**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

S.B. Civil Writ Petition No. 2494/2015

Rajasthan Housing Board through Dy. Housing Commissioner & Resident Engineer, Rajasthan Housing Board, Jodhpur

----Petitioner

Versus

1. Legal Representatives of deceased plaintiff Mani Ram

----Respondents

**<u>Connected With</u>**

S.B. Civil Writ Petition No. 2476/2015

Rajasthan Housing Board through Dy, Housing Commissioner & Resident Engineer, Rajasthan Housing Board, Jodhpur

----Petitioner

Versus

1. Hema Ram

2. State of Rajasthan, through the Tehsildar, Jodhpur

----Respondents

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| For Petitioner(s) | : | Mr. P.C. Sharma |
| For Respondent(s) | : | Mr. P.P. Choudhary, Sr. Advocate<br>Mr. J.L. Purohit, Sr. Advocate<br>Mr. Pankaj Sharma, AAG assisted by<br>Mr. Rishi Soni<br>Mr. Shashank Joshi<br>Mr. Lalit Kumar<br>Mr. Rajeev Purohit<br>Mr. D.S. Beniwal |

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**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Judgment**

**02/03/2022**

**Judgment pronounced on : 11th March, 2022**

**Judgment reserved on : 02.03.2022**

The present writ petitions are listed in the "Orders Category" but with the consent of the learned counsel for the parties, these petitions are heard for final disposal.

Both these writ petitions arise out of the judgment and decree dated 02.12.2000 passed by the learned Assistant Collector and Executive Magistrate (HQ), Jodhpur which were allowed and decreed in favour of the plaintiffs-respondents. The validity of this judgment and decree was assailed before the Revenue Appellate Authority, Jodhpur. The Revenue Appellate Authority, Jodhpur vide its judgment dated 23.09.2002 dismissed the appeal preferred by the petitioner – Rajasthan Housing Board which was further challenged by the petitioner before the Board of

Revenue, Rajasthan, Ajmer but that second appeal too was dismissed by the Board of Revenue, Rajasthan, Ajmer vide its judgment dated 02.01.2014. Aggrieved of the three orders passed by these courts, the present writ petitions have been preferred.

Since the writ petitions arise out of the common judgments passed by three courts below and the subject matter being common, both these writ petitions are disposed of by this common order.

For convenience, the facts are being extracted from SB Civil Writ Petition No. 2476/2015 (Rajasthan Housing Board Vs. Hema Ram & anr.)

Succinctly stated the facts of the case are that the dispute relates to the land comprising of Khasra Nos. 134 and 135 measuring approximately 804 bighas and 3 biswas situated in village Sunthla, and Khasra Nos.853/1/751, 846/751, 853/751 and 855/751 measuring 547 bighas 2 biswas of land situated in village Jodhpur. On 04.08.1979, the State Government issued a Notification under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred as "the Act of 1953) for acquisition of land measuring 804 bighas 3 biswas situated in Village Sunthla comprising of Khasra Nos.134 and 135. Thereafter, on 08.2.1980, after considering the objections received under Section 5A of the Act of 1953, a declaration under Section 6 of the Act of 1953 was made. Thereafter, on 16.07.1980, an award was passed by the Land Acquisition Officer. On 13.11.1980, the paper possession of the land was handed over to the

Rajasthan Housing Board by the Land Acquisition Officer but the actual physical possession was not taken. Subsequently, on 11.5.1981 the mutation of the land comprising of khasra Nos. 134 and 135 of village Sunthla was made in favour of the Rajasthan Housing Board.

Likewise, on 23.05.1983, the State Government again issued a notification under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 for acquisition of land measuring 547 bighas 2 biswas situated in Village Jodhpur including the land comprising of Khasra Nos. 853/1/751, 846/751, 853/751 and 855/751 including the land of the private respondents. Thereafter, on 9.4.1986, while dispensing with the enquiry made under Section 5A of the Rajasthan Land Acquisition Act , 1953 a declaration was issued under Section 6(1) of the Act of 1953. On 28.12.1988, again an award was passed by Land Acquisition Officer for the land comprising of Khasra Nos. 853/1/751, 846/751, 853/751 and 855/751 situated at village Jodhpur. The paper possession of the land was handed over to the Rajasthan Housing Board by the Land Acquisition Officer but actual physical possession was not taken by the Board.

