

Board of Revenue for Rajasthan

LAND RIGHTS AND SECURITY OF TENURE

*Address by V.Srinivas IAS, Chairman Board of Revenue to Revenue Officers of
District Udaipur, Conference Hall, Collectorate, Udaipur*

Dated October 27, 2017

**Shri Bhavani Singh Detha, Divisional Commissioner Udaipur,
ShriBishnu Charan Malik, District Collector, Udaipur
Shri P.P. Mitra, Revenue Appellate Authority, Udaipur
All Additional District Collectors, Udaipur
All Sub-Divisional Officers, Udaipur
All Tehsildars, Udaipur**

I am delighted to be in Udaipur today to address the senior officials of Revenue Administration on a subject that is very close to my heart, “Land Rights and Security of Tenure”. Working as Sub-Collector in Nimbaheda, I discovered my passion for Land Reforms. I worked on complex issues of tenancy rights, common lands, land allotment to landless peasants. The Rajasthan Land Revenue Act 1956 and the Rajasthan Tenancy Act 1955 represent powerful instruments in the hands of the State to ensure Land Rights and Security of Tenure.

I watched many people who live in poverty depend on land for their survival. Those who have secure land rights to own or use that land are able to protect it from more powerful interests. It is the State’s job to protect Land Rights and ensure security of tenure. My mind goes back to my 1992 study on Tribal Land Alienation conducted in Jhadol and Kotra Tehsils of Udaipur district wherein I had studied the indebtedness amongst Tribals of Udaipur district concluding that high lending rates from Shahukars were leading to tribal land alienation.

The Nation has witnessed a Rural Transformation in recent years, with Jan Dhan – Aadhar – Bhim applications leading to comprehensive financial inclusion. Rajasthan’s Revenue Administration needs to ensure that tenants with secure land rights are encouraged to make investments in land – commitments in the form of better seeds, soil improvements, and irrigation so that moneys spent on these investments will boost agricultural productivity and yields.

The march to a New Age India is dependent on how well the revenue administration in States implement land reforms. There are certain specific sections of the Rajasthan Tenancy Act that I wish to deliberate upon with you.

V.SRINIVAS, IAS

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Section 63. Tenancy when extinguished – *The interest of a tenant in his holding or a part thereof as the case may be shall be extinguished –*

(iv) when he has been deprived of possession and his right to recover possession is barred by limitation.

I would urge great caution on part of the revenue courts in interpreting the provisions of this section. I have seen Assistant Collectors utilize the provisions of this section in a number of cases to not only extinguish tenancies but also rule that Khatedari rights are conferred by adverse possession. Adverse possessions cannot be proved by oral evidence alone. The burden is always on the person alleging adverse possession.

The Board of Revenue had ruled that if a tenant's suit for ejectment of a trespasser is dismissed on the ground that the trespasser was in adverse possession for 12 years, the tenant's right will be deemed to have been extinguished. The Rajasthan Tenancy Act does not forbid acquisition of Khatedari rights by adverse possession. It is for the Revenue Courts to interpret Sections 88, 53, 183 and 183 – B based on judicial precedents.

How does one determine adverse possession in suits claiming Khatedari rights in cases of lands covered under section 42 (b). To assess a claim of adverse possession, a two pronged enquiry is required –

- 1) Application of Limitation provision jurisprudentially to distance the title of the land from the paper owner
- 2) Specific positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner to the adverse possessor.

A contrary view has also been expressed by the Board of Revenue that the Indian Limitation Act has limited application and Revenue Courts have no powers to grant khatedari rights on adverse possession.

Once a tenancy is extinguished under this section, the Courts must repose the Khatedari rights in some other person, khatedari rights will not remain “*in medio*”.

For Udaipur division, and Tribal Areas, the provisions of S.63 of the Rajasthan Tenancy Act can often conflict with the stated objectives of the State to protect Land Rights and ensure security of tenancies to Scheduled Tribe tenants under section 183-B.



Another Section that I wish to discuss with you is Section 212 of the Rajasthan Tenancy Act.

S.212. Provision for injunction and appointment of a receiver – (1) If in the course of any suit or proceeding under this Act, it is proved by affidavit or otherwise –

- a) That any property to which such suit or proceeding relates is in danger of being wasted, damaged or alienated by any party thereto, or*
- b) That any party to such suit or proceeding threatens or intends to remove or dispose of the said property in order to defeat the ends of justice.*

The Court may grant a temporary injunction and if necessary appoint a receiver.

In deciding Temporary Injunctions, Revenue Courts are required to ensure compliance of the principles governing the grant of temporary injunction namely

- a) That the Plaintiff has a prima facie case
- b) That the Court's interference is necessary to protect the party applying for temporary injunction from irreparable damage before his legal right is established by the trial and
- c) Balance of convenience which is likely to arise from granting the injunction.

Ordinarily a Temporary injunction cannot be granted against a recorded Khatedar Tenant.

I also wish to discuss the status of deity under the Rajasthan Tenancy Act. In several cases being pleaded in the Board of Revenue, Khatedari rights are being claimed on lands held by deity. It imperative that Revenue Courts are fully knowledgeable about the legal provisions of lands held by deity. In several instances, lands held by Deity have got recorded in the name of the Pujari and thereafter transfers have been made to third parties. The Deity is a minor in perpetuity and Revenue Courts must see that wherever such mutations and records of rights entries exist, necessary action for initiating References under Section 82 must be initiated. It is not for the Revenue Courts to determine who the Pujari is for a particular Deity. That is left to the civil courts to decide.

I would urge Tehsildars to accord equal rights to women while sanctioning mutations. All mutations of inheritance must be opened not only in the names of widow and male heirs but also contain the names of daughters.



I would further urge Sub-Divisional Officers to issue speaking orders in accordance with the provisions of Order XX Rule 5 of the Civil Procedure Code wherein the Court has to state its decision on each issue. In suits in which issues have been framed, the Court shall state its finding or decision with the reasons therefor, upon each separate issue.

Revenue Administration has received enormous support from Government. The massive expansion in the number of posts of Sub-Divisional Officers and Tehsildars has provided tremendous impetus to dispense timely justice to litigants. **The Litigant is the centrality of the Revenue Court administration.** We must devote adequate time for court sittings and timely judgment writing. We must deliver justice to the litigants.

The Rajasthan Government has vested tremendous power in the Revenue Courts to ensure progress in land reforms. The State of Rajasthan is deeply committed to strengthening Tribal land rights, Deity land rights and Women's land rights and has enacted appropriate legislation to bring prosperity and stability to its population. Let us collectively implement the legislation.

Please accept my good wishes in all your challenging policy endeavors.

Jai Hind.

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V.SRINIVAS, IAS

DATED 27/10/2017

