitendra Singh vs. Ministry of Environment and others, Civil Appeal No.5109/2019**, in which it was observed that it is the responsibility of the State to ensure protection and integrity of the environment, especially one which is a source of livelihood for rural population. It was also observed that the protection of the common areas in the village is essential to safeguard the fundamental rights. These common areas are lifeline of village communities. Water bodies are importance source of fisheries and much needed potable water.

(iii) Reference was made to the Division Bench judgment dated 29.09.2021 in the case of **Suo Moto vs. State of Rajasthan and another, D.B. Civil Writ Petition No.752/2016**, in which in public interest petition, several directions were issued to the State authorities for protection and reservation of importance lakes situated in the State.

31. Learned senior counsel appeared for the State Government and opposed the petitions contending that the State Government has framed a policy in the larger interest. The scope of judicial review of such decisions is available on extremely limited grounds. This policy is not opposed to any of the directives in case of Gulab Kothari nor is unreasonable or arbitrary. The Government has the necessary mandate to make policy changes and also has the wherewithal to frame such policy with the aid and advise of the experts in the field. The Court would ordinarily not interfere in

such policy matters. In support of this contention he relied on the following decisions:-

(i) Rustom Cavasjee Cooper Vs. Union of India, reported in AIR 1970 SC 564.

(ii) Narmada Bachao Andolan Vs. Union of India And Ors., reported in (2000) 10 SCC 664.

(iii) Madras Bar Association Vs. Union of India and another, reported in (2021) 7 SCC 409.

32. He also referred to the decisions of the Supreme Court in cases of **R.K. Garg Vs. Union of India And Ors., reported in (1981) 4 SCC 675** and **Balco Employees' Union (Regd.) Vs. Union of India And Ors., reported in (2002) 2 SCC 333** to canvass that the executive has the authority to frame policies for governance and which enjoys greater latitude when it comes to frame policy in the socioeconomic spheres.

33. Learned senior counsel Mr. Harin P. Raval appeared for the development authorities and strongly opposed the petitions. He contended that these petitions have been filed with malicious intention. In case of Roshan Vyas initial challenge was limited. The prayers made were against a communication dated 23.04.2021 which was wrongly described as an order. This communication did not create any rights nor had the Government through this communication framed any policy which could be called in question. Referring to challenge to the order dated 20.09.2021, counsel pointed out that this challenge was limited only to a few isolated clauses which have been either deleted or modified by the

State Government. This petition in its original form thus has become infructuous. An attempt was therefore made to amend the writ petition by making large scale changes and expanding the challenge which was not permissible.

34. He pointed out that in quick succession another petition was filed by Bhanwar Singh which according to him was done only to frustrate the Government policy which is sought to be implemented in the interest of the people belonging to the middle and lower income strata of the State. He took us extensively through terms contained in the three impugned orders/circulars of the Government dated 20.09.2021, 27.09.2021 and 28.09.2021 and argued that none of these provisions are opposed to the directions contained in Gulab Kothari judgments nor are in any manner illegal. He submitted that contrary to what is sought to be projected by the counsel for the petitioners, under these policies the Government does not wish to regularise unauthorised occupations and encroachments in any of the public lands nor these circulars aim at regularising illegal constructions. The thrust of the policy is to regularise landholdings of various occupants who on account of variety of reasons do not have clear titles to the land. On one hand this creates serious problem for occupants of the land at the time of transfer and on the other hand since no valid document of transfer is created, the Government also loses revenue in the form of stamp duty and registration charges. The policy contains provisions for recognising such rights on the basis of certain reliable documents and granting leases which would

give clear title to the landholders. In the process, no development plans would be breached. Counsel submitted that decision to regularise *kachchi basties* is in tune with the socioeconomic policy of the executive. Similar attempts have been made in the past.

Consideration of the issues :

35. Having heard learned counsel for the parties and having perused the documents on record, the entire issue of validity of the State Government's policy expressed in the impugned circulars and orders would have to be examined from three angles, namely (i) the decisions of the Division Bench and Larger Bench in case of Gulab Kothari; (ii) whether these policies can be implemented within the existing statutory framework. In the process we would also be examining the validity of the statutory amendments under challenge before us; and (iii) whether argued before us or not, in this public interest litigation we would also be interested in satisfying ourselves whether in the process of implementing these policies the State Government has in any manner breached the principle of public trust. In case of **Centre for Public Interest Litigation And Ors. Vs. Union of India And Ors., reported in (2012) 3 SCC 1,** the Supreme Court observed that the natural resources are national assets and the State is the trustee of such resources on behalf of its people. The State Government thus holds all public properties in trust or on behalf of the people. Any divesting of such public property must be governed by reasonable parameters and cannot be in utter disregard to environmental

concerns and degradation of the ecology. We would be examining the validity of the Government policies on the anvil of trinity of these parameters.

36. At this stage we may refer to the relevant statutory provisions. To consolidate and amend the law relating to land; the appointment, powers and duties of revenue courts, revenue officers and village servants; the preparation and maintenance of maps and land records; the settlement of revenue and rent; the partition of estate; the collection of revenue and matters connected thereto, the Rajasthan Land Revenue Act, 1956 (hereinafter to be referred as 'the Act of 1956') was enacted. Chapter VI of the Act of 1956 pertains to land. Sub-section (1) of Section 88 falling within the said Chapter provides that all public roads, lanes, paths, bridges and ditches, all fences on or beside the all rivers, streams, lakes and tanks, all canals and watercourses, all standing and flowing water and all lands wherever situated which are not the property of individuals or of bodies of person legally capable of holding property are except insofar as any rights of such persons or bodies may be established in over the same and except may be otherwise provided in any law for the time being in force are declared to be with all rights in or over the same or appertaining thereto, the property of the State and it would be lawful for the collector subject to the order of the commissioner to dispose of them in such manner as may be prescribed.

