

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal Decree/TA/2875/2009/Jodhpur

Private Bus Owners Association, Jodhpur through Secretary

...Appellant

Versus

1. The State of Rajasthan through Tehsildar, Jodhpur
2. U.I.T., Jodhpur, through Secretary, U.I.T. Jodhpur
3. Jodhpur Model Co-operative Society Ltd., Jodhpur through Secretary, Jodhpur, Model Co-operative Society Ltd., Vishnu Bhawan, Jodhpur
4. Shri Thana Ram son of Shri Naina Ram Jat, resident of Masuria, Jodhpur
5. Shri Binja Ram
6. Shri Lumba Ram
7. Shri Mangla Ram
8. Shri Anada Ram - sons of Shri Naina Ram Jat
9. Shri Champa Lal son of Shri Suraj Mal Mahajan
10. Smt. Sukhda Devi wife of Shri Naina Ram Jat
11. Shri Ramchandra son of Shri Ram Gopal
12. Shri Prem Singh son of Aaidan Ram
13. Shri Bhanwar Lal son of Ummeda Ram
14. Shri Heera Lal Shri Poonam Ji Vishnoi
15. Shri Chain Singh son of Shri Ranjeet Singh
16. Shri Ladu Ram Gwala son of Shri Deva Ram
17. Smt. Magi wife of Shri Mohan Ram
18. Shri Basant Kumar son of Shri Amrit Lal
19. Smt. Dhani Devi wife of Shri Kishan Ji
20. Shri Ganesh Ram son of Shri Anada Ram Masuria
21. Smt. Rukma wife of Shri Ganga Ram Jat, Jodhpur

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2. Appeal Decree/TA/10076/2007/Jodhpur

Private Bus Owners Association, Jodhpur through Secretary

...Appellant

Versus

1. Shri Akshay Mohnot son of Shri Sobhagmal Mohnot by caste Agarwal, resident of 111, Shastri Nagar, Jodhpur

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2. Shri Thana Ram son of Shri Naina Ram Jat resident of Masuria, Jodhpur
3. Jodhpur Model Co-operative Housing Society Limited through President Shri Harendra Gwala son of Shri Laduram Gwala- resident of Vishnu Bhawan, Udai Mandir, Jodhopur
4. U.I.T., through Secretary, U.I.T. Jodhpur
5. The State of Rajasthan through Tehsildar, Jodhpur.

...Respondents

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Shri Bajrang Lal Sharma, Member

Shri B.L.Gupta, Member

Present:-

Shri Rugharam Chaudhary, Counsel for the Appellant in both the appeals

Shri Bhawani Singh, Counsel for respondent No.2 in appeal No.10076/2007 and respondent no.4 in appeal No. 2875/2009

Shri Basant Vijaivargiya, Counsel for respondent No.4 in appeal No.10076/2007 and respondent no.2 in appeal No. 2875/2009

Shri S.P Singh, Counsel for the respondent No.13 in appeal No. 2875/2009

Shri Amrit Pal Singh, Counsel for the respondent No.3 in appeal No.2875/2009

Shri R.K.Gupta, Govt. Advocate for the State

Ex-parte proceedings were drawn against the rest of the respondents.

JUDGMENT

Dated 12-12-2011

The above captioned two appeals have been preferred by the private bus owners Association under Section 224 of the Rajasthan Tenancy Act, 1955 (In short the Act) being aggrieved and dissatisfied

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by the judgment passed by the Revenue Appellate Authority Jodhpur on 1.10.2007 (In appeal no.41/2005) and on 23.3.2009 (in appeal no.187/2008). The parties, subject matter and the law points involved in these appeals are similar. Therefore, both the appeals are disposed of by this judgment with the consent of the counsels of the parties. The copies of the judgment will be kept on both the files.

2. Historical Background:

(i) The brief facts of the case are that Shri Thana Ram filed a regular suit for declaration of khatedari rights and perpetual injunction against the State of Rajasthan and 15 other defendants in the court of Assistant Collector, Jodhpur on 13.5.1981. The land involved in this suit was khasra No.832/751 measuring 5 bighas, khasra No.832/1/751 measuring 17-16 bighas and khasra No.833/751 measuring 11 bighas in total 33 bighas 16 biswas of village Jodhpur. The plaintiff averred that the land in question was purchased by the plaintiff and defendants from Shri Dhanraj son of Shri Bije Raj and Shri Bhanwar Lal son of Shri Dhanna Ram by caste Kumhar on 03.09.1964 by a registered sale deed. It was a sale of so called Bapi rights as the sellers were not entered as tenants of disputed land in the revenue record on the day of sale. He also averred that Shri Bhanwarlal and Shri Dhanraj became tenants by operation of Marwar Tenancy Law and the purchased land is in their continuous cultivatory possession. He further averred that Tehsildar, Jodhpur conferred khatedari rights to the sellers in 1967 and afterwards the mutation was sanctioned in favour of the plaintiff and defendants on the basis of registered sale deed on 27.6.1967. In the plaint it was also stated that the mutations sanctioned by the Tehsildar were ignored while preparing the jamabandi. This action of the revenue authorities became the instant cause of action, and hence, this suit was filed before the trial court on 13.5.1981.