During the process of land acquisition proceedings, on 26.6.1985, the plaintiff-respondent No.1- Hema Ram filed a suit against the State Government before the Sub Divisional Officer, Jodhpur for declaration of the khatedari rights of the land in dispute situated in village Jodhpur and Sunthla respectively and sought a declaration of permanent injunction to restrain the defendants-petitioners not to interfere in his possession, as he is

in the possession of the said land since the Samvat year 2000 and he has been regularly paying the Bigodi in his capacity as Gair Bapidar and with the coming into force of the Rajasthan Tenancy Act, 1955, he became the Khatedar but the said land was not entered in his khatedari and was made only 'siwai chak'. The respondent No.2 - State of Rajasthan filed written statement and denied the averments made by the plaintiffs in the plaint and submitted that the land in dispute is “khalsa” and “siwai chak” and the possession of the plaintiff is as an encroacher only and no tenancy right was ever conferred by any competent authority in his favour. It was also stated that the land was acquired as per the provisions of the Land Acquisition Act, 1894 and after the award, the paper possession of the land was also handed over to the Rajasthan Housing Board, thus, the plaintiff-respondent is not entitled to any khatedari rights nor to seek any permanent injunction. After filing of the written statement by the State Government, the plaintiff filed an application under Order 6 Rule 17 CPC for amendment of the plaint which was allowed and the Rajasthan Housing Board was impleaded as a defendant and amended plaint was also filed. The Rajasthan Housing Board also filed written statement to the amended suit and submitted that the land in dispute was acquired for the Rajasthan Housing Board as per the provisions of the Act of 1953 and that the plaintiff is not a khatedar of the land in dispute and the land was entered as a government land being khalsa (land belonging to the State Government) and Siwai Chak only. Thereafter, the case was transferred from Sub Divisional Officer, Jodhpur to the Assistant Collector & Executive Magistrate, (HQ), Jodhpur.

The following issues were framed :

(i) Whether the plaintiff is entitled to khatedari rights on the basis of his possession in the capacity of tenant on the land mentioned in amended plaint situated in village Jodhpur as per the then existing laws of Marwar State and the Rajasthan Tenancy Act,1955 ?

(ii) Whether the plaintiff is entitled to permanent injunction against the defendants, as the plaintiff is in cultivatory possession of the land as tenant, asami, gair-khatedar for the last 55 years ?

(iii) Whether the plaintiff is not entitled to khatedari rights and permanent injunctions as proceedings were initiated against him under Section 91 of The Rajasthan Land Revenue Act, 1956 ?

(iv) Whether since the land has been acquired as per the provisions of the Land Acquisition Act and the agricultural land has been converted to Abadi land and since the Land Acquisition Proceedings have not been challenged in competent court within time by the plaintiff and the possession being taken by the Rajasthan Housing Board, the revenue court has no jurisdiction to hear this suit?

The Assistant Collector & Executive Magistrate, (HQ), Jodhpur vide his judgment and decree dated 02.12.2000 while decreeing the suit, declared the plaintiff- respondent No.1 as khatedar tenant and ordered that the *lagaan* be recovered from them and issued a permanent injunction against the defendants State of Rajasthan and Rajasthan Housing Board and directed them not to interfere in the khatedari land of the plaintiff. The illegal mutation made in favour of the Rajasthan Housing Board

and the UIT was cancelled and set aside and the Tehsildar, Jodhpur was directed to enter the name of the plaintiff as khatedar tenant in the revenue records and necessary entries be also made in the land records.

Being aggrieved by the judgment and decree dated 2.12.2000, the petitioner – Rajasthan Housing Board filed an appeal under Section 203 of the Rajasthan Tenancy Act, 1955 before the Revenue Appellate Authority Jodhpur which was dismissed on 23.09.2002 and the second appeal preferred by the Rajasthan Housing Board before the Board of Revenue, Rajasthan, Ajmer was also rejected on 02.01.2014.

Heard learned counsel for the parties and perused the material available on record.

Learned counsel for the parties are in agreement that the facts in the matter are not in dispute.

Learned counsel for the petitioner as well as the learned counsel for the respondents have filed their written submissions in the matter.