37. Section 90-A of the Act of 1956 pertains to use of agricultural land for non-agricultural purpose and reads as under:-

> "**[90-A.] Use of agricultural land for non-agricultural purpose –** (1) No person holding any land for the purpose of agriculture, and no transferee of such land or any part thereof, shall use the same or any part thereof, by the construction of buildings thereon, shall use the same or any part thereof, by the construction of buildings thereon, shall use the same or any part thereof, by the construction of buildings thereon or otherwise for any other purpose except with the written permission of the State Government obtained din the manner hereinafter laid down and otherwise that in accordance with the terms and conditions of such permission.
>
> (2) Any such persons desiring to use such land or any part thereof for any purpose other than that of agriculture shall apply for the requisite permission in the prescribed manner and to the prescribed officer or authority and every such application shall contain the prescribed particulars.
>
> (3) The State Government shall, after making or causing to be made due inquiry in the prescribed manner, either refuse the permission applied for or grant the same subject to the prescribed terms and conditions.
>
> (4) When any such land or part thereof is permitted to be used for any purpose other than that of agriculture, the person to whom such permission is granted shall be liable to pay to the State Government in respect thereof -
>
> (a) an urban assessment levied at such rate and in accordance with such manner is may be laid down in rules to be made in this behalf by the State Government, or
>
> (b) such amount by way of premium as may be prescribed by the State Government, or
>
> (c) both.
>
> (5) If any such land is so used –
>
> (a) without the written permission of the State Government being first obtained, or

(b) otherwise than in accordance with the terms and conditions of such permission, or

(c) after such permission having been refused under sub-section (3), or

(d) without making any of the payments referred to sub-section (4), the person originally, holding the land as aforesaid for the purpose of agriculture as well as all subsequent transferees, if any, shall be deemed to be a trespasser or trespassers, as the case may be, and shall be liable to ejectment from such land in accordance with Section 91 as if he or they had occupied or continued to occupy such land without lawful authority and to every such proceeding the provisions of Section 212 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955) shall apply as if such land were in danger or being wasted, damaged or alienated:

Provided, that State Government may, in lieu of having such person and the subsequent transferees so ejected from the land in question, allow him or them, as the case may be, to retain such land, use the same for any purpose other than that of agriculture on payment to the State Government, in addition to the urban assessment and premium payable under subsection (4) of fine by way of penalty as may be prescribed.]

[(5A) Notwithstanding anything contained in any other provision of this section, the agricultural land may be used without permission for such non-agricultural purposes as may be prescribed by the State Government.]

[(6) Where permission under this section is sought with respect to a land situated in an urban area, the permission shall be granted only if the desired non-agricultural purpose is permissible in accordance with the law applicable in that area and is in consonance with the master plan or any other development plan or scheme, by whatever name called, in force, if any, in that area.

(7) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, when an order granting permission under this section is passed with respect to a land situated in an urban area, on and from the date of such order.-

(a) tenancy rights over such land of the person to whom permission under this section is granted shall stand extinguished; and

(b) the land shall be deemed to have been placed at the disposal of the local authority under section 102-A and shall be available for allotment to the person to whom permission is granted under this section, or to the successors, assignees or transferees of such person, by the local authority for any permissible non-agricultural purposes in accordance with the rules, regulations or bye-law made under the law applicable to the local authority of urban assessment or premium or both leviable and recoverable under sub-section (4)

(8) Notwithstanding anything to the contrary contained in this Act and the Rajasthan Tenancy Act, 1955 (Act No.3 of 1955) where before 17th June, 1999 any person, holding any land for agricultural purposes in an urban area or within the urbanisable limits or peripheral belt of an urban area, has used or has allowed to be used such land or part thereof for non-agricultural purposes or, has parted with possession of such land or part thereof for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or will or in any other manner for purported non-agricultural use, the rights and interest of such person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and the officer authorised by the State Government in this behalf, shall, after affording an opportunity of being heard to such person and recording reasons in writing for doing so, order for termination of his rights and interest in such land and thereupon the land shall vest in the State Government free from all encumbrances and be deemed to have been placed at the disposal of the local authority under section 102-A and shall be available for allotment or regularisation by the local authority for any permissible non-agricultural purposes in accordance with the rules, regulations or bye-laws made under the law applicable to the local authority to the persons having possession over such land or part thereof, as the case may be, on the basis of allotment made, or Patta given, by a Housing Co-operative Society or on the basis of any document of sale or agreement to sell or power of attorney or a will or any other document purporting transfer of land to them either by person whose rights and interests have been ordered to be terminated under this sub-section or by any other person claiming through such person, subject to the payment to the local authority of urban assessment or

premium or both leviable and recoverable under sub-section (4):

Provided that-

(i) nothing in this sub-section shall apply to any land belonging to deity, Devasthan Department, any public trust or any religious or charitable institution or a wakf;

(ii) no proceedings or orders under this sub-section shall be initiated or made in respect of lands for which proceedings under the provisions of the Urban Land (Ceiling and Regulations) Act, 1976 (Central Act No.33 of 1976), the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No.11 of 1973) and the Rajasthan Land Reforms and Acquisition of Land Owners Estate Act, 1963 (Act No.11 of 1964) are pending.

(9). Any person aggrieved by an order of an officer or authority made under this section may appeal within thirty days from the date of such order to such officer not below the rank of Collector as may be authorised by the State Government in this behalf, who shall, as far as practicable, disposed of such appeal within a period of sixty days from the date of its presentation and if he is unable to dispose of the appeal within the aforesaid period, he shall record reasons therefore. An order passed under this sub-section shall be final.

Explanation.- For the purposes of this section.-

(a) "Local Authority" in relation to a local area, means an authority constituted or designated for, or entrusted with the function of, planned development of that area and includes an Urban Improvement Trust constituted under the Rajasthan Urban Improvement Act, 1959 (Act No.35 of 1959) the Jaipur Development Authority constituted under the Jaipur Development Authority Act, 1982 (Act No.25 of 1982), the Jodhpur Development Authority constituted under the Jodhpur Development Authority Act, 2009 (Act No.2 of 2009) or a Municipality constituted under the Rajasthan Municipalities Act, 2009 (Act No.18 of 2009)

(b) "Urban Area" means an area falling within Jaipur region as defined in clause (8) of section 2 of the Jaipur Development Authority Act, 1982 (Act No.25 of 1982), Jodhpur region as defined in clause (8) of section 2 of the Jodhpur Development Authority Act, 2009 (Act No.2 of 2009) or a municipal area as defined in clause (xxxix) of section 2 of the Rajasthan

Municipalities Act, 2009 (Act No.18 of 2009) or an area specified as such in a notification issued under section 3 of the Rajasthan Urban Improvement Act, 1959 (Act No.35 of 1959) or an area for which a local authority is constituted or designated under any law for the time being in force;

(c) "Urbanisable limits" means the urbanisable limits indicated in the master plan or master development plan of a city or town prepared under any law for the time being in force and where there is no master plan or master development plan, the outer limits of the municipal area;

(d) "Peripheral belt" means the peripheral belt indicated in the master plan or master development plan of a city or town prepared under any law for the time being in force and where there is no master plan or master development plan or where peripheral belt is not indicated in such plan, the area as may be notified by the State Government from time to time.]"

