

M.L. Jindal's

COLONISATION LAW IN RAJASTHAN

Fourth Edition

THE RAJASTHAN COLONISATION ACT, 1954

(Act No. XXVII of 1954)

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THE RAJASTHAN COLONISATION ACT, 1954

(Act No. XXVII of 1954)

[Received the assent of His Highness the Rajpramukh on the 17th day of December, 1954; Assent first published in Rajasthan Gazette (Rajpatra), No.132, Part IV-A, Ext., dated 24th December, 1954]

And as subsequently amended by the following:—

1. Raj. Act No. 27 of 1957;
2. Raj. Act No. 38 of 1958;
3. Raj. Act No. 8 of 1962;
4. Raj. Act No. 23 of 1974;
5. Raj. Act No. 4 of 1976;
6. Raj. Act No. 12 of 1983;
7. Raj. Act No. 12 of 1984, w.e.f. 4.5.1984;
8. Raj. Act No. 02 of 1987, w.e.f. 3.1.1987;
9. Raj. Act No. 12 of 1989, w.e.f. 7.9.1988;
10. Raj. Act No. 15 of 1990, w.e.f. 1.1.1990;
11. Raj. Act No. 16 of 1991, w.e.f. 1.7.1991;
12. Raj. Act No. 14 of 1992, w.e.f. 1.1.1991;
13. Raj. Act No. 28 of 1995, w.e.f. 18.11.1995 = **1996 RSCS/Pt. II/P. 30/H. 5**
and
14. Raj. Act No. 5 of 2007, w.e.f. 31.5.2007 = **2007 RSCS/Pt. II/P. 295/H. 241**

[An Act to make better provision for the colonisation and administration of lands in ¹[the State of Rajasthan.]

1. Subs. by Rajasthan Act No. 27 of 1957.

COMMENTARY

1. Statement of Objects and Reasons.—[1] *Raj. Act 12 of 1984.*—Section 13 of the Rajasthan Colonisation Act, 1954 provided that no tenant shall transfer by way of sale, exchange, gift, will, mortgage or in any other manner including by sub-lease beyond 5 years, any right or interest vested in him by or under the said Act without the prior written consent of the State Government or an officer authorised by State Government in this behalf and any such transfer, sub-lease or charge made in transferee, if he has obtained possession, shall be ejected. Sub-section (1) of the said section was amended with effect from August, 1983 and the tenants in whom right or interest had vested under Sec. 15-AAA of the Rajasthan Tenancy Act, 1955 were also brought within the purview of Sec. 13 prospectively.

It has been decided that all tenants in colony areas on whom khatedari rights have been granted or accrued should be restricted from transferring, charging or sub-letting beyond five years of such rights without the permission of State Government or an officer authorised in this behalf. Necessary amendments in Sec. 13 of the principal Act is, therefore, proposed to be made to that effect.

Large number of transfers have taken place in violation of this mandatory provision of law. A new Sec. 13-A was, therefore, added for regularisation of such cases. The expression "khatedar tenant" used in this section had created a wrong impression in the minds of tenants in Rajasthan Canal Project area that the said section was applicable to such persons who had acquired or were granted khatedari rights under Sec. 15-AAA of the Rajasthan Tenancy Act, 1955. It is intended to renew the misapprehension by amending Sec. 13-A so as to specify clearly that it applied and applies to only those tenants in whom khatedari rights had been vested by or under the Rajasthan Colonisation Act, 1954. Legal mechanism provided to regularise past cases of illegal transfers on payment of compounding fee by Sec. 13-A applied and applies only to such tenants and it is, therefore, being clearly and explicitly declared in the said section.

Transfer of rights or interest may be declared as valid by the Collector on an application, being made to him and on making payment of a compounding fee to the State Government by the transferor or the transferee within 270 days. The said period has expired. It came to the notice of the State Government that majority of transferors as transferees could not apply for getting the illegal transfers validated within the above period. Therefore, it is proposed to extend the period of making application from 270 days to 514 days.

With regard to the compounding fee the affected persons represented to the Government that it is excessive and requested for its reduction as well as for recovery in instalments. With a view to mitigating the financial hardship to such tenants or their transferees the Government reconsidered the matter and deemed it proper to reduce the compounding fee. The said fee is now being proposed to be fixed at Rs. 20,000/- per 25 bighas of irrigated land and Rs. 4,000/- per 25 bighas of barani/uncommand land or allotment price,

whichever is less, and further the amount of the compounding fee is proposed to be made payable in four equal instalments. Further concession is proposed to be given to those tenants who make payment of the compounding fee in a lump sum by reducing 25% of the amount.

