

**IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER**

**Appeal/LR/7629/2012/Churu.**

1. Ummed Khan son of late Shri Gutu Khan
  2. Kasam Khan son of late Shri Gutu Khan
  3. Babu Khan son of late Shri Gutu Khan
  4. Yunus Khan son of late Shri Nanu Khan
  5. Smt. Mobina Bano wife of Yusuf Khan
  6. Islam Khan son of late Shri Yusuf Khan
- All by caste Kayamkhani resident of Aguna Mohalla, Churu Tehsil & Distt. Churu.

...Appellants.

Versus

1. Mahant Shri Yogendra Das son of late Shri Haridas, Mahanat Bada Mandir Churu.
  2. Niranjana Das son of late Shri Hari Das
  3. Rajendra Das son of late Shri Hari Das
  4. Surendra Das son of late Shri Hari Das
  5. Narendra Das alias Thakur Das son of late Shri Hari Das
  6. Smt. Gayatri Devi wife of late Shri Hari Das
- All residents of Bada Mandir Distt. Churu.
7. Babu Khan son of Nanu Khan
  8. Akaram Khan son of Nanu Khan
  9. Basir Khan son of Gutu Khan
  10. Sabir Khan son of Gutu Khan
  11. Khatun daughter of Gutu Khan wife of Asgar Khan
  12. Lifu daughter of Gutu Khan wife of Asgar Khan
- All by caste Kayamkhani residents of Near Railway Station, Mugalon Ka Mohalla, Fatehpur Distt. Sikar.
13. Mst. Bai Chhoti daughter of Gutu Khan wife of Aamin
  14. Mst. Rajia daughter of Gutu Khan wife of Asat Ali Khan
- All by caste Kayamkhani resident of Ward No. 13, Near Khemka Petrol Pump, Churu.
15. State of Rajasthan through Thesildar, Churu.

...Respondents.

16. Asat Ali Khan son of Annu Khan
  17. Phule Khan son of Annu Khan
  18. Mohan Khan son of Annu Khan
  19. Aleem Khan son of Jaumirdi Khan
  20. Mumtaz Khan son of Jaumirdi Khan
  21. Iqbal Khan son of Isab Khan
  22. Samsad Khan son of Isab Khan
  23. Alil Bano daughter of Isab Khan
  24. Kalu Bano daughter of Isab Khan
  25. Gula Bano widow of Isab Khan
- All by caste Kayamkhani resident of Aguna Mohalla, Churu.
26. Mst. Nathi daughter of Bano wife of Hasam Ali Khan resident of Bhadra Distt. Hanumangarh.

...Proforma respondents.

**S.B.**

**Shri Bajrang Lal Sharma, Member**

Present:-

Shri G.S. Lakhawat, counsel for the appellants.

Shri Asgar Khan, counsel for respondent No.1.

Shri Sunil Pareek, counsel for the respondent No.1.

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Date:16.11.2012

**J U D G M E N T**

The appellants have filed this second appeal under section 76 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the 'the Act') being aggrieved by the judgment passed by Settlement Officer-cum-Revenue Appellate Authority, Bikaner on 23.8.2012 in appeal No. 11/2012.

2. The factual matrix of the case is that Shri Annu Khan had khatedari land in revenue village Churu measuring 120 bigha 11 biswas. His land was acquired by District Collector, Churu in the year 1965 for construction of Collectorate, Police Lines, government residential houses etc. Shri Annu Khan, Khatedar tenant was given monetary compensation for 62 bighas of acquired land and against the rest of 58 bighas, he was allotted 50 bighas of land in khasra No. 445 which was 'johad paytan' in classification. The District Collector allotted this land on 2.8.1965 and directed Tehsildar, Churu to hand over possession of the allotted land to the allottee. This is also pertinent to mention here that khasra No. 445 measuring 116 bighas 1 biswa was the total area of 'Johad paytan' out of which only 50 bighas was allotted to Shri Annu Khan. Against this allotment order some Nanu Khan and Gutu Khan challenged the allotment in the year 1995 before Collector, Churu by filing an application under Rule 14(4) of the Rajasthan Land Revenue (Allotment of Government Land for Agricultural Purposes) Rules, 1970. This application was rejected by Collector, Churu on 13.6.1996. Being aggrieved by the Collector's order Shri Nanu Khan filed the first appeal before Settlement Officer-cum-Revenue Appellate Authority, Bikaner who also dismissed the appeal on 12.8.1997. Thereafter the State Government filed a second appeal before the Board of Revenue being aggrieved by the judgment passed by the first appellate court which was partly accepted on 21.12.2005 and the matter was remitted to District Collector, Churu for deciding the matter afresh in light of the distinct observations made by this court. The Additional