(ii) In this case, the land in question (33 bighas and 16 biswas of 03 khasra nos.) was set apart by Collector, Jodhpur for residential purposes on 3.3.1978 along with other 43 khasras of Jodhpur village to the then Urban Improvement Trust, Jodhpur (Presently called as Jodhpur Development Authority, Jodhpur). In this way, when the plaintiff filed the suit for declaration in the trial court pertaining to this

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land in question, this disputed land stood set apart in favour of UIT. Jodhpur and the UIT deposited the desired premium amount with the Tehsildar on 18.4.78 and the possession was also taken by the UIT on 19.4.1978. This is also pertinent that Shri Thana Ram, the plaintiff challenged the order of the Collector dated 3.3.1978 for setting apart the land to the UIT in the Court of the Revenue Appellate Authority, Jodhpur in the year 1980 which was partly accepted by the Revenue Appellate Authority on 23.5.1981 and the matter was remanded with certain directions to the Collector for afresh decision. The UIT assailed the judgment of the Revenue Appellate Authority in the Board of Revenue and the Single Bench of the Board of Revenue on 27.1.1992 quashed the judgment of the Revenue Appellate Authority and upheld the set apart order dated 3.3.1978 passed by the collector with certain observation. This is also very important to mention that in the original suit filed by Shri Thana Ram, the plaintiff in 1981 he chose not to implead the UIT as necessary defendant knowingly it well that the land in question has already been set apart in 1978 to the U.I.T. On the contrary Shri Thana Ram challenged the set apart order way back in 1980 in the court of Revenue Appellate Authority impleading U.I.T. Jodhpur as a party.

(iii) The trial court decreed the original suit of the plaintiff on 17.10.1981 against the State Government. The UIT preferred an appeal before the Revenue Appellate Authority, Jodhpur which was dismissed on 20.6.1986 on limitation. The UIT assailed the judgment of the Revenue Appellate Authority dated 20.7.86 in the Board of Revenue for Rajasthan by way of filing a revision under Section 230 and 221 of the Act which was dismissed on 16.4.1993 by the Single Bench of the Board. In the meantime the Urban Development and Housing Department of the State Govt. took a decision on 12.7.93 for formulating a Bus Stand Scheme on the disputed land and they issued a notification to this effect. This decision was taken under Section 32 of the U.I.T. Act, 1959 and is in force till date. On the basis of this notification dated 12.7.93, the private bus owners Association filed an appeal before the Revenue Appellate Authority, which was dismissed by the Revenue Appellate Authority on 23.3.09. The Association has

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filed the second appeal in this court under Section 224 of the Act (Appeal No.2835/2009)

(iv) A new development took place in this case in the year 2005 when one Shri Akshay Mohnot filed an appeal before the Revenue Appellate Authority, Jodhpur challenging the judgment & decree passed by the Assistant Collector, Jodhpur dated 17.10.81 (suit no.88/81) on the ground that her mother Smt. Chand Kanwar wife of Shri Shobhagya Mal Mohnot was one of the original buyers of the land in question but she was not made party in the trial court by Shri Thana Ram. The Revenue Appellate Authority, Jodhpur issued an ex-parte temporary injunction on 8.7.2005 in favour of Shri Akshay Mahnot and against Shri Thana Ram and other respondents. Jodhpur Model Housing Society Jodhpur (who claimed to buy this disputed land on 20.2.1973 and to be in possession since then) challenged this interim order dated 8.7.2005 passed by the Revenue Appellate Authority in the Divisional Bench of the Board of Revenue. The Jodhpur Model Housing Society stated in their Appeal memo that they have bought the land in question on 20-02-1973 from Shri Thana Ram and others on a valuable consideration. Afterwards this appeal was dismissed as withdrawn on 19.9.2007 by the Divisional Bench of this court. In the main appeal filed by the Akshay Mahnot, the Private Bus owners association filed an application under order 1 rule 10 of the Civil Procedure Code before the Revenue Appellate Authority on 24.10.2005 to be impleaded as a party in the appeal. On this application no decision was taken by the Revenue Appellate Authority till 1.10.2007. On 1.10.2007 the Revenue Appellate Authority allowed Shri Akshay Mahnot to withdraw his appeal without deciding order 1 Rule 10 application. The Private Bus Owners Association has assailed the order allowing withdrawal of appeal dated 1.10.2007 passed by the Revenue Appellate Authority in this Court (appeal no.2007/10076).

(v) This is also an important fact that Shri Thana Ram and others sold the land in question (33 bighas 16 biswas) to Jodhpur Model Co-operative Society Ltd., Jodhpur through an agreement to sale on 20.2.1973 and the possession was handed over to the Society. The sale was also got registered on 21.7.1982, after obtaining the impugned

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decree from the Assistant Collector dated 17.10.1981. Therefore the Jodhpur Model Co-operative Society as a buyer of the disputed land has been impleaded in this case.

3. Heard the rival contentions of the learned counsels of the parties.

4. The learned counsel for the appellant association argued that the decree & judgment dated 17.10.1981 passed by the trial court are against the basic principles of law and evidence available on record. The learned counsel contended that the disputed land was a Govt. land and the Collector set apart this land along with other 43 khasras to the UIT on 3.3.1978. He submitted that the plaintiff knew it well that the disputed land has been set apart to the UIT and the UIT has taken over the possession also but when the plaintiff filed the suit for declaration and perpetual injunction on 13.05.1981 for the disputed land he deliberately did not implead the UIT as a party in this suit. He also argued that the plaintiff filed the suit for declaration of 33 bighas 16 biswas but the court decreed the suit in favour of plaintiff, defendants and 2 others who were not even the party in the suit. There was no counter claim from the defendants either. The learned counsel further argued that the learned trial court went against the established principles and procedures of law and even without an iota of evidence pertaining to possession and title of the plaintiff decreed the suit based on fake documents of sale and some obscure photocopies revenue record. He contended that it was a clear case of land grab and the trial court connived with the plaintiff and hurriedly passed the decree of the valuable urban Govt. land in favour of the plaintiff and the defendants within 5 months. He argued that Shri Bhanwar Lal and Shri Dhanraj were not khatedars on the day of sale i.e. 03.09.1964 and it was completely a bogus sale. He also submitted that Shri Thana Ram et. al also sold the land on 20.3.1973 which was a Govt. land even to the Jodhpur Model Housing Society. He also stated that since the Urban Development Department notified this land for bus stand scheme, the appellants who have the vested interest in the scheme, took advice from the counsels and filed their application/appeal before the Revenue Appellate Authority. He also argued that the decree of the trial court has been obtained by fraud and misrepresentation, therefore, the issue of