Learned counsel for the petitioner at the outset submitted that it was wrongly mentioned in the written submissions that the appeal was decided by the Revenue Appellate Authority, Barmer on 23.09.2002 on account of the fact that no jurisdiction was vested in it. Hence, the ground of lack of jurisdiction of First Appellate Authority is not pressed.

It is argued by the learned counsel for the petitioner that all the three courts below committed illegality while exercising their

jurisdiction and declaring the plaintiff - private respondents as khatedar of the land in dispute which was duly acquired as per the procedure laid down under the Land Acquisition Act, 1894. The paper possession was handed over to the petitioner and the mutation was also made in its favour. Since the land being Abadi land, therefore, on the day when the suit was filed, the land in dispute was not an agricultural land. However, despite this apparent lack of jurisdiction, the trial court exercised the jurisdiction which was not vested in it and decreed the suit resulted into grave injustice to the petitioner. Furthermore, the Rajasthan Housing Board is a Statutory body and was deprived of valuable land by such unscrupulous persons causing loss to the public at large.

The learned counsel further argued that the courts below committed grave error while ignoring the fact that the possession of the plaintiff was not as a tenant on the disputed land and none of the witnesses stated that on 15.11.1955, the plaintiff was in possession in his capacity as a cultivator nor there was any admitted tenancy of the plaintiff, therefore, the plaintiff could not have acquired tenancy rights. Moreover, the plaintiff did not produce any revenue record of Samvat year 2012 as documentary proof; therefore, all the courts below committed grave illegality while holding otherwise and declaring the plaintiff as a khatedar of the land in dispute.

It is also submitted by the learned counsel for the petitioner that all the courts below overlooked the fact that the trial court earlier had dismissed the suit against which a review petition was

filed and after acceptance of the review petition, the petitioner had filed an appeal against the said review order which was pending, still the trial court decreed the suit which is highly improper and illegal resulting into grave injustice to the petitioner.

Learned counsel argued that the courts below while dealing with the matter, ignored the fact that the land in dispute was recorded as Shikargah which the plaintiff claims to have taken for cultivation does not come within the definition of landlord nor does this prove the tenancy, thus, no khatedari rights can be accrued to the plaintiff and thus, the suit filed for declaration of khatedari right and permanent injunction was not maintainable and was liable to be dismissed.

It is argued on behalf of the petitioner that the courts below have committed grave illegality while not considering the important fact that once the land is duly acquired under the provisions of the Land Acquisition Act, no revenue court can grant declaration or permanent injunction with respect to such lands. The observations made and the findings given in this regard are wholly illegal and without any basis whatsoever and deserve summary rejection.

Learned counsel for the petitioner also raised an argument that the courts below committed grave illegality in disregarding the important fact that as per the Marwar Tenancy Act, 1949 the Bapi Rules were applicable only outside 5 miles (about 8 kms) of the boundary wall of the city, therefore, the courts below committed an error while holding that as per the Bapi Rules, the plaintiff acquired khatedari rights despite there being a bar in such

cases as per the provisions of the section 16 (6) of the Rajasthan Tenancy Act 1955.

It is also submitted that the mere entry in revenue record does not confer any right until and unless the khatedari right/cultivator right is granted by a competent authority.

The trial court, the first appellate court as well as the Board of Revenue committed an error while deciding the Issue No.1 against the petitioner. The plaintiff had not proved that he was an admitted tenant and the receipts of lagaan and dhal-banch produce submitted by him were of prior to Samvat year 2010, therefore, he could not have been conferred tenancy rights. Moreover, since the land was of Shikargah, no person can get khatedari rights merely because of possession and on the basis of contract is proved, still the trial court and the appellate courts decided the said issue in favour of the plaintiff which is wholly wrong and illegal.

Learned counsel for the petitioner further contended that since the plaintiff was not holding the land as a tenant, no permanent injunction could have been granted under Section 188 of the Rajasthan Tenancy Act, 1955 as the plaintiff failed to prove his tenancy and no declaration for conferring khatedari rights could have been made in his favour. The entire proceedings are wholly illegal and deserve to be quashed and set aside.

Learned counsel for the petitioner further submits that in view of Section 16 sub-Clause (6) of the Rajasthan Tenancy Act, 1955, the khatedari rights cannot be conferred if the land acquired is for the public purpose or for a work of public utility. Thus, the

respondents cannot take the ground of provision of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Since the land was being acquired for the welfare of the public at large, as the Rajasthan Housing Board is working on the principal of no profit no loss and provides shelter for all the sections of the society, specially the economically weaker sections, therefore, the finding recorded by all the courts below are required to be quashed and set aside while allowing the writ petitions.

