

3
1/3/10



न्यायालय राजस्व मण्डल राजस्थान,

जोधपुर

निगरानी/एल.आर./संख्या- /2011 जिला जोधपुर

प्रार्थी-

निजी बस आनर्स एसोसिएशन जोधपुर जरिये सचिव, निजी बस आनर्स एसोसिएशन, जोधपुर।

अप्रार्थीगण-

01. जोधपुर विकास प्राधिकरण, जरिये सचिव, जोधपुर विकास प्राधिकरण, जोधपुर।

02. जमीन ज्येति छुटी रामनराम छूत
819 विम्बेष्टा हाउस जयपुर जोधपुर

बस निगरानी अधिभाषक
या उच्चतम न्यायालय द्वारा आज
दिनांक 12/3/11 को न्यायालय को
प्रस्तुत की गई है। निम्न प्रकार कर
रिपोर्ट में सुनिश्चित

राजस्व मण्डल राजस्थान, जोधपुर

निगरानी अंतर्गत धारा 84 राजस्थान भू-राजस्व
अधिनियम 1950 विरुद्ध आदेश श्री आर.के. जैन, आर.
ए.एस. संभागीय आयुक्त जोधपुर द्वारा अपील संख्या- 59
/2011 अन्वयान निजी बस आनर्स एसोसिएशन बनाम
जोधपुर विकास प्राधिकरण में पारित किया गया।
दिनांक 4-5-11 को

नम्बर व तारीख
अहकाम जो इस
में जारी हुए

Revision No.5649/2011/LR/Jodhpur
Private Bus Owners' Association
Versus
Jodhpur Development Authority, Jodhpur

तारीख हुकम	हुकम या कार्यवाही इनिशियल्स जज	नम्बर व तारीख अहकाम जो इस हुकम की जारी में जारी हुए
13.10.2011	<p style="text-align: center;"><u>S.B.</u> Shri Pramil Kumar Mathur, Member</p> <p><u>Present:</u> Shri Rugharam Chaudhary, counsel for the petitioner.</p> <p style="text-align: center;">---</p> <p>This revision petition has arisen out of the order dated 04.5.2011 passed by learned Divisional Commissioner, Jodhpur in appeal No.59/2010 whereby the appeal preferred by present petitioner under section 90-B(7) of the Rajasthan Land Revenue Act, 1956 (hereinafter to be referred as "the Act") has been dismissed which arose out of the Patta issued to non-petitioner No.2 by Urban Improvement Trust, Jodhpur on 16th June, 2005.</p> <p>Material facts relevant for the disposal of this revision are that Urban Improvement Trust, Jodhpur has issued a Patta to non-petitioner No.2 on 16th June, 2005 which has been assailed by the present petitioner by preferring an appeal before learned Divisional Commissioner, Jodhpur on the ground that land bearing khasra No.832/751, 832/1/751 & 833/751 total area 33 bigha 16 biswa was converted in Abadi Bhumi by District Collector, Jodhpur on 03.3.1978 and allotted to U.I.T., Jodhpur. Thereafter, disputed land was set apart by the U.I.T. in Master Plan for the purpose of Bus Stand in public interest. Hence, U.I.T. has no right to issue Patta on the public utility land.</p>	

W.P.

13-10-11

Revision No.5649/2011/LR/Jodhpur
Private Bus Owners' Association
Versus
Jodhpur Development Authority, Jodhpur

तारीख हुक्म	हुक्म या कार्यवाही इनिशियट्स जज	सम्बर व तारीख अहकाम जो इस हुक्म की जारी में जारी हुए
	<p style="text-align: center;">Heard learned counsel for the petitioner at admission stage and perused the available record.</p> <p style="text-align: center;">It is submitted by the learned counsel for the petitioner that learned Divisional Commissioner, Jodhpur has seriously erred in dismissing the appeal because non-petitioner No.2 neither was the khatedar nor was in possession; therefore, he has got no right to initiate the proceedings under section 90-B of "the Act". On the public utility land, Patta for residential purpose cannot be issued. The learned counsel further submitted that learned Divisional Commissioner has passed the impugned order in flagrant violation of the relevant law and without following due procedure of law. His findings that Divisional Commissioner has got no jurisdiction for disposal of the appeal, is not based on the sound & settled proposition of law; therefore, the revision be admitted and necessary directions be issued to the Divisional Commissioner. In support of his contentions, the learned counsel for the petitioner has relied upon the judgments of the Board of Revenue, Ajmer in the matters of :-</p> <ol style="list-style-type: none"> 1. 'Rakesh Kanwar Vs. Km. Jyoti Sharma & ors.' 2009-10 (Supplement) RRT page 151 2. 'Rawat Sawai Hari Singh Vs. Balwant Singh & anr.' 2005 RRD page 147 3. 'Suresh Chand & ors. Vs. Ladu Lal & ors.' 2004 RRD page 13 <p style="text-align: center;">This is admitted position that petitioner has approached to the learned Divisional Commissioner, Jodhpur by preferring an appeal under the provisions of section 90-B(7) of "the Act".</p>	