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limitation does not come in the way for assailing this illegal & perverse decree. He argued that the trial court ignored the written statement of the State and connived with the plaintiff for granting tenancy rights on 33-16 bighas of urban abadi land owned by the Govt. The learned counsel also submitted that the judgment and decree of the trial court were challenged by the UIT before the Revenue Appellate Authority who dismissed the appeal solely on limitation and on filing revision before this court, the revision was also dismissed on the ground of maintainability. Therefore, the doctrine of merger and res judicata do not apply in this case. He also submitted that the validity of the judgment & decree has never been examined by the Divisional Bench of this court therefore the appeals should be decided on merits. The learned advocate referred RRD 1994 P 563, AIR 1974 SC 2177 and AIR 2004 SC 1576 in support of his arguments. Finally, he urged the court to set aside the judgment & decree passed by the trial court dated 17.10.1981 and the judgment passed by Revenue Appellate Authority Jodhpur dated 20.6.1986, 1.10.2007 and 23.3.2009.

5. The learned Govt. Advocate argued that the judgment and decree of the trial court are bad in eye of law because the UIT was a necessary party and was deliberately left out from contesting the case. Therefore the suit suffered from the defect of non joinder of parties. He contended that there is no law which can permit the sale of the possession on the Govt. land. He contended that the disputed land was never entered in the khatedari of the sellers. He further argued that the decree of the trial court has not yet been challenged in this court under Section 224 of the Act and the doctrine of merger or res judicata do not come in the way in this case. The learned advocate urged the court that on the basis of some unreadable photo copies of irrelevant and bogus documents and some vague oral evidence, this decree involving illegal transfer of big chunk of precious urban land of the Govt has been passed. He also submitted that in this case there was no counterclaim of the defendants and there is not a single copy of the Jamabandi i.e record of rights, which is the basis of the suit. All the buyers of the disputed land as per the sale deed dated 03-09-1964 have not been made party and the Court added 2 defendants at his own will while

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passing the decree. He termed the decree as a collusive decree obtained on the basis of misrepresentation & fraud. He finally urged the court that it is plainly a perverse and illegal decree and deserves to be set aside.

6. The learned counsel for the U.I.T. (Presently Jodhpur Development Authority) argued that the disputed land was set apart by the Collector along with other 43 khasras on 3.3.1978 to then UIT, Jodhpur. The UIT deposited the premium amount and took possession of the disputed land on 19.4.1978. He further submitted that the plaintiff did not implead the UIT as party in the suit before the trial court in the year 1981 knowingly well that the land has already been given in possession to the UIT on 19.4.1978. The plaintiff had challenged the order of set apart dated 3.3.1978 in the court of Revenue Appellate Authority in the year 1980 (appeal no.417/80) and UIT was made respondent in this appeal by Shri Thana Ram himself. He also argued that the impugned decree issued by the trial court is perverse and illegal which has been passed while misusing the court procedure to benefit the land grabbers. He submitted that the suit was not decreed only in favour of the plaintiff but in favour of the defendants without filing the counter claim and 2 others who were not even the party in this case. It is a case of misuse of jurisdiction by the trial court and the decree passed is a nullity. He also stated that the doctrine of res judicata & merger do not apply in this matter as the legal issues involved in this case were never considered, adjudicated and decided by the D.B. of this court under Section 224 of the Act. The learned advocate also conceded that the disputed land was earmarked for Bus stand scheme by the Govt. on 12.07.1993. Therefore, the appellant association has the locus standi to file these appeals. He referred to RRD 1993 SC P.598, AIR 1997 SC P 2477, WLC 2003(4) Raj. 309; WLC 2002 (4) Raj. 297; RRT 2008(2) HC 1183; RRT 2007(1) HC 728; AIR 1998 Raj. 85 in support of his arguments. He also urged the court to set aside the perverse & illegal decree passed by the trial court and the other courts below in utter violation of the legal provisions.

7. The learned advocates for Jodhpur Model Housing Society and Shri Thana Ram contended that the appellant Association has no locus

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standi to file this appeal as they are not the aggrieved party. They submitted that the appeal is hopelessly time barred as it has assailed the decree after lapse of some 25 years, therefore, the appeal deserves to be dismissed on this sole ground. They further argued that the UIT has assailed the judgment & decree of the trial court in the court of Revenue Appellate Authority which was dismissed. The UIT also assailed the judgment of the Revenue Appellate Authority in this court under Section 230 of the Act by way of revision which was also dismissed by this court on 16.4.1993. They contended that the impugned decree has already gained finality. In these circumstances the doctrine of merger and res judicata applies in this case and now the case cannot be adjudicated in this court again. The learned advocates also submitted that the arguments advanced by the learned advocates for the appellants, U.I.T. and the Govt. are baseless because the trial court has passed the decree after adhering the settled court procedures. He submitted that it is ill-founded and false to state that it is a case of land grab. On the contrary the land has been bought by the plaintiff and defendants through a registered sale deed and the land has been in their possession. He argued that even a public interest litigation titled Jugal Kishore Vs. U.I.T. and Ors. (D.B.C.W.P.No. 3736/2000) was filed about this land wherein the high court has dismissed the writ petition on 30.01.2002. They also submitted that the appellants have no locus to file this appeal and the appeal has been filed just to harass the bona fide plot holders of Jodhpur Model Housing Society. The learned advocates argued that the land in question has been converted for residential purpose and houses have been built on them. They also submitted that appeals filed by the appellant association are frivolous and devoid of any merit. Therefore, be dismissed with costs. The learned advocates took support of the legal pronouncements cited in RRD 1981 P.143; AIR 1974 SC P.1126, RRD 2003 P 417; RRD 2003 P.421; P,321; SCC 2009 P.352; AIR 2001 SC P.2003; 1994 (1) SCC P 215 and 1994 (1) SSC Page 215.