Mr. Pankaj Sharma, learned Additional Advocate General appearing of the behalf of the State supported the arguments raised by the learned counsel for the petitioner.

On pointed query being raised to the counsel for the petitioner and the State Government, it was admitted that the order of the Assistant Collector& Executive Magistrate, Jodhpur dated 02.12.2000 was not challenged by the State Government before the appellate courts by way of filling an appeal nor any writ petition was preferred before this Court.

Per contra, Mr. P.P. Choudhary, the learned Sr. counsel appearing for the private respondents vehemently supported the orders passed by the trial court dated 02.12.2000 and submitted that all the four issues framed before the trial court were exhaustively dealt with by the trial court while taking into consideration the documents produced before it and after examining the records, recorded a finding of fact in favour of the plaintiff – respondents. There is no infirmity in the findings recorded before the trial court. Learned Sr. counsel after having

taken this Court to the relevant paragraphs of the judgment dated 12.02.2000, canvassed that the respondents were in possession of the land prior to the year 1955 and, therefore, it is not a case for allotment of the land but it was a case for declaration of the khatedari rights of the land which was already in possession of the plaintiffs – respondents prior to 1955. Thus, by operation of law, the land which was in possession of the plaintiffs- respondents was declared to be the khatedari land of the plaintiffs – respondents. He further submits that Section 16 of the Rajasthan Tenancy Act, 1955 cannot come in his way as the suit was for the purpose of declaration of the khatedari rights of the plaintiffs which was in their possession prior to the enactment of law i.e. on 15.10.1955.

Learned Sr. Counsel submits that if the land belongs to the Government, then, there is no question of undertaking the land acquisition proceedings and passing the award. He further submits that the land which belongs to the Government, does not require any acquisition proceedings for taking the possession.

The learned Sr. counsel submits that in the writ proceedings, the concurrent findings recorded by the three courts below are normally not interfered with, specially the evidence recorded by the courts below are not to be re-appreciated in these proceedings for coming to a different conclusion. The petitioner has failed to point out any infirmity in the finding recorded by the courts below.

To butress the argument, the learned Sr. counsel relied upon the judgment of Hon'ble Supreme Court in the cases of ***Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar & ors. reported***

***in (1999) 3 SCC 722*** and of this court in the case of ***Ganga Ram & Anr. Vs. State of Rajasthan & Ors. reported in 2012(1) RRT 325.***

The learned Sr. counsel submits that even there is no *locus standi* of the present petitioner to file these writ petitions as the matter in the present case involves declaration of khatedari rights and since the land belongs to the State Government, therefore, it is a dispute *inter se* between the plaintiffs-respondents and the State. Interestingly, the State had chosen not to file the appeal against the order of the trial court dated 02.12.2000 and even no writ petition was preferred. He, therefore, submits that even no right is accrued in favour of the Rajasthan Housing Board to challenge the khatedari rights of the plaintiffs – respondents by way of filing either the writ petitions or the appeals.

The learned Sr. counsel further submits that the plaintiffs – respondents were in possession of the subject piece of land prior to the year 1955 and, therefore, after 15.10.1955, they continued to be the khatedars of the land by operation of law and for this purpose, a suit for khatedari rights under Sections 88, 188 and 92 of the Rajasthan Tenancy Act, 1955 for declaration and permanent injunction was preferred before the trial court. The suit was not for fresh allotment of the land after coming into force the Act of 1955, therefore, Section 16 of the Tenancy Act, 1955 cannot be an impediment in the suit for declaration of the plaintiffs – respondents. To butress his contentions, learned Sr. counsel for the respondents relied upon the judgment of the Apex Court in the

case of ***Prabhu vs. Ramdeo and others reported in AIR 1966 SC 1721***

The learned Sr. Counsel submits that since no physical possession of the land was taken and no compensation was paid, therefore, by virtue of Section 24(2) of the Land Acquisition Act, 2013, even if the acquisition proceedings had been initiated on the subject piece of land, the same would have lapsed by efflux of time because five years prior to the commencement of this Act, neither the physical possession of the land was taken nor the compensation was paid. To support the contentions, the learned Sr. counsel relied upon the Larger Bench judgment of the Apex Court in the case of ***Indore Development Authority Vs. Manoharlal & ors. reported in AIR 2020 SC 1496***.