38. This section has undergone several amendments. It was inserted in the Act in the year 1958 by virtue of the Amending Act of 1958. Existing sub-section (5) was substituted in the year 1980. Sub-sections (6), (7), (8) and (9) were added by virtue of Rajasthan Laws (Amendment) Act, 2012 and brought into effect on 02.05.2012. Sub-section (5A) was inserted w.e.f. 07.10.2014 by the Rajasthan Land Laws (Amendment) Act, 2014. Section 90-B was inserted in the year 1999 but under the Amending Act of 2012 this section was deleted w.e.f. 02.05.2012. Section 90-B pertained to termination of rights and resumption of land in certain cases. Before the deletion of Section 90B, the restrictions on the use of agricultural land for non-agricultural purposes were dealt with under Section 90-A and the consequences of breach of these restrictions were dealt with under Section 90-B. After the

amendments of 2012, these provisions were merged in Section 90-A and Section 90-B was deleted altogether.

39. Section 91 of the Act of 1956 pertains to unauthorised occupation of land. Sub-section (1) of Section 91 provides that any person who occupies or continues to occupy any land without lawful authority shall be regarded as a trespasser and may be summarily evicted by the *Tehsildar.*

40. Section 92 of the Act of 1956 provides that subject to the general orders of the State Government the collector may set apart land for any special purpose, such as for free pasturage of cattle, for forest reserve, for development of *abadi* or for any other public or municipal purpose and such land shall not be used otherwise than for such purposes without the previous sanction of the collector.

41. Section 101 of the Act of 1956 permits the specified authority to allot land for agricultural purposes in such manner as may be prescribed.

42. Section 102 of the Act of 1956 provides that notwithstanding anything hereinfore contained the State Government shall have power to allot land for the purpose of an industry or for any purpose of public utility on such conditions as it deems fit. Section 102-A of the Act of 1956 provides that any *Nazul* land or land set apart under Section 92 may be placed by the State Government at the disposal of a local authority having jurisdiction and such local authority may take over with the land so placed at its disposal for and on behalf of the State Government or may use the same for

special purpose for which it has been set apart to such extent and subject to such conditions and restrictions as the State Government may from time to time lay down and in such manner as it may from time to time prescribe.

43. Section 103 of the Act of 1956 defines the term land and *Abadi* for the purposes of Chapter VI. The land is defined in most comprehensive manner which would include the land as defined in the Rajasthan Tenancy Act, land acquired under the provisions of the Rajasthan Land Acquisition Act, land surveyed and recorded in the Government records, land in possession of the Government or a local authority obtained by transfer or otherwise, *nazul* land and land within the *abadi* area vesting in a local authority or land reserved and set apart for special purposes under Section 92 and would include the benefits to arise out of such land and things attached to the earth or permanently fastened to anything attached to the earth. The terms "*abadi*' or "*abadi* area" or "*abadi* land" mean the populated area of a village, town or city which would include the site of such village, town or city, land reserved and set apart under Section 92 for the development of *abadi.*

44. With a view to achieving the improvement of the neglected urban areas, to provide for the establishment of the improvement trusts to empower them to raise funds to frame improvement schemes and to execute them and to exercise municipal powers during such executions, the Rajasthan Urban Improvement Act, 1959 was framed. Section 2(vii) of the Act defines "master plan" as to mean the master plan prepared and approved for any urban

area in accordance with the provisions of Chapter II. Section 2(x) defines "urban area" as to mean the urban area notified under Section 3 or Section 8, as the case may be. Section 2(xi) defines "zone" as to mean any one of the divisions in which the urban area may be divided for the purposes of the improvement under the Act. Section 2(xi-a) defines "zonal development plan" as to mean a plan prepared and approved in the manner as may be prescribed.

45. Chapter II of the Act of 1959 pertains to master plans. Under Section 3 falling in the said Chapter, the State Government enjoys power to direct that master plan be prepared in respect of any urban area and for which purpose the State Government may constitute an advisory council. Section 4 pertains to contents of master plan and provides that such plan shall define various zones into which the urban area having population of more than one lac may be divided for the purpose of its improvement and indicate the manner in which the land in each zone is proposed to be used and shall serve as a basic pattern of framework within which improvement schemes and zonal development plans of the various zones may be prepared. Section 5 lays down the procedure to be followed for preparation of the master plan and envisages preparation and publication of draft master plan by inviting and considering the objections and suggestions that may be received before finalising the master plan.

46. Chapter III of the Act of 1959 pertains to constitution of trusts. Section 8 falling in the said Chapter envisages

establishment and incorporation of trusts for the purpose of carrying out improvement of urban areas. Chapter V of the Act of 1959 pertains to framing of schemes. Sub-section (1) of Section 29 envisages framing of schemes for improvement of urban area by Urban Improvement Trust. As per sub-section (2) of Section 29, such schemes may provide for all or any of the matters, such as acquisition of any land or other property necessary for execution of the scheme; re-laying out of any land comprised in the scheme; construction or reconstructions of buildings; forming of open spaces for the benefit of the area; making sanitary arrangements as required; establishment and constructions of markets and other places of public requirement; reclamation or reservation of land for gardens, forestation, planting or preservation of trees and plantations etc. Such scheme when prepared by the Urban Improvement Trust would be placed before the Government for its consideration in terms of Section 37. Under Section 38 the State Government would sanction a scheme and notify the same upon which the trust would proceed to execute the scheme. Under Section 39, the State Government would specify time within which the scheme would be executed. Section 40 which pertains to alteration of the scheme after sanction provides that at any time after a scheme has been sanctioned by the State Government and before it has been carried into execution, the trust may alter it. However if such alteration is estimated to increase the net cost of execution of the scheme by more than Rs.50,000/- or 5% of the cost, whichever is less, the

alteration shall not be made without previous sanction of the State Government.