8. The learned advocate for shri Bhanwar lal contended that his client has not been given an opportunity of hearing. He also argued that some of the decree holders have died and their legal representatives have not

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been brought on record. The learned advocate submitted that the impugned judgment is based on the sacrosanct evidence and has been passed after complying with the court procedures. He argued that the appellant association has no locus to file this appeal and the appeal is hopelessly time barred. He also contended that the impugned decree has become final which can not be challenged now in this court. The learned advocate urged the court to dismiss this appeal with costs.

9. We gave serious and thoughtful considerations to the contentions raised by the learned counsels of the rival parties. We examined the record available with us and studied the legal pronouncements referred before us by the counsels of the parties. We also read carefully the judgments so far passed by all the courts pertaining to this land in dispute. We also called for decided files pertaining to the disputed land from record room of this court.

10. First of all the most contentious issue before us is the locus standi of the appellant association (Private bus owners association, Jodhpur). It has been argued before us that the appellant association has no locus as it is neither seeking title of the disputed land nor it is claiming any right or raising any objection on the title of the respondent society. We have gone through the judgment dated 23.3.2009 passed by the learned Revenue Appellate Authority, Jodhpur. The Revenue Appellate Authority has observed that the appellant association does not seem aggrieved by the judgment & decree of the trial court dated 17.10.81 and has no locus. The respondents have heavily relied on AIR 1974 P 1126 where in the hon'ble Apex court has observed that :

There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.

The respondents have also relied on RRD 1981 P 144 wherein the Hon'ble High Court has observed :

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The question whether the petitioners were grazing their cattle or not on the land in dispute is a disputed question of fact in as much as in the reply to the writ petition filed by the State Govt. it has been denied that the petitioners had been grazing their cattle in khasra no.540. The reply filed by the State is accompanied by an affidavit given by the Sub-divisional officer of the concerned area, who is expected to know the existing position of the land. The entries in the revenue records also do not show the disputed land as pasture land. The petitioners have thus no locus standi to challenge the impugned order dated 9th July, 1971, passed by the Collector before the revenue authorities.

In this case the appellant association has explained their locus that the disputed land was to be used for the bus stand scheme as per the mandate of the Urban Development Deptt. of the Govt. vide its notification dated 12.7.1993. In this case we find that the disputed land was prima facie a Govt. land and set apart for residential purposes to the UIT. Thereafter the Govt. decided to formulate Bus Stand scheme on this piece of land. The appellant association is engaged in operating bus services and a bus stand is a public place earmarked for various facilities for the passengers. Besides this, as per the revenue record, the disputed land is Govt. land which is very valuable being located in the urban area. Therefore, the appellant association which is engaged in plying public transport can have interest in ensuring its appropriate use in larger public interest. We take support from the hon'ble Apex Court judgment passed in K. Ramdas Shenoy Vs. The Chief Officers, Town Municipal Council Udipi and Ors. cited in AIR 1974 (SC) 2177 wherein it has been held that a resident in a locality where a cinema building was to be constructed contrary to the building town planning scheme, the individual was held to be entitled to maintain writ on the ground that the residential area would stand spoiled by unauthorized construction in violation of the statutory provisions. The similar view has been expressed in Thiruvengadam Vs. Muthu Chettair and Anr. cited in AIR 1970 (Mad.) 34 that a person can be said to be aggrieved if apart from the general interest, such a person, as a member of the public has particular or special interest in the subject matter supposed to be wrongly decided.

In light of the observations discussed above, this court is of the opinion that the prima facie the disputed land is government land situated in the municipal precincts of Jodhpur. Therefore this land forms a part of community land and the appellant association has a right to ensure its suitable use. Any individual or any public spirited organization may feel aggrieved when prima

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in fact they witness that a large chunk of Govt. land is being taken over fraudulently by a group of individuals in garb of a court decree. In these circumstances we hold that the appellant organization has an interest in the disputed land and is an aggrieved party. Therefore in our considered opinion the Appellant association has locus to file this appeal.

11. In this matter another legal issue has been raised by the respondents that since the decree & judgment of the trial court was earlier challenged by the UIT before the Revenue Appellate Authority and afterwards before the Board of Revenue and the impugned decree & judgment were upheld. Therefore, now the appellants can't file this appeal before the Revenue Appellate Authority and they have argued that the doctrine of res judicata and doctrine of merger apply in this case. They have strongly argued that the appeal deserves to be dismissed solely on this ground. This has also been an argument that in a public interest litigation relating to this disputed land hon'ble High court has also examined this decree and dismissed the writ petition. Consequently, now the decree has become final and can not be assailed at this level.

12. We also studied the hon'ble Apex court judgment cited in 1949 (1) RBJ 364 wherein it has been held that the judgment and decree of the first court got merged in that of the first appellate court and sequently on second appeal with that of Board Of Revenue. In this specific case the facts and circumstances are altogether incompatible. This is an admitted position in this case that the U.I.T. was not impleaded as a defendant in the trial court. The U.I.T. challenged the decree & judgment of the trial court before the Revenue Appellate Authority, which was dismissed on 20.6.1986 on the ground of limitation. This court also holds that when the learned Revenue Appellate Authority while delivering the judgment on 20.6.1986 observed that the appeal was time barred, the merit of the case could not be examined by the appellate court. Thereafter the U.I.T. filed a revision under section 230 & 221 of the Act which was also dismissed on 16.4.1993 on maintainability. Therefore, this is an admitted position that the decree and judgment of the trial court has never been examined under Section 224 of the Act by the divisional Bench of this court. In these circumstances, the judgment and decree of the trial court did not gain finality because the legal issues involved in this matter were never raised, considered and decided by a competent court on merits. In a case where the appeal or Revision has been dismissed on technical grounds like limitation and maintainability, doctrine of merger and

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es judicata will not come in the way to examine the validity of the impugned judgment and decree. The appellant association has never assailed the judgment & decree of the trial court before. Therefore, we are of the considered view that doctrine of res judicata and doctrine of merger do not apply in this matter as the matter has never been put to legal scrutiny and decided by this bench.