I have considered the detailed submissions made at the bar and scanned the records thread bare.

On pointed query being raised to the learned counsel for the parties, it was emphatically submitted that the physical possession was not taken from the plaintiffs – respondents and no compensation was paid. The same is also reflected from the communication of the petitioners dated 08.05.2013 (Annex.R/2) in which the Secretary, Rajasthan Housing Board, Jaipur addressed a letter to Dy. Secretary to the Government (I), Urban Development and Housing Department stating that in past 36 years, the actual physical possession of the land was not taken.

Since the facts are not in dispute, therefore, at the very outset, it emerges from the documents on record that even if the award was passed but neither the physical possession was ever

taken nor any compensation was paid. This fact is also fortified from the fact that the petitioner Rajasthan Housing Board had written a letter dated 08.05.2013 to the Dy. Secretary to the Government (I), Urban Development and Housing Department, wherein they categorically mentioned that for last 36 years, the possession of the land was not taken.

Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as :

> *(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:*
>
> *Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.*

Hon'ble the Supreme Court in the case of **Indore Development Authority (supra)** held as under:

"363. In view of the aforesaid discussion, we answer the questions as under:

1. Under the provisions of Section 24(1)(a) in case the award is not made as on 01.01.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to determined under the provisions of Act of 2013.

2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided Under Section 24(1)(b) of the Act of 2013 under the Act of 1894 as if it has not been repealed.

3. The word 'or' used in Section 24(2) between possession and compensation has to be read as 'nor' or as 'and'. The deemed lapse of land acquisition proceedings under Section 24(2) of the Act of 2013 takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.

4. The expression 'paid' in the main part of Section 24(2) of the Act of 2013 does not include a deposit of compensation in court. The consequence of non-deposit is provided in proviso to Section 24(2) in case it has not been

deposited with respect to majority of land holdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the Act 1894 shall be entitled to compensation in accordance with the provisions of the Act of 2013. In case the obligation under Section 31 of the Land Acquisition Act of 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the Act of 2013 has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the Act of 1894.

5. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). Land owners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the Act of 2013.

6. The proviso to Section 24(2) of the Act of 2013 is to be treated as part of Section 24(2) not part of Section 24(1)(b).

7. The mode of taking possession under the Act of 1894 and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking

possession under Section 16 of the Act of 1894, the land vests in State there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2).

8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force, in a proceeding for land acquisition pending with concerned authority as on 1.1.2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

9. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the Act of 2013, i.e., 1.1.2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition."

Thus, it can safely be held that after the enactment of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the possession of the land was not taken and no compensation was paid, therefore, the land acquisition proceedings initiated for the subject piece of land stood lapsed.

On the issue of jurisdiction, the learned counsel for the petitioner stated that because of typographical error, they mentioned that Revenue Appellate Authority, Jodhpur had no jurisdiction, needs no deliberation in view of the learned counsel for the petitioner not pressing this ground.

The contention of the learned counsel for the petitioner that the learned trial court had committed jurisdictional error while entertaining the suit of the plaintiffs – respondents, is bereft of merit as it is true that the Revenue Courts have no jurisdiction in the proceedings initiated under the Land Acquisition Act but when the dispute is with regard to the khatedari rights in the land, the Revenue Courts have the jurisdiction to decide the dispute and admittedly in the present case, the suit was filed under Sections 88, 188 and 92(A) of the Rajasthan Tenancy Act, 1955 for the declaration of the Khatedari rights and and permanent injunction.

The argument of the learned counsel for the petitioner that khatedari rights cannot accrue in the land if the same is acquired for the public purpose or for a work of public utility. It is noted that the land was not allotted to the plaintiffs – respondents as they were already in possession of the said land prior to the enactment of the Act of 1955 and therefore, a declaratory suit was filed for declaration of their khatedari rights and for permanent injunction.