Revision No.5649/2011/LR/Jodhpur
Private Bus Owners' Association
Versus
Jodhpur Development Authority, Jodhpur

तारीख हुक्म	हुक्म या कार्यवाही इनिशियल्स जज	नम्बर व तारीख अहकाम जो इस हुक्म की जारी में जारी हुए
	<p>According to section 90-B of "the Act", the Divisional Commissioner has jurisdiction to hear appeals under sub-section (7) of section 90-B of the "the Act" and upon perusal of sub-section (7) of section 90-B of the "the Act", it is revealed that the said appeal can be filed against the order passed under sub-section (5) of section 90-B of "the Act" before the Divisional Commissioner or the officer authorized by the State Government in this behalf within thirty days. According to sub-section (5) of section 90-B of the Act of 1956 where, after hearing the parties, the Collector or the officer authorized by the State Government in this behalf, is of the opinion that the land is liable to be resumed under sub-section (1), he shall after recording reasons in writing, order for termination of rights and interest of such person in the said land and order for resumption of the said land. Meaning thereby, appeal can be filed before the Divisional Commissioner, being aggrieved by the order made under sub-section (5) of Section 90-B but the petitioner's case is not covered under this Section because termination of tenancy rights and resumption order were not challenged by present petitioner.</p> <p style="text-align: center;">Learned Divisional Commissioner has also mentioned in the impugned order that "in support of the appeal, the learned counsel for the appellant has not filed any solid facts & documents by which it can be inferred that order has been passed under the</p>	



13-10-11

Revision No.5649/2011/LR/Jodhpur
Private Bus Owners' Association
Versus
Jodhpur Development Authority, Jodhpur

तारीख हुक्म	हुक्म या कार्यवाही इनिशियल्स जज	नम्बर व तारीख अहकाम जो इस हुक्म की जारी में जारी हुए
	<p>provisions of section 90-B(5) of "the Act". Here also, the learned counsel for the petitioner has not filed any document which can support his contention that Patta has been issued in pursuance of the power enshrined in section 90-B of "the Act".</p> <p>There is another aspect of the matter which cannot be lost sight of. The learned Divisional Commissioner, Jodhpur has given his findings on the basis of the legal assumption that Patta issued under the Rajasthan Urban Improvement Trust Rules, 1974 cannot be assailed under the provisions of section 90-B of "the Act". In this context, it is appropriate to mention that as per the contentions averred in the revision petition, land in dispute was converted in Abadi land on 03.3.1978 and thereafter allotted to U.I.T. Conversion of land from agriculture to abadi on 03.3.1978 gives reason to believe that land was converted in the year 1978 whereas the provisions of section 90-B of "the Act" were inserted and made applicable from 17.6.1999. It means that the land in dispute was never been the subject matter of the proceedings under section 90-B of "the Act". Thus, no logical inference could be drawn that impugned Patta has been issued in pursuance of section 90-B of "the Act". Therefore, the learned Divisional Commissioner has committed no illegality in dismissing the appeal for want of jurisdiction.</p>	

(Signature)
13/10/11

Revision No.5649/2011/LR/Jodhpur
Private Bus Owners' Association
Versus
Jodhpur Development Authority, Jodhpur

तारीख हुकम	हुकम या कार्यवाही इनिशियल्स जज	बम्बर व तारीख अहकाम जो इस हुकम की जारी में जारी हुए
	<p style="text-align: center;">In the case of 'Rakesh Kanwar Vs. Km. Jyoti Sharma & ors.' (supra), the case dealt by the Hon'ble bench was not appeared to be similar to the case in hand and in the cited case, land was not converted before coming into force of section 90-B of "the Act" i.e. before 17.6.1999.</p> <p style="text-align: center;">In the cases of 'Rawat Sawai Hari Singh Vs. Balwant Singh & anr.' and 'Suresh Chand & ors. Vs. Ladu Lal & ors.' (supra), the matter relates to factum of order passed under sections 90-B(3) and 90-B(5) of "the Act". Hence, there is no quarrel as to the proposition of law that order passed under section 90-B(5) of "the Act" was appealable to Divisional Commissioner u/s 90-B(7) of "the Act". Therefore, the cases relied by the learned counsel for the petitioner do not support his claim. Hence, in view of above mentioned discussions, there is no justification to interfere with the lucid order passed by the learned Divisional Commissioner, Jodhpur dated 04.5.2011.</p> <p style="text-align: center;">In the result, this revision petition fails and is hereby dismissed at admission stage.</p> <p style="text-align: center;">Pronounced.</p> <p style="text-align: center;"> (Pramil Kumar Mathur) Member</p>	