13. We also went through the judgment passed by hon'ble High Court in the matter of Jugal kishor Vs. UIT, Jodhpur (DBCWP no 3736/2000). This public interest petition was filed by some jugal kishor who sought intervention of the court in restraining the UIT from parting with the lands placed at its disposal by the state. In this writ petition the validity of the impugned judgment and decree was neither assailed by the petitioner nor did the court give any finding to uphold it. Therefore it is not correct to state that the hon'ble high court has inferred favourably on the impugned decree.

14. In this case the respondents also have raised the issue of limitation. The judgment and decree have been passed on 17.10.1981 and admittedly the U.I.T. who was a necessary party, was not impleaded as a party. Therefore, the suit suffered from the defect of non-joinder of necessary party. The only defendant in this case was the State of Rajasthan on whose behalf the Collector had already set apart this land on 3.3.1978 for residential purposes of Jodhpur city. Therefore, the State had no interest left in the disputed land. We have gone through the pronouncements referred by the respondents. Since the land in question is a precious Govt. land situated amidst the periphery of municipal council, Jodhpur. The hon'ble Supreme Court in State of Karnataka Vs. Y. Moiddin Kunhi (dead) by L.Rs. and Ors. [AIR 2009 (SC) 2577] has condoned the delay of more than 6500 days and held:

It is a matter of concern that in very serious matters action is not taken as required under law and the appeals/petitions are filed after long lapse of time. It is a common grievance that it is so done to protect unscrupulous litigants at the cost of public interest or public exchequer. This stand is more noticeable where vast tracts of land or large sums of revenue are involved. Even though the courts are liberal in dealing with the belated presentation of appeals/ applications..... keeping in view the importance of questions of law which are involved we are inclined to condone the delay subject to payment of exemplary costs.

15. The hon'ble Supreme Court has held in umpteen pronouncements that limitation should not come in the way as a technical objection while

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rendering justice. Specifically the Apex Court has held in Raja Harishchandra Raj Singh Vs. Dy. Land Acquisition Officer and Anr. AIR 1961 (SC) 1500 Purushottam Bhai Magan Bhai Patel and ors. Vs. State of Gujarat and anr. AIR 2005 (SC) 3464 State of Andhara Pradesh and anr. Vs. Marry Venkaiah and ors., AIR 2003 (SC) 2949, the Apex Court has held that no person should be permitted to take the benefit of technical rule of limitation depriving the other side of its legitimate claim. In this case the plaintiff filed a suit with a glaring defect of non-joinder of party. In this suit before the trial court, the U.I.T. was not made party and the decree was obtained on the back of the U.I.T. This is one of the rarest case where the Public interest seems to have suffered as a group of individuals bought the Govt land from the unauthorized possessors and on the basis of such a sale deed obtained the impugned decree from the court. In such circumstances, this court is of the opinion that the issue of limitation as a technical objection should not come in the way to examine the legal issues raised in this case on merits. Therefore, we condone the delay and proceed to decide this appeal on merits.

16. In collector, Land Acquisition, Anantnag Vs. Mst. Katiji. AIR 1987 SC 1353 the Apex court has observed:

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side can not claim to have vested right in injustice being done.....

17. In noorduiddin Vs. Dr. K. L. Anand 1995 (1) SCC 242 the Apex court has very categorically held that:

The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour of and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and Alma meter for

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the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice.

18. In this appeal an objection has also been raised that the parties in the suit have not been given opportunity of hearing and some of the parties are dead. We carefully perused the record. In this case Shri Thana Ram was the only plaintiff and the defendants did not file the W.S. and had no counter claim either before the trial court. The notices to all the respondents were published in Rajasthan Patrika dated October 7, 2009. The information given by the learned advocate about the death of the parties is also vague. It is very relevant to mention here that the entire land involved in the impugned decree has been sold by the decree holders much before obtaining the impugned decree to Jodhpur Model Housing Society long back on 20.02.1973. Therefore the society has come in the shoes of the decree holders. And the Jodhpur Housing Society has already been impleaded as a party and being represented by a learned counsel.

19. We carefully perused the record available with us. We also called for some decided files pertaining to the disputed land from the record room of this court. After perusal of the record following glaring facts came to the light in this case:-

(i) In the trial Court, the plaintiff did not produce any certified copy of the record of right i.e. jamabandi, which is the basis of the suit. Only illegible photocopies of some khasra Girdawaries, Dhal Banchh (Cash book) money receipts have been produced which too are not in name of the plaintiff.

(ii) The plaintiff has averred that they bought the land in question from Shri Bhanwar Lal and Shri Dhan Raj on 03.09.1964. The sellers were not the khatedar tenants in revenue record on the date of sale. Therefore, what could they sell? As per the photocopies of the khasra girdawaries the disputed land is Govt land. They simply sold their "possession" (kabja) on the Govt. land to the buyers under the caption Bapi rights.

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(iii) Shri Bhanwar Lal and Shri Dhan Raj were declared khatedars on the basis of old possession under Section 15 of the Act by the Tehsildar (who had no jurisdiction to do so) on 27.10.1967 whereas they already had sold their Bapi rights on the disputed land on 03.09.1964 by a registered sale deed to the plaintiff & others.

(iv) The disputed land is situated in the municipal limits of Jodhpur city. The District Collector set apart the disputed land along with 43 other khasras situated within the urban area to U.I.T., Jodhpur on 3.3.1978. The U.I.T. deposited the premium and took over the possession on 19.4.1978. As per section 43 of the Rajasthan urban Improvement Trust Act the disputed land vested in the UIT.

(v) Shri Thana Ram (Plaintiff) assailed the order of set apart dated 3.3.1978 before the Revenue Appellate Authority, Jodhpur and the U.I.T, Jodhpur was made respondent in the year 1980. But Shri Thana Ram chose not to implead the U.I.T. as a defendant when he filed the regular suit before the trial court, knowingly it well that the land was no longer with the State of Rajasthan. Therefore this decree does not any effect on the rights of the UIT.