The argument of the learned counsel for the petitioner on the erroneous findings recorded by the trial court and affirmed by the appellate courts, it is observed that on all the aforesaid four issues framed before the trial court, the learned trial court while

recording the finding on each issue minutely examined the record, evaluated the evidence and then after detailed deliberations, the same had been decided. Thus, no infirmity can be found with the findings recorded by the trial court. Not only this, the first appellate court had also gone in detail while scanning the findings recorded by the trial court. Further, this Court is of the view that the concurrent findings of fact recorded by the three courts below are not required to be interfered with as there is no infirmity in the same and requires no interference by this Court as held by Hon'ble the Supreme Court in the case of **Kondiba Dagadu Kadam (supra)** in para 5 as under:

> "It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements

made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

This Court in the case of ***Ganga Ram & Anr. Vs. State of Rajasthan reported in 2012 (1) RRT 325*** held as under:

"In this view of the matter, in considered opinion of this Court, the concurrent findings arrived at by the three Courts below after due appreciation of evidence on record cannot be said to be capricious or perverse and the order impugned passed by the Board does not suffer from any jurisdictional error so as to warrant interference by this Court in exercised of its extra ordinary jurisdiction."

In ***Deep Chandra Juneja Vs. Lajwanti Kathuria (Smt.) (dead) Through L.Rs. Reported in (2008) 8 SCC 497***, it was held that well reasoned concurrent findings and reasons recorded by the prescribed authorities under the statute or by the appellate authority thereunder would not warrant any interference unless there is any illegality, infirmity or error of jurisdiction.

The observations of the learned trial court are gainfully reproduced hereunder for better appreciation of the facts:

"(ब) इस प्रकार उस समय प्रचलित मारवाड़ बापी एवं गैरबापी रूल्स के प्रावधानों के अनुसार यदि देखा जाय तो जो व्यक्ति श्री दरबार की आज्ञा से या उसके बिना काश्त करता है वह कृषक होगा, अतः संवत् 2000 से पहले वादीगण का काश्त व कब्जा कृषक की हैसियत से वादग्रस्त भूमि पर काबिज था, इसके पश्चात् जब मारवाड़ टिनेंसी एक्ट, 1949 प्रभावशील दिनांक 6.4.1949 को हुआ तो वादी जो लगान अदा कर रहा था एवं भूमि पर काश्त कर रहा था वह उक्त अधिनियम की धारा 10 के अनुसार दिनांक 6.4.1949 को खातेदार हो गया या उसे बापी अधिकार प्रदान किये जाने चाहिये जो राजस्थान काश्तकारी अधिनियम के खातेदार के समान है। धारा 10 निम्न प्रकार है :—

"Section 10 - Subject to the provisions of Sec.11 every person who at the commencement of this Act is a tenant or who is after the commencement of this Act, admitted as a tenant, otherwise, then as a Sub-tenant, shall be Khatedar."

(स) राजस्थान काश्तकारी अधिनियम की धारा 15 के अनुसार जो इस अधिनियम लागू होने से पहले कृषक की हैसियत से राजकीय भूमि पर काश्त करते थे उनके द्वारा केवल प्रार्थना पत्र के आधार पर वाद जांच के उप जिलाधीश खातेदारी प्रदान करने में सक्षम थे। इन परिस्थितियों में हमारे विचार से ज्यों ही संवत् 2000 से पूर्व में वादी के पूर्वजों ने उक्त भूमि काश्त करना प्रारम्भ किया एवं लगान अदा कर दिया तो मारवाड़ बापीदार एवं गैरबापीदार रूल्स के प्रावधानों के अनुसार वह भूमि का टिनेंट हो गया एवं मारवाड़ टिनेंसी एक्ट लागू होने पर दिनांक 6.4.1949 को उक्त अधिनियम की धारा 10 के अनुसार वह खातेदार हो गया एवं राजस्थान काश्तकारी अधिनियम 1955 के प्रावधानों के अनुसार उक्त अधिनियम की धारा 15 के अन्तर्गत दिनांक 15.10.1955 को वादी खातेदार बन गया अर्थात् आज दिन वादी का कब्जा बहैसियत टिनेंट के हैं। केवल संबंधित राजस्व अधिकारियों एवं कर्मचारियों द्वारा वादी का नाम खातेदार की हैसियत से दर्ज नहीं करने के आधार पर वादी के खातेदारी अधिकार समाप्त होना नहीं माना जा सकता है।