Agreements to sell have also been included in the purview of the validation. Opportunity has also been taken to make some verbal changes and consequential amendments in Secs. 13 and 13-A of the Rajasthan Colonisation Act, 1954.

Since the Rajasthan Legislative Assembly was not in session and the circumstances existed which rendered it necessary to take immediate action in the matter, the Governor promulgated the Rajasthan Colonisation (Amendment) Ordinance, 1984 (Ord. 4 of 1984) on 5th May, 1984.

This bill seeks to replace the said Ordinance.

[2] *Raj. Act 16 of 1991*.—According to the provisions of Sec. 4 of the Rajasthan Colonisation Act, it was only the State Government which could withdraw a colony or any part of a colony from the operation of all or any of the provisions of the Act. Similarly, according to the provisions of clause (ii) of Sec. 2 of the Act, it was only the State Government which could declare an area to which the provisions of the Act would apply. In order to avoid delay in issuing orders for the aforesaid purposes, it was thought proper to authorise Collector for issuing such orders, although, only in so far as such orders related to the minor irrigation projects. For this purpose, the provisions of Sec. 4 of the Act had to be suitably amended, the definition of 'Colony' as given in clause (ii) of Sec. 2 had to be reworded and the definitions of major, medium and minor irrigation projects had to be inserted in Sec. 2 of the Act.

Since the Rajasthan Legislative Assembly was not in session and the circumstances existed which rendered it necessary to take immediate action, the Governor of the State of Rajasthan promulgated the Rajasthan Colonisation (Amendment) Ordinance, 1991 (Ordinance No. 2 of 1991) on the 29th day of June, 1991, which was published in the Official Gazette on the 1st July, 1991.

The Bill seeks to achieve the said objects and to replace the said Ordinance.

[3] *Raj. Act 28 of 1995*.—A new Section 13-A was added in the Rajasthan Colonisation Act, 1954 in the year 1983 so as to validate the transfers etc. of certain rights or interests vested in a tenant by or under the said Act. Originally, a period of 180 days was allowed for making an application to the Collector for such validation. This section was, thereafter, amendment from time to time for extending the aforesaid period. By the Rajasthan Colonisation (Amendment) Act, 1987, a proviso was inserted in sub-sec. (1) of Section 13-A, whereby the State Government was empowered to extend, by notification, the period ultimately so extended upto 30th June, 1987 for such further period not exceeding six months as was deemed fit. This period of six months was later on raised to a period of two years and six months by the Rajasthan Colonisation (Amendment) Act, 1989. This period of two years and six months was later on raised to a period of three years and six months by

the Rajasthan Colonisation (Amendment) Act, 1990. This period of three years and six months was later on raised to a period of five years and six months by the Rajasthan Colonisation (Amendment) Act, 1992.

Since it has been brought to the notice of the State Government that applications for validation of transfer etc. are still being made and are likely to be made still further, it is proposed that by inserting a new proviso to sub-sec. (1) of Sec. 13-A of the Act, the State Government may be empowered to extend, by notification from time to time, the period beyond the aforesaid period of five years and six months for making such applications. It is also proposed that on the applications received during the period extended beyond 31.12.92, the transfer, sub-lease or charge shall be declared valid only on the condition that the applicant shall, in addition to the compounding fee payable under sub-sec. (1) of Sec. 13-A, be also liable to pay interest at the rate of eighteen percent per annum on the amount of compounding fee for the period from 1st January, 1993 to the date of application. Two new provisos are proposed to be inserted in sub-sec. (1) of Sec. 13-A to provide for these proposals.

[4] *Raj. Act 5 of 2007.*— Section 7(4) of the Rajasthan Colonisation Act, 1954 provides for allotment of land but there is no provision to deal with contingency where the allottee dies after issuance of written order but before taking possession of land. In such a situation it is proposed to provide by inserting a new proviso that where the allottee dies after such written order has been passed but before taking possession of the allotted land, his spouse or in case the spouse is not alive his legal heirs dependent on him may take possession of the allotted land. This proviso is proposed to be inserted with effect from 8.8.1975.

Under the provision of (Sec. 22) the Rajasthan Colonisation Act, 1954 the Collector is empowered to take action regarding unauthorized encroachment on land whereas under the provision of the Rajasthan Land Revenue Act, 1956 such powers are exercised by Tehsildar under Sec. 91 thereof. It is proposed for the sake of uniformity that under the Rajasthan Colonisation Act, 1954 also Tehsildar be authorised to take action against unauthorized occupants. Accordingly Sec. 22 of the Rajasthan Colonisation Act, 1954 proposed to be amended and consequential amendment is also proposed to be made in Sec. 25 thereof. Since the word "Tehsildar" has not been defined under the Rajasthan Colonisation Act, 1954, it is also proposed to insert the definition of the Tehsildar in Sec. 2 of the Act.