47. Chapter VI of the Act of 1959 pertains to powers and duties of the trust where a scheme has been sanctioned. Sub-section (1) of Section 43 provides that the State Government may by notification in the official gazette and upon such terms and conditions as may be agreed upon between it and the trust, place at the disposal of the trust all or any of the improved and unimproved lands in the urban area for which the trust has been constituted and which may be vested in the State to be known as *nazul* lands for the purposes of improvement in accordance with the scheme framed and sanctioned.

48. Chapter VII of the Act of 1959 pertains to acquisition and disposal of land. Section 51 falling in the said Chapter authorises the trust to acquire land by purchase, lease or exchange through agreement. Under Section 52, upon a representation from the trust the State Government may acquire any land for the purpose of improvement or for any other purposes under the Act.

49. Section 74 of the Act of 1959 under Chapter X authorises the State Government to frame rules consistent with the Act. In exercise of such powers the State Government has framed the Rajasthan Urban Improvement (Disposal of Urban Land) Rules, 1974 and the Rajasthan Urban Improvement (Change of Use of Residential Land or Premises for Commercial Purposes) Rules, 1974.

50. To consolidate and amend the law relating to tenancies of agricultural lands and to provide for certain measures of land reforms and matters connected therewith, the Rajasthan Tenancy Act, 1955 (for short, 'the Act of 1955') was enacted. Section 16 of the Act of 1955 provides that notwithstanding anything in the Act or in any other law or enactment for the time being in force in any part of the State, khatedari rights shall not accrue in relation to several kinds of land including pasture land, land used for causal or occasional cultivation in the bed of a river, land comprised in gardens owned and maintained by the State Government, land acquired or held for a public purpose or a work of public utility, land situated within the limits of a cantonment, land included within railway or canal boundaries, land within boundaries of any Government forest, land which has been set apart or is in the opinion of the collector necessary for the flow of water therein into any reservoir or tank of drinking water for a village or for surrounding villages.

51. We have reproduced paragraph 205 of the judgment in the case of Gulab Kothari-1 which contains directions and restrictions to the State and its authorities in relation to land use. These directives which are relevant from the standpoint of the present controversy can be summarised as under:-

(i) the development authority in the State to ensure that master development plan for the area is comprehensive and provides for preservation, conservation, development of eco-sensitive zone, ecological zone, green area etc.

(ii) Simultaneously or immediately after preparation of master development plan the authority should proceed to prepare zonal development plan.

(iii) Sanctity of such plan shall be maintained and there should be vigilant implementation thereof and any deviation must be an exception.

(iv) Eco-sensitive zone or ecological zone or green area specified in the master plan once established shall not be altered or put to other uses during operative period or even while undertaking revision or preparation of new plan.

(v) Area shown in various master plans as green zone, green area which are to be developed as buffer shall not be permitted to be used for any activities other than those specified unless the State Government permits diversion of land.

(vi) The use of the land in peripheral control belt shall not generally be permitted for the purposes other than those specified but if any change is necessary in larger public interest, then only to subserve the legislative intent of planned development for promotion and enhancement of the quality of life of the citizens it may be allowed.

(vii) Open spaces, green space, common facilities, playgrounds, gardens, parks and recreational areas shall be protected.

(viii) The land use as specified in the plan shall not be changed without alteration or modification of the plan carried out after following the procedure laid down under the law.

(ix) The authorities shall frame township policy ensuring that no small colony comes up in small areas with no infrastructure facilities.

(x) Immediate steps to be taken to check encroachment or unauthorised constructions over the public way and footpaths. The encroachments on such areas by putting stairs, ramps, hoardings or fencing shall be removed.

(xi) The authorities would enforce the building bye-laws strictly and no construction in deviation of approved plan will be permitted. The unauthorised constructions raised violating the building line and the set backs norms shall not be permitted to be compounded.

(xii) Unauthorised development or change of land use shall not be compounded in exercise of power conferred under various statutes unless such unauthorised development or change of land use falls within the parameters of permissible modification of the plan.

(xiii) The State should take effective steps for conservation and preservation of natural resources such as hills, forests, rivers, other water bodies and catchment area and to undertake a drive to remove all encroachments made over the natural resources.

52. In Gulab Kothari-2 the Larger Bench refused to entertain the request of the State Government to modify or clarify the directions issued in Gulab Kothari-1. In particular prayer for modification of the directions not to permit compounding of unauthorised constructions violating the building norms was rejected. The further direction issued was not to permit conversion of land use or regularisation of unauthorised colony or individual unauthorised constructions until and unless the zonal development plans and sector plans for the local area concerned governed by the master development plan are prepared, finalised and notified in accordance with law. It was thus provided in para 54(e) of the judgment as under:-

> "(e) The respondents are further directed not to permit conversion of land use/regularisation of unauthorised colony or individual unauthorised constructions until and unless the Zonal Development Plan and Sector Plans for the local area concerned governed by Master Development Plan are prepared, finalized and notified in accordance with law. Further, the conversion of the land use or regularisation of unauthorised development shall not be permitted unless the unauthorised development undertaken fulfills the norms laid down for requisite infrastructure facilities and amenities and conforms to the Master Development Plan/Zonal Development Plan/Sector Plans/Schemes duly notified."

53. Perusal of the judgments of Gulab Kothari-1 and Gulab Kothari-2 would thus demonstrate that that the fundamental issue considered was of haphazard unplanned development of urban centers in the State. The Court was perturbed by the non-existence of the development plans and wherever such plans existed, lack of proper implementation thereof and unauthorised

and unsupervised development which was contrary to the development plans. The directions issued by the Court thus were for the purpose of preserving the sanctity of developing plans and to ensure that the future development takes place strictly in terms of the provisions made in the plan and no existing development which is contrary to the land use permitted under the plan is regularised. Unauthorised constructions only to the extent it conforms to the land use and building bye-laws could be regularised. Any other land use which is contrary to the provisions of the plan would not be regularised unless the plan itself within the permissible limits and after following the due procedure has been altered. Emphasis was placed on preservation of natural resources by providing effective steps for conservation or preservation of natural resources, such as hills, forests, rivers, other water bodies and catchment area. Any encroachment on such areas would be removed.

54. With this background we may now advert to the three Government orders/circulars which are under challenge. Broad features of the order dated 20.09.2021 can be summarised as under:-

(i) For agricultural land whose layout plans are already approved in the past, the Government envisages grant of lease deed by exercising powers as noted under Section 90-A and 90-B as applicable of the Act of 1956. This will include correction of measurement errors. Premium would be charged as per the Government policy.