इस कानून की स्थिति के अध्ययन के साथ अगर वादी के गवाहान पेश किये दस्तावेजात को पढ़ा जाय तो कोई शक नहीं रह जाता कि वादीगण को राजस्थान काश्तकारी अधिनियम की धारा 88, 188, 92 ए के प्रावधानों के अनुसार खातेदार घोषित करने एवं स्थायी निषेधाज्ञा की डिक्री प्रतिवादीगण के विरूद्ध देने में कोई बाधा या आपत्ति नहीं रहती और आवासन मण्डल को राजस्थान काश्तकारी अधिनियम के के अनुसार कब्जा या काश्त कोई सबूत नहीं होने से आपत्ति करने का कोई अधिकार नहीं होता।

स्थायी निषेधाज्ञा के लिये सी.पी.सी. के प्रावधानों के स्थान पर राजस्थान काश्तकारी अधिनियम में धारा 92 ए जोड़ा गया है, अतः राजस्व न्यायालय को निषेधाज्ञा देने के सम्पूर्ण अधिकार धारा 188 के साथ पढते हुए प्राप्त है।

इन दोनों तनकीयात के बारे में आवासन मण्डल द्वारा अपने जवाब दावों में जो आपत्तियों की गयी वे सब निराधार, गलत और प्रभावशून्य है, कयोंकि अवाप्ति की या कार्यवाही यदि वह विधिवत की जाना सिद्ध हो जावे तब भी वादीगण का 57 वर्षों से अधिक बिना रोकटोक के कब्जाकाश्त होना आवासन मण्डल की शहादत मे मौन रहना या शहादत पेश नहीं करना, से एवं ग्राम सूथला की भूमि में नामान्तरकरण किये जाना प्रथम दृष्टता गलत मालूम होता है और अवाप्ति अधिनियम के अनुसार कब्जा फर्द तथ्यों से मेल नहीं खाती यानि भूमि पर वादीगण का आबाद कब्जा लगातार सिद्ध होने से बिना कब्जे आवासन मण्डल के नाम का नामान्तरण अवैध है और हालांकि नामान्तरकरण विधिवत सिद्ध भी नहीं किया गया है पर नामान्तरकरण अधिकार का कोई सबूत नहीं हो सकता। इस कथन की पुष्टि वादीगण द्वारा पेश चार सरकारी राजस्व कर्मचारी करते हैं जो राजस्व रेकर्ड के आधार पर बयान देते है तथा मौके पर कब्जा काश्त वादीगण का बताते है और इसकी तरदीद में (विरूद्ध) कोई सबूत पेश नहीं किया गया है और डी.डबलू. 1 जो प्रभारी अधिकारी प्रतिवादी संख्या दो ने उन्होंने व्यक्तिगत विवादित भूमि पर आज कब्जा किसका है यह भी बयान देने से मना करते हैं, मगर मौजूदा पटवारी हल्का, जोधपुर व सूथला जो वादीगण की ओर से पेश किये गये है वे इसका समर्थन करते हैं कि वास्तविक कब्जा व काश्त ढाणी, लाटा व रहवास आज भी वादीगण का मौजूद है। विद्वान वकील वादीगण का एक ही तर्क था कि यह साबित किया जाय कि उन्हें कभी बेदखल किया गया है या भूमि अवाप्त करने, सरकारी भूमि दर्ज करने या आवासन मण्डल तथा नगर सुधार न्यास के नाम नामान्तरकरण भरते समय उन्हें कभी सुना गया हो साबित किया जाय। प्रतिवादी पक्ष की तरफ से ऐसा कोई आधार दस्तावेजी या मौखिक पेश नहीं किया गया, जिससे यह साबित हो सकता हो कि वादीगण को कभी बेदखल किया गया हो। विवेचन के अनुसार

भू–अभिलेख, खसरा गिरदावरी व खसरा परिवर्तनशील में इन वर्षों में वादीगण की काश्त दर्ज है।"

"इसी प्रकार जमाबंदी हिस्सा ए2 तथा जमाबंदी खतौनी संख्या 2012 से 2015 गिरदावरी, ढालबांछ में वादी का नाम गैर खातेदार कृषक की हैसियत से दर्ज है, इसका तात्पर्य यही निकल सकता है कि उक्त समय में प्रचलित टिनेंसी कानून के अन्तर्गत वादी को उक्त भूमि का टिनेंट एडमिट किया गया एवं मारवाड़ टिनेंसी एक्ट प्रभाव मे आने के समय उक्त अधिनियम की धारा 10 के अन्तर्गत भी वादी बहैसियत खातेदार टिनेंट इस पर काबिज था एवं धारा 15 राजस्थान काश्तकारी अधिनियम के प्रावधानों के अनुसार दिनांक 15.10.55 को वादी उक्त भूमि का खातेदार स्वतः ही कानूनन हो गया।"