This bill seeks to achieve the aforesaid objectives.

2. Provisions of Code of Civil Procedure—Applicability of.—As the law stands at present, it cannot be said that all the provisions of the Code of Civil Procedure automatically apply to the proceedings under the Rajasthan Colonisation Act and the Rules made thereunder. *Jugalkishore vs. State*, 1982 RRD 634.

3. Charging rent of land in a colony.—Officers of the Colonisation Department can charge rent of land in a colony only in accordance with the provisions of the law in force. There appears to be no provision in any statute

which may empower the Colonisation Department to increase the rent arbitrarily and realise the same from a back date, *Liladhar vs. State of Raj.*, **I.L.R. (1963) 13 Raj. 895=1963 R.L.W. 423.**

4. Construction.— [1] See Aid of Preamble of an Act. *Jaisingh vs. Union of India*, **1993 (2) WLC 1 (FB).**

[2] Beneficial legislation. *Noratanmal vs. Smt. Sobhagkanwar*, **1990 (2) RLR 371.**

[3] *Raj. P.S.C. vs. Dr. Damyanti*, **1983 RLR 473.**

Be it enacted by the Rajasthan State Legislature in the fifth year of the Republic of India as follows:—

1. Short title and extent.—(1) This Act may be called the Rajasthan Colonisation Act, 1954.

[(2) It extends to the whole of the State of Rajasthan.]

COMMENTARY

SYNOPSIS

1. Applicability of provisions.
2. Contravention of provisions.
3. Constitutional validity of Sec. 22 with reference to Arts. 14, 19 & 226.
4. Challenge to validity of rules – Competency of Board of Revenue.
5. Principles of natural justice.

1. Applicability of provisions.—[1] Notification applying the provisions of the Act containing names of towns and areas in scheule, it was held that Act does not apply towns and areas not specifically mentioned in it. *Ramlal vs. State of Rajasthan*, **1962 RLW 29 = ILR (1962) 12 Raj. 39.**

[2] Section 5 (b), therefore, applies in the circumstances of the case and the courts below arrived at an incorrect decision on account of their failure to read the rules for computation of ceiling area prescribed by section. Had they done so and referred to the preliminary decree they would not have considered, land, held by five tenants as that belonging to the appellant alone and passed the impugned orders. *Bharat Singh vs. State of Rajasthan*, **1977 RRD 93.**

2. Contravention of provisions.—Land sold without permission of Collector—Collector is granted discretion to impose penalty after hearing tenant—Collector cannot be forced to regularise breach by imposition of penalty.

None of the rights or interest vested in a tenant by or under the Rajasthan Colonisation Act, 1954 cannot be transferred without the consent in writing of the Collector. If any such transfer is effected without such consent it shall be void and the transferee who has obtained possession shall be liable to be ejected under the orders of the Collector. The Collector has

1. Subs. by Rajasthan Act No. 27 of 1957.

been granted direction to impose penalty up to Rs. 500/- after hearing the tenant concerned but this is a discretionary matter for the Collector. The Collector could not be forced to regularise breach of Sec. 13 of the Rajasthan Colonisation Act, 1954 by imposition of penalty—*Journal Singh vs. Phooman Singh*, 1974 RRD 361.

3. Constitutional validity of Section 22 with reference to Arts. 14, 19 & 226.—[1] Section 22 of the Rajasthan Colonisation Act is ultravires being violative of Article 14 and 19 (1) (f) of the Constitution of India, because the power conferred by this section is unguided and absolute discriminatory and violative of the right of equality guaranteed by Art. 14 of the Constitution. *Jugal Kishore vs. State of Raj.*, 1973 W.L.N. 52 = 1973 RLW 244.

[2] Condoning of delay in writ petition filed on 15-12-1978 against an order dated 1-2-1977 depends entirely on the facts and circumstances of the case. There cannot be any hard and fast rule to it.

Some points expressly given up before the Board of Revenue can not subsequently be agitated again in writ petition before the High Court. *Hansraj vs. Board of Revenue*, 1980 RRD 5.

4. Challenge to validity of Rules—Competency of Board of Revenue.—[1] The petitioners were allotted land for temporary cultivation in village which according to the State itself are a part of the colony of the Rajasthan Canal Project. They were certainly affected by the rules of allotment and they were entitled to complain that the rules framed by the State u/s 28 were discriminatory. *State of Rajasthan and Ors. vs. Ramdhan*, 1972 WLN 839.