(vi) The plaintiff in his suit avers that he is in continuous possession of the land in question but in reality he had no possession on the disputed land because he had sold this land to Jodhpur Model Housing Society on 20.2.1973 and possession was handed over to that Society. This situation does not allow him to file a suit for declaration & perpetual injunction. It is also evident that the plaintiffs did not come with clean hands before the trial court. The plaint itself hides more and reveals less.

(vii) The disputed land is 33 bighas 16 biswas. The trial court gave 1 bigha each to 17 persons and the rest 16 bighas 6 biswas to Shri Thana Ram whereas the so called sale deed dated 30.9.64(which is the basis of the suit) reads that Shri Thana Ram is entitled to slightly less than 1/3 of the disputed land i.e. 11

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bighas 5 biswas only. The decree passed has no explanation to this big discrepancy.

(viii) Shri Bhanwar Lal and Shri Dhanraj, the so called possession holders of the disputed land sold their possession on Govt. land to 20 persons (Thana Ram and others). Out of these 20 buyers, 06 persons were not made party in the suit. There were 04 such persons who did not buy the land but got the decree from the trial court.

(ix) The trial court passed the decree in favour of 02 such persons who were not even the party in the proceedings. This is very strange that the trial court became benevolent to this extent that it issued a decree of 02 bighas of valuable urban Govt land to the strangers.

(x) The disputed land was sold to Jodhpur Model Housing Society through an agreement to sale on 20.2.1973 and afterwards a registered sale deed was executed on 21.7.1982. The persons who entered in the agreement to sale on 20.2.1973 with the society and who executed the registered sale deed were different, because out of those 18 who executed the registered sale deed 6 persons were such who were not original buyers of the disputed land.

20. On the plaint filed by the plaintiff, the State of Rajasthan filed the written statement vehemently denying the long possession of the plaintiff and other defendants. In the reply it was plainly mentioned that the land is situated in the urban area of Municipal Council therefore khatedari rights cannot be conferred. The other respondents chose not to reply and consequently there cannot be any counter claim either. On the basis of the reply of the State of Rajasthan the following issues were framed:-

(1) Whether the disputed land i.e. K.N.832/751 measuring 5.00 bighas K.No.832/1/751 area 17.16 bighas and K.N.833/751 area 11 bighas of village Jodhpur (Khema Ka Kua) was with Shri Dhan Raj & Bhanwar Lal prior to Marwar Tenancy Act came into force and after the sale plaintiff & defendants are in continuous possession of the disputed land and have become khatedars?

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...Plaintiff

(2) Whether a mutation was sanctioned by the Govt. on the basis of sale and old possession in favour of plaintiff & defendants?

...Plaintiff

(3) Whether the disputed land is in possession of the parties since Svt. 2000, therefore, they have automatically become khatedar?

...Plaintiff

(4) Whether the plaintiff & the defendants do not have the old possession and the land in question is in periphery of the Municipal Council, therefore, no khatedari rights can be given?

...Defendant.

(5) Relief-

21. We carefully went through the judgments passed by the trial court, the Revenue Appellate Authority and this court pertaining to the land in question. The issue wise findings of this court in this matter are as under :-

(1) Whether the disputed land i.e. K.N.832/751 measuring 5.00 bighas K.No.832/1/751 area 17.16 bighas and K.N.833/751 area 11 bighas of village Jodhpur (Khema Ka Kua) was with Shri Dhan Raj & Bhanwar Lal prior to Marwar Tenancy Act came into force and after the sale plaintiff & defendants are in continuous possession of the disputed land and have become khatedars?

The plaintiff has averred that the disputed land has been purchased from Shri Dhan Raj and Shri Bhanwar Lal through a registered sale deed on 3.9.1964. He has also argued that Shri Dhan Raj became the tenant of the land in question by operation of Marwar Tenancy Law. We analyzed the evidence available on file on this issue. It is unequivocal that the disputed land was Govt. land and it was situated in Jodhpur village which was in the urban limit of the Jodhpur Municipal Council. The plaintiff did not produce the basic record of right i.e. current jamabandi or jamabandi Svt. 2004 (when the Marwar Tenancy Law came into force) or Svt. 2012 which could prove their existence as a tenant/sub-tenant on the disputed land on the commencement of the Act. The documentary evidence produced by the plaintiff are the illegible photocopies of khasra girdawari, cash book etc. which

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are hardly adequate to establish their long possession. We also went through the oral evidence produced by the Plaintiff. The plaintiff produced 06 witnesses in support of his plaint. The oral evidence produced by the plaintiff is not direct. Looking to the age of the witnesses and their statements, the evidence seems to be vague and unreliable and does not prove the possession of the plaintiff before Svt.2012.

This is also very pertinent to mention here that the so called sale deed dated 3.9.1964 explicitly manifests that the sellers have sold their possession (Kabja) on the Govt. land and they did not have the title on the disputed land on the day of sale. Such a sale deed cannot confer better right, title or possession than the so called sellers. On this issue it is also very important fact that the sale deed dated 3.9.1964 is in favour of 20 persons whereas the plaintiff is only one and 15 other persons have been made defendants. There were 6 more persons who were in the list of buyers but not made the party in the suit and there are 2 persons who were made party but they are not in list of buyers. There is no explanation to this anomaly by the plaintiff or by the trial court passing the impugned decree. There is no evidence of possession of the decree holders on the land in dispute since 1955 to 1980 when the systematic revenue records were maintained by the State were readily available. Registers like Khasra parivartansheel (P-14) or khasra girdawari which were available in tehsil could have been submitted by the plaintiff in the case to prove his possession.