(ii) In cases where lease deeds of unapproved colonies are to be granted in the city with the population of more than one lac, the same would be done only after the zonal plan is approved. However, the colonies where layout plans are already approved, they would be accommodated in the zonal plan considering them as commitments. Such regularisation could be done in terms of Section 90B and 90A as may be applicable and for which charges at the prescribed rates would be collected.

(iii) Regarding cases where the records of colonies have not been submitted by the private developers to the Jaipur Development Authority, this order provides that the plot holders directly or by forming a development committee can submit the details of the land along with available documents to the Jaipur Development Authority who shall prepare layout plan after conducting a survey and such holders will be issued lease deeds.

(iv) For the plots allotted by the local authorities during auction or lottery, relaxation and concession in interest and penalty on the late deposit would be granted.

(v) Interest and penalty waiver has been provided for the houses of economically weaker sections and lower income group persons.

(vi) The provisions have also been made for grant of new lease deeds on freehold basis under specified situations.

55. The circular dated 27.09.2021 principally lays down the guidelines and provides for relaxation for granting property rights

as envisaged in the order dated 20.09.2021. The salient features of this circular are as under:-

(I) The requirements of proof of property rights have been relaxed so that lease deeds can be given effectively. For example it is provided that lease deed, registry, donation, registered book or any other documents issued during princely time would be recognised. In case of non-availability of necessary documents the proof of right can be determined on the basis of documents, such as electricity or water bill of vintage prior to 01.01.1992, or name in the voter list prior to the said date, affidavit of two persons above the age of 60 from the neighborhood vouching for the undisputed right of possession of the applicant over the property before 01.01.1992 etc.

(II) For old *abadi* area several provisions have been made. These terms specifically provide the following:-

> "(ii) Lease deed shall not be issued for encroachment on public road/facility area. The verification of encroachment can be done on the basis of previous city survey/other documents.
> (iii) Lease deed shall not be issued for the construction/encroachment done on the ramps/verandah area or the terrace of the verandah of the market's located in walled city area.
> (iv.) Mixed-use lease deed shall be issued for the area wherein commercial activities (shop on ground floor and residence on upper floor(s) have been going on traditionally in the walled city. For the remaining area of the walled city. Residential/ /Commercial/ Hotels use lease deed may be issued while issuing of the lease deed an affidavit regarding adherence of the provisions of heritage shall be sought.
> (v) Reconstitution/sub-division rules and related charges will not be applicable for the plots located in the walled city area (UDH order no.F.10(65) UDH/3/4 dt. 21.10.2020)"

56. We have reproduced earlier clause (4) of this circular which lists the cases where lease deeds shall not be granted. This includes restricted areas as per the Rajasthan Municipality Rules, land falling within the limits prescribed for any archaeological site, monument etc. and importantly "land belongs to or vests in the Central Government of State Government or statutory or non statutory bodies, authorities or companies established by or under control of the Central Government or State Government, as the case may be, except land vests in the Municipality".

57. In the order dated 28.09.2021 it is provided that the *Abhiyan* will be executed in three phases. This document provides the guidelines regarding main tasks to be executed in the *Abhiyan.* These guideline include the following:-

(i) Giving new lease deed by surrendering ownership rights in the non-agricultural or *abadi* land located in the urban areas and envisages granting of lease deed subject to certain conditions and correcting measurement errors and anomalies in actual holding in land records.

(ii) Giving lease deed in the colonies developed on agricultural land according to the master plan/zonal development plant/ approved plan. It provides that in terms of the decision in case of Gulab Kothari, any area where zonal development plans have been prepared it would be ensured that land use would be as shown in the zonal development plan. Further detailed provisions have been made for such purpose.

(iii) This circular also envisages exemption from stamp duty in certain cases.

(iv) Grant of lease deed of plots on settlements on the land acquired under the Ceiling Act or Rajasthan Land Owners' Property Acquisition Act. It was noted that developments have come up on lands acquired under the Ceiling Act and other similar provisions and in some cases the land has already been sold prior to commencement of the Act, developments have come up on such properties and litigation is pending in various courts with respect to such lands since long. Such landholdings are therefore decided to be regularised by granting lease deed after charging premium at the specified rates.

(v) For *nazul* properties it would be done at the specified rates fixed by the cabinet sub-committee.

(vi) Freehold leases to be given in respect of short term lease and rental business properties.

58. As noted earlier, the thrust of the Gulab Kothari judgments is the requirement of planned development of urban areas and preservation of sanctity of development plans. On the other hand the thrust (though not the sole purpose) of the Government scheme under scrutiny is recognising and granting leasehold or freehold rights to the occupants of the land by relaxing the standards of proof of the subsisting rights and waiver of interest penalty and premium charges. In the process the Government scheme also in part envisages regularisation of existing constructions which may not be strictly in tune with the

development scheme and in some cases in absence of development scheme.

59. In Gulab Kothari judgments the High Court has put strict restrictions on the Government and its authorities in the spheres of town planning. Not just the Government and its authorities, we also, by virtue of law of precedent are bound by the judgments of coordinate and Larger Bench. We would therefore not permit the State Government to implement any of its measures/provisions contained in the impugned circulars which are in deviation of the mandamus contained in Gulab Kothari judgments.

60. Having said that, as observed in the preliminary remarks of this judgment, the urban town planning is extremely complex socioeconomic and legal challenge. Due to variety of reasons there is a wide gap between what a dream urban modern center should look like and what the realities are. We must realise that the executive wing of the state is headed by Council of Ministers who is chosen by the legislative assembly formed by elected representatives of the people. The policies framed by the legislature are implemented by the executive. The members of the assembly have the mandate of their electorates to take policy decisions. Their performance is judged periodically on the basis of the decisions that they take. They therefore have to seek a fresh mandate from the electorates at the end of the five year term. It is therefore that as part of the broad division of powers under the Constitution, it is recognised that the Government has the authority to frame policies which also come with the elbow room

to experiment and make errors. This play in the joint is essential in any democratic set up. The Government agencies also have the wherewithal and assistants of the experts in the field which enables them to frame policies and to take informed decisions. The Courts neither have expertise in the highly technical field such as town planning nor have the democratic mandate to take policy decisions nor have the requirement to have such policy measures tested by facing the electorates. At the same time precisely because the Courts do not have to have their decisions tested on the principle of popularity, they can insulate the governmental actions and decisions from being merely populist and at times majoritarian. While thus preserving the power of judicial review even of policy natters, the Courts hold the Government policies in high regard and make interference in policy matters on rare and exceptional occasions.