District Collector, Churu heard both the parties, called for the relevant files and record and decided the dispute on 25.4.2012, canceling the allotment of 29 bigha 17 biswa in khasra No. 1265 of village Churu (Old khasra No. 445). The order of Additional Collector, Churu was challenged before Settlement Officer-cum-Revenue Appellate Authority, Bikaner who accepted the appeal and upheld the allotment made to Shri Annu Khan by Collector, Churu. Being aggrieved by the appellate court's judgment dated 25.4.2012, the appellants have filed this second appeal before this court. During adjudication of the dispute, the allotted land was transferred by the legal heirs of deceased Annu Khan to Shri Hari Das and his wife Gayatri Devi in the year 1996.

3. Heard the learned counsels of both the parties on admission and merits of the appeal.

4. The learned counsel for the appellants contended that old khasra No. 445 measuring 116 bigha 1 biswa was recorded as 'johad paytan' in the revenue record of village Churu, out of this land District Collector, Churu allotted 50 bigha of this land to Shri Annu Khan son of Menu Khan Kayamkhani on 2.8.1965. He submitted that no allotment can be made on the land classified as 'johad paytan' because there is absolute restriction provided under section 16 of the Rajasthan Tenancy Act, 1955 and this restriction has also been specifically mentioned in all the Allotment Rules. He argued that the allotment order issued by District Collector on 2.8.1965 was void ab-initio because such a community land could have never been allotted to any individual as per law. The learned advocate further argued that when this case came before this court in second appeal No. 152/98/LR/Churu this court had given explicit directions on 21.12.2005 to Collector, Churu while disposing of the second appeal. The Additional Collector, Churu complied with the instructions of this court in letter and spirit and cancelled the allotment because he found the allotment in utter violation of the provisions of section 16 of the Rajasthan Tenancy Act and the learned appellate court did not pay any heed to the directions of this court and arbitrarily quashed the reasoned judgment passed by Additional District Collector. He also argued that the allottee or his

legal heirs or the buyers of this disputed land never cultivated it and had no possession. The learned advocate referred the pronouncement made by Hon'ble Rajasthan High Court in S.B.Civil Writ Petition No. 1536/2003 'Abdul Rehman Vs. State' and 2011 (2) RLW 1379 (SC) wherein it has been observed by the Hon'ble Apex Court that no community land can be allotted in favour of an individual because such community lands are earmarked for the use of local people.

5. The learned counsels for the respondents argued that Shri Annu Khan was allotted the disputed land in lieu of the land acquired by the State Government. They submitted that Shri Annu Khan was khatedar tenant of his land but Collector, Churu persuaded him to give his khatedari land in acquisition for construction of the Collectorate and other government buildings in larger public interest. Annu Khan, the tenant, volunteered to help the government in the year 1965 and he was given monetary compensation for only 62 bighas and for remaining 58 bighas he was allotted only 50 bigha of land in old khasra No. 445 of village Churu which was comprising of 116 bigha 1 biswa (classification 'johad paytan'). They further submitted that the Collector got the classification changed from the State Government and thereafter allotted this land. Learned advocate argued that Collector was well within his jurisdiction while allotting the land because at the time of allotment the land was not 'johad paytan' but siwai chak. They also emphasized that the total area of 'johad paytan' was 116 bighas 1 biswa out of which only 50 bighas was allotted to the tenant in larger public interest and the appellants have no locus standi to file this second appeal because they are not aggrieved persons in this case. They have filed this second appeal just to harass the respondents after lapse of some thirty years. The tenancy rights were conferred on the allottee long back in 1976 and thereafter the land has been purchased by respondent No. 1 to 6 in the year 1996 and they are in possession of the land in dispute as bonafide buyers. Therefore, after 47 years of allotment this second appeal is not maintainable and hence it deserves to be dismissed. The learned advocate also referred to

1995 RRD 172, 2006 RRT 487 and 185, 1996 RRD 232, 500 and 525.

6. I have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and also perused the record available on file and the judgments referred to by the learned counsels.