"तनकी नम्बर एक व दो में दिये गये विवेचन के आधार पर वादीगण अतिक्रमी नहीं रहा और कृषक की हैसियत से काबिज काश्त होने के कारण 15.10.55 को स्वतः ही खातेदारी अधिकार प्राप्त करने का अधिकारी हो गया।"

Similarly, the first appellate court while affirming the findings of the trial court also observed as under :

"इस प्रकार राजस्व रेकर्ड में उक्त कारणवश यह भूमि आज दिन तक सिवायचक रही एवं इस कारण वादीगण को उनके प्राप्तशुदा अधिकारों से वंचित नहीं किया जा सकता। तनकी नम्बर एक व दो मे दिये गये विवेचन के आधार वादीगण अतिक्रमी नहीं रहा और कृषक की हैसियत से काबिज होने के कारण 15.10.55 को स्वतः ही खातेदारी अधिकार प्राप्त करने का अधिकारी हो गया।"

The detailed findings of the learned trial court were affirmed by the first appellate court as well as the second appellate court.

It is also observed that since the khatedari rights were essentially granted by the State as the State is the custodial of the entire land, however, the State had not chosen to challenge the findings recorded by the trial court, also goes to show that in a way the State Government is in agreement with the findings recorded by the trial court which on the face of it are elaborated and reasoned. It is also noted that that the suit preferred by the plaintiffs – respondents was for declaration and permanent injunction for the land which they were in possession prior to 1955

and therefore, it was rightly observed by the trial court that even by operation of law after 15.10.1955, the khatedari rights were required to be made in the name of the plaintiffs – respondents. Hon'ble the Supreme Court almost in the similar circumstances in the case of ***Prabhu vs. Ramdeo and others reported in 1966 SC 1721*** also observed in para 8 as under :

> "Let us now refer to section-15 as it stood at the relevant time. Section 15 provides, inter alia, that subject to the provisions of section -16 every person who, at the commencement of this Act, is a tenant of land, shall, subject to the provisions of this Act and subject further to any contract not contrary to section – 4 be entitled to all the right conferred and be subject to all the liabilities imposed on Khatedar tenants under the Act. In other words, as soon as section -15 came into operation on October 15, 1955, the possession of the respondents, who had been inducted into the land by the mortgagee was substantially altered and they became Khatedars by virtue of the statutory provisions prescribed by section - 15 .Section 161 of the Act provides that no tenant shall be ejected from his holding otherwise than in accordance with the provisions of this Act. The position thus is clear that as soon as the Act came into force the respondents were entitled to the benefits of section 15 and cannot be ejected except under the provisions of' the Act in view of section - 161. It is because of these provisions that the appellant was driven to make the plea that the respondents were trespassers inasmuch as they had voluntarily surrendered possession of the land to him after the redemption decree was passed and had wrongfully entered into possession thereafter. That plea has not been proved and the matter falls to be considered squarely within, the provisions of ss.15 and 161 of the Act. It is true that s.183. of the Act provides for the ejectment of a trespasser but that section has no application to this case inasmuch as the respondents cannot be held to be trespassers at all.

The submission of the learned counsel for the petitioner that during the pendency of the review petition, the trial court decided the main suit itself is noted to be rejected as the

petitioner failed to challenge those proceedings at relevant time and therefore, the same cannot be of any advantage to the petitioner at this stage and on this ground, the order passed by the trial court cannot be interfered with.

In view of the discussion made hereinabove, the concurrent findings of fact recorded by the three courts below does not suffer from any infirmity as the same has been recorded after correct appreciation of evidence on record. There is no jurisdictional error in the findings recorded by the courts below which warrant interference by this Court in exercise of its extra ordinary jurisdiction. There is no force in these writ petitions. The same are, therefore, dismissed.

All pending applications are also disposed of.

**(VINIT KUMAR MATHUR),J**

120-121/Anil/-