61. We would therefore have due regard to the Government policy flowing from the three impugned orders and circulars. We would not interfere unless the policy fails any of the three tests which we have outlined earlier, namely:-

(i) It is contrary to any of the directions issued by this Court in Gulab Kothari judgments.

(ii) It is not permissible as per the statutory frame work.

(iii) Or it otherwise fails to pass the public trust test.

62. Insofar as the desire of the Government to regularise the rights of the persons who have landed properties by granting leases we do not find the same is in any manner opposed to the

Gulab Kothari directives. As noted more than once earlier, Gulab Kothari judgments principally concern the question of urban town planning and unauthorised development in urban centers. These decisions do not touch the question of recognising or granting leasehold rights to the occupants of the lands in any manner. We have also perused these provisions which as noted make relaxation in the requirement of proof of existing rights, give relaxation on interest and penalty on late payments. It also envisages regularising non-agricultural use of agricultural lands within the parameters of erstwhile Section 90-B and present Section 90-A of the Act of 1956. Erstwhile Section 90-B contained provisions for termination of rights and resumption of land when agricultural land is put to non-agricultural use after following the procedure laid down therein. Sub-section (6) of Section 90-B provided that the land so resumed shall vest in the State free from all encumbrances and would be placed at the disposal of concerned authority. However proviso to sub-section (6) provided that lands surrendered under sub-section (3) shall be made available to the person who surrenders the land for its planned development in accordance with the rules, regulation and bye-laws applicable for housing, commercial purposes etc. This provision thus envisaged regularisation of land use for non-agricultural purposes under certain circumstances. Likewise Section 90-A of the Act of 1956 in the present form also envisages resumption of the agriculture land which has been put to non-agriculture use after following the procedure. Proviso to sub-section (5) of Section 90-A provides that the State Government

may in lieu of having such person and the subsequent transferees so ejected from the land, allow him to retain it and use the same for any purpose other than that of agriculture on payment of urban assessment and premium and fine by way of penalty as may be prescribed. Sub-section (8) of Section 90-A covers the cases where such land use for non-agricultural purpose has been made before 17.06.1999. In such a case the Government could allow a person to continue to hold the land on payment of assessment of premium. Thus in the existing framework the Government has the right to regularise non-agricultural use of agricultural land made without permission.

63. Having said that, no divesting of the public property in the guise of recognising or granting leasehold rights to the occupants can be permitted unless a proper legal framework has been put in place. In the present Government scheme we do not find that the Government proposes to divest any of the public properties. This would be demonstrated from various provisions of these circulars and orders. For example paragraph 4 of the circular dated 27.09.2021 provides that freehold leases for various kinds of land would not be granted, one of them being land belonging to or vests in the Central Government or State Government or statutory or non-statutory bodies, authorities or companies established by or under control of the Central Government or the State Government. In paragraph 38 of the order dated 28.09.2021, it is provided that lease deed will not be given in forest land, low lying area or oran land and other restricted area.

64. In the order dated 28.09.2021, there are two clauses which require special mention. Clause 10 as it stood at the relevant time made detailed provisions regarding grant of lease deed of the lands acquired for housing board and local bodies and the colonies developed on the lands of local bodies. For such purpose this clause envisaged that the lands of the housing board would be transferred to the development authority or Urban Improvement Trust, who in turn would grant lease deed to the occupants of the colonies which have come up on such lands. It would be done after charging normal rates applicable to agriculture land. We have serious doubt about the manner and method for divesting such public property in favour of private individuals who could regarded as no better than encroachers.

65. While the hearing of these petitions was still going on, the State Government filed its affidavit on 10.12.2021 and declared that the Government has decided not to give effect to clause-10 of the said circular dated 28.09.2021 for the present and these provisions will not be acted upon. The Government would review the situation later. This spares us the requirement of testing the legality of this clause.

66. In comparison to this clause which as noted involves grant of lease deed in favour of occupants of Government land, clause-11 pertains to issuance of lease deed of plots on settlement on the lands acquired under the Ceiling Act or any other similar Acts. It appears that with respect to lands falling under the Urban Ceiling Act or other similar Acts, there are multiple disputes, some of

them are pending before various courts since long. Even if there are no legal disputes pending, as it often happens the State fails to protect such properties from occupations and constructions put up by such occupants, majority of whom are innocent purchasers of constructed properties. In some cases such developments have taken place even before the ceiling laws were introduced. In this context the Government has taken a decision to regularise such occupations by charging premium at prescribed rates. This decision of the Government cannot be seen as divesting public property and we would therefore not interfere with the same.

67. The question of regularising kachchi basties needs to be dealt with separately. The provisions are made for this purpose in Government order dated 28.09.2021. We reproduced paragraph 18 of the said order as per which the cut-off date as 15.08.2009 which was adopted in the previous Abhiyan of 2012 for grant of lease deeds to surveyed and non-surveyed of kachchi bastis has been maintained. One modification made is that the lease deeds earlier issued which were non-transferable have now been made transferable after 10 years from the date of issue of lease deeds. The rates of lease deeds of kachchi bastis have been kept same as before. Further clarifications were issued by the Government in separate order dated 12.11.2021 regarding kachchi bastis. Further guidelines have also been issued. It is clarified that leases should not be given in such kachchi bastis which are developed in reserved facility areas such as park, playground, roads, open land, public land etc.; reserved land, forest land, river, drain, ponds and

other restricted areas. It is pointed out that the lease deeds have already been issued in past in favour of the families residing in notified/surveyed kachchi settlements till 15.08.2009. In the present, the Government again issued lease deeds to the remaining families residing in such bastis with the cut-off date of 15.08.2009. Such lease deeds would be issued according to the norms of Kachchi Bastis Policy-2005.