7. This court is aware that in the proceedings under the Rajasthan Land Revenue Act, the record of the lower court should essentially be called. But the learned counsels of the parties have supplied with the relevant judgments and copies of the record and have consented to dispose of the case on merits. Therefore, the case is being finally decided on merits.

8. This is an undisputed fact that the Collector, Churu acquired 120 bigha 11 biswa land for construction of government offices and other buildings in the year 1965. And out of the acquired land monetary compensation for 62 bighas was paid to the tenant and against the rest 58 bighas 10 biswa of acquired land, 50 bighas was allotted in old khasra No. 445 (New khasra No. 1265) to Shri Annu Khan from whom the land was acquired for construction of collectorate and other government buildings. The allotted 50 bighas of land has been settled in present khasra No. 1265 measuring 29 bighas 17 biswas only. This is an undisputed legal position that there is an absolute bar provided under section 16 of the Rajasthan Tenancy Act wherein it has been provided that khatedari rights on the lands mentioned in this section shall not accrue and such lands are not available under any of the allotment rules made under Rajasthan Land Revenue Act. In this case, Collector, Churu wrote to Private Secretary to the then Hon'ble Minister for Revenue in the State Government for change of classification. The Collector allotted 50 bighas of land out of khasra No. 445 measuring 116 bigha 1 biswa of land (classification 'johad paytan') on 2.8.1965. There is no such document which could prove that the State Government changed the classification of the disputed land.

9. First of all this court would like to examine whether the appellants are the aggrieved persons and have the locus standi to file the appeal? Indisputably, the disputed land was 'johad paytan' in

classification. 'Johad' or a local pond is well accepted as community land which is used for cattle grazing and drinking water for cattle and human beings. The appellants are the residents of Churu and the disputed land is situated in revenue boundary of Churu town. The Hon'ble Apex Court has held in Mehsana District Central Cooperative Bank Ltd & ors. Vs. State of Guraja and ors. (AIR 2004 SC 1576):

"where there are allegations of violation of statutory rules which have been brought to the notice of the authorities and the authorities concerned fail to perform their statutory obligations, any aggrieved citizen can bring the inaction to the notice of the court, which may pass the appropriate orders."

In light of the Apex Court decision this court is of the clear view that the petitioners have direct interest in the disputed land and its alienation to an individual deprives them from their rights to access the community land. Therefore, the appellants are the aggrieved persons and have a locus standi to file this appeal. The learned advocate for the respondents have also raised this issue that the allotment made to Annu Khan has been challenged after lapse of some thirty years and after conferment of khatedari rights. The issue of limitation in such cases is of great consequence. It is a well accepted fact that the allotment order made in favour of Annu Khan does not manifest that under which rules the allotment has been done. In the year 1965 the allotment of land for agricultural purposes could only be made under Rajasthan Land Revenue (Allotment of Government Land for Agricultural Purposes) Rules, 1957. Under these rules also the lands which were mentioned in section 16 of the Rajasthan Tenancy Act, 1955 or other community lands were not available for allotment. The change of classification of 'johad paytan' land is not proved and apart from this, change of classification of 'johad' to benefit an individual is not justified. Therefore, such an order is a flagrant violation of the legal provisions, can be challenged at any time and such an appeal cannot be dismissed on technical ground of limitation.

10. Apart from the observations made by the Hon'ble Apex Court, there are numerous pronouncements reiterating the view that especially in cases involving public interest the law of limitation

should not be considered as a material objection but the court is under obligation to decide such matters on merits only. This court is of the opinion that the impugned allotment effects larger public interest being the community land. Therefore, this court finds it appropriate to examine the validity of the judgments passed by the lower courts.

11. The moot question before this court is whether Collector, Churu was competent to allot 50 bighas of land from khasra No. 445 which was classified as 'johad paytan' and whether the State Government was competent to accord sanction for change of classification? This is also very pertinent to mention here that there is no such communication from the State Government wherein such classification has been changed by the Government. This court is aware that all 'johad paytan' lands are community lands which have been reserved for grazing cattle or drinking water for cattle and for other use of local community at large.