We also carefully studied the registered sale deed executed by Shri Thana Ram and others on 21.7.1982 (available on file No.7543/2006 of this court) which reads that the disputed land was actually sold by them by an agreement to one Jodhpur Model Housing Society long back on 20.2.1973 and the possession was also handed over to them. In this case Shri Thana Ram, the plaintiff has stated in his plaint in 1981 that he is in possession of the disputed land. This fact makes his averment self contradictory. The trial court did not apply its mind on this contradiction. The plaintiff did not approach the trial court with clean hands. This entire episode signals for a systematic strategy to grab the precious Govt. land in garb of the court order. The photocopies of khasra girdawari, Dhaal Banchh (cash book) and some cash receipts which are also in name of sellers are barely of any consequence to prove the long possession of the plaintiff on the disputed land. When the Revenue record of 1955 to 1980 is available in tehsil office why to rely on obscure photocopies of some irrelevant record (which are also

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not in name of the plaintiff) in such an important case? We are of the considered view that neither Shri Bhanwar Lal & Dhanna Lal were tenants nor they had any right to sell this disputed land which was a Govt. land and the possession of the plaintiff is not at all proved by the evidence available on file. We find that the finding given by the trial court on this issue is perverse and devoid of any merit. Therefore this issue is decided against the plaintiff

2. Whether a mutation was sanctioned by the Govt. on the basis of sale and old possession in favour of plaintiff & defendants?

On this issue we carefully went through the 4 copies of mutations decided on 27.6.1967 by the Tehsildar pertaining to the disputed land. In first mutation the patwari has entered 22-16 bighas of disputed land in khatedari of Shri Bhanwar Lal son of Shri Dhan Raj on the basis of long possession and under Section 15 of the Act. In another mutation Shri Dhanna son of Shri Bije Raj has been sanctioned khatedari of 11.00 bighas of the disputed land on the basis of long possession and under Section 15 of the Act. We referred to the Section 15 of the Act but the patwari/Tehsildar had no jurisdiction to sanction tenancy rights on the Govt. land situated in the urban limits in the year 1967. And more specifically so where the land has already been sold in 1964 and possession handed over. Both the mutations have been sanctioned in utter violation of the law and are void ab initio. It is some sort of criminal Act to part with the precious Govt. land to some individuals who sold their possession on this land long back (on 30.9.1964) and the Patwari/Tehsildar sanctions them tenancy rights retrospectively on 18.11.1966/27.6.1967 after about 12 years of sale. In other 2 mutations the disputed land has been entered in name of the plaintiff along with other buyers on the basis of sale deed dated 30.9.1964. These 2 mutations which have been sanctioned on 27.6.1967 are also void ab initio as the sellers had no right to sell the Govt. land and a sale deed intended to sell the possession without title does not confer any right. The sale deed is just a waste paper prepared and designed with an ill-motive. The findings of the trial court and the Revenue Appellate Authority are baseless, perverse and illegal. Therefore, such findings cannot be upheld on this issue and the issue is decided against the plaintiff.

3. Whether the disputed land is in possession of the parties since Svt. 2000, therefore, they have automatically become khatedar?

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On this issue we examined the evidence produced in the trial court. The photocopies of khasra girdawari, Dhaal Banchh (cash book), cash receipts and the certified copies of 4 mutations do not prove long possession of the plaintiff on the disputed land. The photocopies of the khasra girdawaris and dhaal banchh have no entry supporting the possession of the plaintiff. There is no entry of possession in name of the plaintiff because he claims to be in possession after the execution of so called sale deed dated 30.9.1964. Therefore, how his possession can be entered since Svt. 2000? We also went through the statements of the witnesses. The statements of the witnesses are not reliable because out of 6 witnesses Shri Badri Narain was 45 years in 1981, Shri Champa Lal was 44 years in 1981, Shri Devi Kishan was 40 years in 1981 and they cannot prove the possession of some individual in 1945 (Svt.2000), because they were below 10 years in 1945. On this issue evidence produced is not at all reliable, on the contrary it is vague and farcical. This is very pertinent to mention here that in Jodhpur systematic revenue record is being maintained by the State since 1955, when the Tenancy Act came into force. The plaintiff could have produced the most reliable revenue record prepared by the State at least of 25 years (1955 to 1980).

The hon'ble supreme court has in H.B. Gandhi & others Vs. Gopinath & sons, 1992 supp (2) SCC 312 simply observed that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered perverse. On this issue there was no documentary evidence to prove the possession of the plaintiff and the oral evidence was also not direct and based on hearsay. Therefore the finding of the trial court is perverse.

The trial court was also expected to be vigilant because this was a peculiar case of sale of possession (kabja) under the caption of Bapi rights of precious urban land belonging to the government. Therefore the court could have referred the revenue record or called the Office Kanoongo/Patwari for evidence before passing the decree of the Govt. land in favour of some individuals. We are of the clear view that the learned trial court and the Revenue Appellate Authority have erred in giving their finding on this issue. The finding given by them is perverse and hence can not be upheld. On the basis of the evidence available on record we hold that their possession on the

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disputed land since svt. 2000 is not proved and their presumption to become khatedar on this Govt. land is misconceived and ill- founded.

4. Whether the plaintiff & the defendants do not have the old possession and the land in question is in periphery of the Municipal Council, therefore, no khatedari rights can be given?

The evidence available on the file plainly suggests that the possession of the plaintiff and other defendants is not at all proved by the revenue record. And more so when they have sold this disputed land to Jodhpur Model Housing Society through an agreement to sale on 20.2.1973 and the possession handed over to them in 1973. How they can be treated to be in possession in 1981 when they filed the suit for declaration and perpetual injunction? This is also undisputed that the disputed land is located in village Jodhpur (Khema Ka Kua area) which is part of the urban area of the municipal council. The written statement filed by the State of Rajasthan mentions this fact. The land situated in urban limits can't be allotted/regularized to an individual as per rules. This is a typical case wherein one person files a suit for declaration and perpetual injunction for 33 bighas 16 biswas of Govt. land located in the Municipal limits of Jodhpur. How can he acquire khatedari rights on the basis of a bogus sale deed dated 30.9.1964 which plainly reads that the sellers have possession on this land and not the title. There is no evidence that in 1949 when Marwar Tenancy Act came into force, the so called sellers were in possession. On one hand they claim khatedari on the basis of Marwar Tenancy Act and on the other hand they have been illegally accorded Tenancy rights by Tehsildar under Section 15 of the Act on 27.6.1967. In our considered opinion the findings of the trial court and the Appellate Court are unusual, irrational and baseless.