68. It can thus be seen that the policy of regularising kachchi bastis is an on-going process continued from time to time. In the present scenario, the original cut-off date of 15.08.2009 is maintained. It is pointed out that earlier steps have been taken to regularise such kachchi bastis. Emphasis is on regularising rest of the eligible bastis for grant of leases to the occupants. This policy is thus not a new one and can be seen as a social welfare measure by the Government to regularise the occupations of the persons belonging to lower income groups and those who belong to below poverty line. One major departure from the earlier policy is that such occupations are now made transferable after 10 years of grant of lease. We do not find this scheme opposed to the directions contained in Gulab Kothari's judgment. The order dated 12.11.2021 records that pursuant to permission granted by the Supreme Court allowing the Government to regulate the occupation of Kachchi basti, the State Government had already granted pattas to about 65000 families and the task of granting pattas to the remaining occupants would be completed. The cut-off date of the possession of occupants for regularisation is fixed as 15.08.2009. This is done in order to give shelter to poor

families. As noted, the order excludes those Kachchi bastis which are situated in facility areas such as parks, playgrounds, roads, open land, public land, reserved land, forest land, river, drain, ponds, other restricted areas from the purview of the Government scheme for grant of pattas. This policy does not suffer from any illegality or is in any manner opposed to Gulab Kothari's judgment (supra) of this Court as long as the Government sticks to its promise of not granting leases to the residents of such kachchi bastis which have developed on reserved facility areas such as park, playground, roads, open land, public land etc.; reserved land, forest land, river, drain, ponds and other restricted areas.

69. When it comes to the desire of the Government to regularise existing constructions, the restrictions imposed by the Court in Gulab Kothari judgments immediately kick in. No such regularisation can be done which is not permissible as per the said decisions. Broadly, restrictions imposed in the judgments of Gulab Kothari are that development schemes shall be framed promptly and those which are framed will be implemented. No land use will be permissible *dehors* the provisions made in the development plan and modification of the development plan would be after following the procedure and only subject to permissible limits. It is also provided that till the zonal development plans are prepared and sanctioned, no development *dehors* the master plan will be permitted. To overcome this obstacle the Government has amended the Rajasthan Urban Improvement Act by amending Section 4. Before amendment Section 4 provided as under:-

> **"4. Contents of Master plan.-** The master plan shall-
>
> (a) define the various zones into which the urban area for which the plan has been prepared may be divided for the purposes of its improvement and indicate the manner in which the land in each zone is proposed to be used, and
>
> (b) serve as basic pattern of frame work within which the improvement schemes of the various zones may be prepared."

70. The amended Section 4 now provides that the master plan shall define the various zones into which the urban area having population of more than one lac may be divided for the purposes of its improvement and indicate the manner in which the land in each zone is proposed to be used and shall serve as a basic pattern of framework within which the improvement schemes and zonal development plans of the various zones may be prepared. Proviso to Section 4 which is important provides that the preparation of zonal development plan shall not be mandatory for urban areas having population of less than one lac. In other words, as per the changed statutory scheme, the development of urban area having population of less than one lac would be governed by master plan without further preparation of the zonal development plan. The legislative reaction to one of the directives contained in Gulab Kothari judgments, in our opinion, is legitimate one. It is within the powers of the legislature to amend the existing statutory framework and as long as the amendment is not unconstitutional, it would serve the legitimate purpose of neutralising the judgments or the directions of the Court. While the legislation in the present form does not envisage preparation

of zonal development plan for urban areas having population of less than one lac, the petitioners cannot bind the Government to the directions issued in Gulab Kothari judgments of not recognising development in such areas without preparation of development plan. The legislative intent appears to be that the master plan itself would contain the manner in which the land would be put to uses in different zones and provides a basic framework within which the areas would be developed. In urban areas with population less than one lac, the legislature in its wisdom as per the proviso to Section 4 of the Rajasthan Urban Improvement Act now provides that the preparation of zonal development plan shall not be mandatory. In such areas, provisions made in the master plan would suffice for the development of the area without further macro planning through zonal development plans. Such legislative wisdom is not open to question before the Court. Merely because a different mode appears more suitable to the Court, cannot be the ground to declare such legislation unconstitutional. In other words, the Court would not substitute its wisdom for that of the legislature.

71. We may recall, the State legislature has made certain legislative amendments under the Rajasthan Laws (Second Amendment) Act, 2021. Section 43 of the Rajasthan Urban Improvement Act, 1959 has been substituted. Sub-section (1) of substituted Section 43 provides that notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956, the land as defined in Section 103 of that Act. Under Sub-section (1) of

substituted Section 43 the lands within the jurisdiction of urban area are deemed to have been placed at the disposal of the Urban Improvement Trust upon establishment of such trusts under Section 8 of the Act and the trust would take over such land for and on behalf of the State Government and could utilize the same for the purposes of the Act and may dispose of the same by way of allotment, regularization or auction subject to such conditions and restrictions by the State Government from time to time lay down and in which manner, as it may, from time to time prescribe. Proviso to Sub-section (1) of substituted Section 43 provides that the trust may dispose of any such land even without undertaking or carrying out any improvement thereon or after undertaking or carrying out such improvement as it thinks fit.

72. Section 60-C has also been inserted in the said Act. As per Sub-section (1) of Section 60-C, any person who holds non-agricultural land within the jurisdiction of the trust otherwise than under a lease or licence issued by the trust may, in the prescribed manner, surrender his rights in such land in favour of the trust for the purpose of obtaining free hold rights from the trust, the trust may accept such rights and may issue free hold patta. Sub-section (2) of Section 60-C provides that any person holding any order or patta issued under any other law may also surrender his rights in favour of the trust for obtaining free hold rights from the trust and the trust may accept such rights and issue free hold pattas, which shall be issued on depositing one time lease money as may be prescribed. Sub-section (3) of Section 60-C provides

that on acceptance of rights by the trust under Sub-sections (1) and (2) all rights of the holder in the said land shall vest in the trust and the trust shall, subject to other provisions of the Act and the Rules made thereunder and on payment by the holder such fee and charges, as may be determined by the State Government, issue free hold patta to the holder of the said land. Sub-section (4) of Section 60-C provides that the free hold patta issued under Sub-section (3) shall be subject to all covenants and encumbrances which were attached to the land and existed immediately before acceptance by the trust of the rights under sub-section (1) and (2).

73. Similar provisions have been made by inserting Section 54-E in the Jaipur Development Authority Act, 1982, Section 50-B in the Jodhpur Development Authority Act, 2009, Sections 68-A and 69-A in the Rajasthan Municipalities Act, 2009 and Section 50-B in the Ajmer Development Authority Act, 2013.