12. This court has also been given to understand that the original allottee or his legal heirs or the buyers had no cultivatory possession on the allotted land. Learned Additional Collector has also mentioned this fact in its judgment. There was no documentary evidence produced before the lower courts or before this court to prove that the allotted land was even cultivated once by the allottee or his heirs after allotment.

13. This court is conscious about this fact that Shri Annu Khan was a tenant and his land was acquired by District Collector, Churu in larger public interest for construction of Collectorate and other government buildings in the year 1965. The deceased tenant (Annu Khan) did an exemplary work by volunteering for this public cause. He was paid monetary compensation only for 62 bighas of land but for the remaining of 58 bighas only 50 bighas of land was allotted in the year 1965 in lieu of the allotted land. This court has sympathy and concern for Shri Annu Khan and his legal heirs who acted in larger public interest and acquiescence by allowing the Collector to go for construction of vital government offices some 45 years back.

14. This court has also been apprised with about the pronouncement by the Hon'ble Rajasthan High Court in Abdul

Rehman case wherein it has been categorically observed that such lands which are classified as rivers, tanks, ponds, drainage area, nalas, lakes etc cannot be allotted to any individual and if such allotments have been made they are against constitutional spirit and cannot be sustained. The Hon'ble High Court has given clear directions to maintain the position of 1947 and to quash such allotments and conversions. This is also a case where 'johad paytan' land has been allotted by the Collector, therefore, this case has quite similar facts with the Abdul Rehman's case. The conclusive directions of the Hon'ble High Court in Abdul Rehman's case are as under:-

**All land shown as drainage channels like nalla, rivers, tributaries etc. as on 15.8.1947 should be declared as Government land. Any conversions made after 15.8.1947 should be declared illegal. The relevant act and rules must be amended accordingly.**

**---In the Government owned lakes and other water bodies, the Khatadari rights of private persons in their submergence area should be brought under the ownership of the Government"**

15. Besides the judgment referred above, the Hon'ble Apex Court has also reiterated the similar view in Jagpal Singh and ors. Vs. State of Punjab and ors. 2011 (2) RLW 1389 (SC). The Apex Court observed that the respondents that community lands cannot be allowed to be regularized or allotted to some individuals. The Apex Court in this case has held as under:-

**"In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.**

**Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.**

**Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/ Gram Panchayat officials, and even this money collected from these**

**so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop."**

Hon'ble Apex Court has heavily relied upon Hlnch Lal Tiwari Vs. Kamla Devi (AIR 2001 (SC) 3215( followed by Madras High Court's judgment in L Krishnan Vs. State of Tamilnadu 2005(4) CTC 1 Madras) wherein it was held that the land recorded as pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose.

16. In light of the judgments referred hereinabove this court is of the view that the disputed land which was classified as 'johad paytan' could not have been allotted by the learned Collector on 2.8.1965. This court appreciates the initiative of the then District Collector for compensating the tenant who volunteered for this acquisition, who volunteered for this acquisition but such an action which was ex-facie illegal, void and in flagrant violation of categorical provisions of law could not have been taken by the learned Collector. The Collector had the option to compensate the tenant monetarily or could have allotted the land under the 1957 Rules. In view of the circumstance, the impugned allotments dated 2.8.1965 is bad in law. Therefore, it could not be allowed to sustain. The respondents No. 1 to 6 who are the buyers of the land in dispute do not get anything because when the original allottee does not have any right, title on the basis of such illegal and void allotment the buyers cannot get better right than the original allottee.

17. As discussed above, the second appeal filed by the appellants succeeds and the judgment passed by the learned Revenue Appellate Authority on 23.8.2012 is quashed. The judgment passed by the Additional Collector dated 25.4.2012 is upheld. In peculiar circumstances of this case, Collector, Churu is directed to allot 50 bighas of land to the legal heirs of the tenant Shri Annu Khan in Tehsil Churu under the existing allotment Rules or compensate him monetarily in such a manner that they get satisfactory compensation with 18% interest thereon.

Pronounced.

(Bajrang Lal Sharma)  
Member