It is also very pertinent to mention here that Rajasthan Urban Improvement Act 1959 has clearly provided in section 43 that all government lands situated in the UIT area will be vested in the trust. The State Government has also issued a notification No. F.18(49) Rev./Col./73 dated July 15, 1974 in exercise of the power conferred by section 92 and 102-A of the Rajasthan Land Revenue Act 1956. The section 43 reads as under:-

The State Government may by notification in the official gazette and upon such terms and conditions may be agreed upon between it and the Trust, place at the disposal of the Trust all or any improved and unimproved lands in the urban area for which

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the Trust has been constituted and which may be vested in the State (known and hereinafter referred to as Nazul lands) for the purpose of improvement in accordance with a scheme framed and sanctioned under this Act.

The State Government also issued the notification in 1974 which is the basic requirement of section 43 of the Act. Therefore, the disputed land which was set apart by Collector Jodhpur on 3.3.1978 vested statutorily in the U.I.T. in the year 1978 in compliance of section 43 of the Act. In such a case, the trial court was not competent to pass the impugned decree in favour of the plaintiff and defendants pertaining to the disputed land even without giving an opportunity of hearing to the UIT. In such circumstances, we hold that the possession of the plaintiff is not proved and the Tenancy rights on the Govt. land located in the Municipal limits cannot be conferred to the plaintiff and other defendants.

(5) Relief:

We have thoroughly examined the record available. The plaintiff had no case of declaration & perpetual injunction. He did not approach the court with clean hands. He concealed the material facts from the court and acted fraudulently. Shri Thana Ram the plaintiff, who is the signatory of the registered sale deed executed by him & others in favour of Jodhpur Model Housing Society on 21.7.1982 explicitly mentions that the land was sold to the society on 20.2.1973 and the possession was handed over to them on this date. Therefore, the plaintiff was never in possession even on the day of filing suit in 1981. Shri Bhanwar Lal and Shri Dhanna were also not tenants and had no title on this disputed land. In this regard the hon'ble Supreme court has observed in S.P. Chengalvarya Naidu Vs Jagannath.1994 (1) SCC 1 as under:

The courts of law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the court.

In this rare and unusual case of conferment of khatedari rights on the urban Govt. land, the role of the trial court and the appellate court has not been

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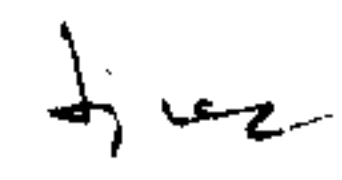
court like. The trial court blindly accepted the plaint without caring for the court procedures & settled principles of law. How can the court add names of two persons, who are strangers to the proceedings, at its own volition and confer them khatedari rights of one bigha urban land to each without filing any claim from their side? How can the court pass such a decree based on the so called sale deed dated 30.9.64 in which 20 persons have been shown as buyers but the plaintiff and defendants have been made arbitrarily. We also hold that Jodhpur model housing Society does not get any right title on the disputed land by effect of the sale deed dated 21. 07. 82 as the title of the sellers is bad. Such a sale deed is void right from the moment of execution. The entire chain of happenings in this case reveals a well thought ill design of a group of individuals wherein the process of the court has also been grossly abused. In our considered view this is a case of usurping Govt. land in the guise of the court judgment and the role of the trial court has been unbecoming of a court.

22. This is a case of judicial impropriety granting wrongful decree in favour of plaintiff and such defendants who had no counterclaim and also in favour of two such persons who were not even party in the suit. The procedure adopted by the trial court is contrary to law and it is evident that the trial court and the appellate court have committed gross illegality in passing/upholding such an illegal decree. Therefore, such a decree passed by the trial court is a nullity and does not confer any right, title to the parties of the case.

23. As discussed above, we accept appeal No. 2875/2009 filed by the appellant Association and quash the judgment and decree dated 17.10.1981 passed by the trial court and the judgment and decree passed by the Revenue Appellate Authority dated 23. 3. 2009. As the impugned judgment and decree passed by the trial court have already been quashed in appeal no 2875/2009, the appeal No. 10076/2007 filed by the appellant association wherein the appellate court's order dated 1.10. 2007 allowing the withdrawal of the appeal has been assailed becomes in fructuous and hence dismissed.

Pronounced in the open court.


 (B. L. Gupta) 12/12/2011
 Member


 12.12.2011
 (Bajrang Lal Sharma)
 Member

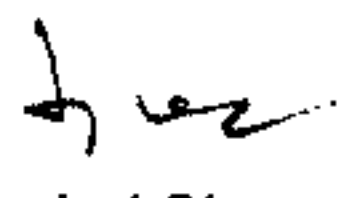
court like. The trial court blindly accepted the plaint without caring for the court procedures & settled principles of law. How can the court add names of two persons, who are strangers to the proceedings, at its own volition and confer them khatedari rights of one bigha urban land to each without filing any claim from their side? How can the court pass such a decree based on the so called sale deed dated 30.9.64 in which 20 persons have been shown as buyers but the plaintiff and defendants have been made arbitrarily. We also hold that Jodhpur model housing Society does not get any right title on the disputed land by effect of the sale deed dated 21. 07. 82 as the title of the sellers is bad. Such a sale deed is void right from the moment of execution. The entire chain of happenings in this case reveals a well thought ill design of a group of individuals wherein the process of the court has also been grossly abused. In our considered view this is a case of usurping Govt. land in the guise of the court judgment and the role of the trial court has been unbecoming of a court.

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Pronounced in the open court.


 (B. L. Gupta) 12/12/2011
 Member

 12.12.2011
 (Bajrang Lal Sharma)
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