74. In essence, under substituted Section 43 of the Rajasthan Urban Improvement Act, 1959, the land falling within the urban area is vested in the Urban Improvement Trust from inception by deeming provision and placed at the disposal of the trust which in turn can dispose of the same by way of allotment, regularization or auction subject to such conditions and restrictions by the State Government from time to time lay down and in which manner, as it may, from time to time prescribe. As per Section 60-C of the said Act, a person holding non-agricultural land or holding pattas can surrender the land in favour of the trust. The trust after

accepting such surrender can issue free hold patta upon payment of such charges as may be determined. The holder of the land thereupon be issued free hold pattas which shall be subject to all covenants and encumbrances attached to the land which existed immediately before acceptance by the trust of the rights under sub-sections (1) and (2).

75. Necessary corresponding amendments have been made in the respective rules. For example, the Rajasthan Municipalities (Surrender of Non-Agricultural Land and Grant of Freehold Lease) Rules, 2015 have been amended by virtue of the Rajasthan Municipalities (Surrender of Non-Agricultural Land and Grant of Freehold Lease)(Amendment) Rules, 2001 through amendment circular dated 20.09.2021. The existing Rule 8 has been substituted by new Rule 8. Sub-rule (1) of substituted Rule 8 is now applicable, which provides that the applicant shall pay such charges as may be determined by the State Government from time to time and submit a proof of deposit of amount of charges along with his application. Sub-Rule (2) of Rule 8 provides that in case of any shortfall in the amount deposited by the applicant on the basis of self assessment, he shall deposit the balance amount of charges within 30 days of the demand raised by the Municipality. Substituted Rule 9 provides that the after grant of permission under Rule 6 and deposition of charges under Rule 8, free hold lease deed shall be executed by the Chief Municipal Officer and Chairperson or any other officer authorised by the State Government in favour of person to whom permission is

granted under Rule 6 or in favour of his successors, assignees or transferees, as the case may be.

76. The *vires* of these provisions have been challenged by the petitioners. However we do not find that the same are unconstitutional in any manner. As is well known as per the decision of the Supreme Court in the case of **The State of Jammu and Kashmir Vs. Triloki Nath Khosa, reported in AIR 1974 SC 1,** if there is a presumption of constitutionality of a statute the onus is on the one who urges that the same is unconstitutional, to produce necessary material in support of such a contention. As held by the Supreme Court in the case of **State of Andhra Pradesh and others Vs. Mcdowell & Company and others, reported in (1996) 3 SCC 709,** the statute framed by the Parliament or State legislature can be challenged only on the ground that the same is not within the legislative competence of the concerned legislature or is opposed to any other fundamental right or any of the provisions of the Constitution. This principle has been expanded by a Constitution Bench judgment in the case of **Shayara Bano Vs. Union of India and others, reported in (2017) 9 SCC 1,** where it has been held that a legislation can also be challenged on the ground of manifest arbitrariness. In the present case the petitioners have not established existence of any of the available grounds for challenge. The provision is neither outside the legislative competence of the State legislature nor it is shown to be opposed to any of the fundamental rights or constitutional provisions nor it is demonstrated to be manifestly

arbitrary. In its legislative wisdom the State legislature has done away with the requirement of framing a development plan for an urban area having population of less than one lac. Our preference or understanding of what should be a better policy certainly has no place when we are judging the constitutionality of a statute framed by the State legislature.

77. There still one area of grave concern. We would be concerned if while implementing the Government scheme, occupations and encroachments in eco-sensitive zones, catchment areas, water bodies, riverbanks and such alike are to be regularised. The same would not only be wholly impermissible on the anvil of principles and directives of Gulab Kothari judgments but independently thereof also. Irreversible environmental damage and ecological degradation cannot be permitted in the name of Government policy choices.

78. We would summarise our conclusions as under:-

(i) Insofar as the impugned Government circulars/orders pertaining to recognising the rights over properties and granting lease deeds subject to terms and conditions indicated, the same are not opposed to the Gulab Kothari judgments nor are impermissible in any other manner.

(ii) Insofar as the Government's desire to regularise the existing land uses, the same falls into broad categories, (a) where agricultural land is put to non-agricultural use without permission and (b) where such lands as aforesaid or other lands of non-agricultural character which have been put to uses other than land

use specified in the development plans. So far as clause (a) category of uses are concerned, *per se* we find no illegality in the approach of the Government. The Government has the authority in terms of Section 90B of the Act of 1956 as it stood at the relevant time and Section 90-A as it stands today to regularise such unauthorised land conversions. However so far as clause (b) is concerned, any such regularisation of the land use, must strictly conform to the Gulab Kothari judgments. In other words, if the current land use is different from the land use permissible under the sanctioned development plan, the same would not be regularised unless and until to the extent permissible and after following the procedure as envisaged, the development plan is modified. While doing so, all rigours, restrictions and directions contained in Gulab Kothari judgments would apply. Nothing stated in this judgment would be taken as having diluted any of these directions.

(iii) *Vires* challenge to the statutory provisions fails.

(iv) No construction in the guise of operating any of the provisions of the scheme which cannot be regularised as per the existing bye-laws, would be regularised. This flows clearly from the Gulab Kothari judgments. Unless and until the Government brings a valid legislation, these directions must apply.

(v) The decision to regularise the kachchi bastis, *per se,* is not opposed to any of the Gulab Kothari's principle as long as the Government sticks to its stand of not granting leases to the residents of such kachchi bastis which have developed on reserved

facility areas such as park, playground, roads, open land, public land etc.; reserved land, forest land, river, drain, ponds and other restricted areas.

79. Before closing we may note that after considerable judicial time was spent in hearing these petitions, it was pointed out to us that Gulab Kothari related issues are still pending before the Larger Bench and one possible approach is to place these petitions for hearing before the same Bench where a holistic view can be taken. We had given anxious consideration to this development. We however chose to continue and complete the hearing. Firstly, because by then considerable judicial time was already consumed which we would go totally waste if no finality was given to these petitions. Secondly, Gulab Kothari case is to be heard by the Larger Bench and formation of which would mean disturbing several benches and current roster. Assembling the Larger Bench would therefore not be that simple nor that frequent. As opposed to this, these petitions were placed before the regular Bench to whom public interest petitions are assigned. On both sides issues were of considerable urgency. We had therefore heard the arguments and reserved the judgment which we are pronouncing now.

80. Both the petitions are disposed of. Pending applications also stand disposed of.

(SUDESH BANSAL),J **(AKIL KURESHI),CJ**

Kamlesh Kumar/