[2] The Board of Revenue is not the proper forum where the vires of a statute passed by the state legislature can be questioned or considered. *Govind Ram vs. State of Raj.*, 1973 R.R.D. 523 (para 6) = 1964 R.R.D. 209, Followed.

5. Principles of Natural justice.—[1] A mutation recorded by Assistant Colonisation Commissioner without notice to the opposite party. The principles of natural justice violated thus entire proceedings is vitiated. *Pukha vs. Gopal*, 1970 R.R.D. 548.

[2] For an action under Section 22, no notice is necessary, no opportunity to the person in possession is afforded the jurisdiction of Civil Court is barred under Sec. 25 and there is no right of appeal. Opportunity of hearing must be provided. *Mahendra Singh vs. State*, 1980 R.R.D. 431.

[3] Section 22 is violative of Articles 14 and 19 (1) (f) of the constitution. We accordingly strike it down *Mahajara Himmatsingh vs. State of Rajasthan*, 1973 W.L.N. 107 = 1973 R.L.W. 409 = A.I.R. 1973 Raj. 254.

2. Definitions.—In this Act, unless the context otherwise requires—

(i) "Collector" means the Collector of the district and includes—

(a) any officer appointed by the State Government to perform all

or any of the functions and exercise all or any of the powers of the Collector under this Act, and

(b) any officer appointed before or after the commencement of this Act for purposes of colonisation;

¹[(ii) "*colony*" means any area to which this Act shall, by notification in the Official Gazette, be applied by an order of the State Government, or in respect of minor irrigation projects, by an order of the Collector authorised by the State Government in this behalf;].

²[(iii) x x x]

(iv) "*Improvement*" means—

(a) the construction and renovation of wells, tanks, bunds and water channels, and

(b) the planting of trees and the draining, reclaiming, clearing, enclosing, levelling and terracing of land,

but does not include such temporary works as are done by tenants or sub-tenants, without any special expenditure, in the ordinary course of agriculture;

³[(v) "*land*" means land belonging to all or any of the following categories, namely:—

(a) land as defined in clause (24) of Sec. 5 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955),

(b) land acquired under the provisions of the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of 1953), for the purpose of Government or a local authority or an educational institution, while such land remains the property of Government or such local authority or educational institution, as the case may be,

(c) land surveyed and recorded, whether before or after the commencement of this Act, as belonging to the Government or a local authority which is used for any public purpose such as a road,

(d) land surveyed and recorded as aforesaid for the use of the community such as, gochar, cremation-ground, grave-yard, road or pathway,

(e) land in the possession of Government or a local authority obtained by transfer or otherwise,

(f) abadi land within the limits of a municipality or a panchayat circle or a village, town or city, vesting in the State Government, and

1. This clause was brought into force in West Banas Project area vide Notfn. No. F(87) Irg/62, dated Feb. 1963, Published in Raj. Gazette, Pt. 1(b), d. 14.2.1963. It is substituted by Raj. Act No. 16 of 1991, w.e.f.1.7.1991.

2. Omitted by Rajasthan Act No. 8 of 1962.

3. Subs. by Rajasthan Act No. 38 of 1958.

(g) land within the abadi area vesting in a local authority or land recorded and set apart for the development of abadi or of mandis or for other public or municipal purposes, and includes benefits to arise out of such land and things attached to the earth or permanently fastened to anything attached to the earth;]

(vi) "*land cultivated personally*" with all its grammatical variations and cognate expressions, means land cultivated on one's own account—

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) by servants on wages payable in cash or in kind (but not by way of a share in crops) or by hired labour under one's personal supervision or the personal supervision of any member of one's family or one's manager or agent:

Provided that in the case of a person who is a widow or a minor or is subject to any physical or mental disability or is a member of the military, naval or air service of India or who, being a student of an educational institution recognised by the State Government is below the age of twenty-five years, land shall be deemed to be cultivated personally even in the absence of such personal supervision;

¹[(vi-a) "*Major Irrigation Project*" means the works constructed to use surface water for irrigation of a culturable commanded area of more than 10,000 hectares;

(vi-b) "*Medium Irrigation Project*" means the works constructed to use surface water for irrigation of culturable commanded area of more than 2000 hectares but not more than 10,000 hectares;

(vi-c) "*Minor Irrigation Project*" means the works constructed to use surface water for irrigation of culturable commanded area upto 2,000 hectares;]

(vii) "*prescribed*" means prescribed by or under this Act;

²[(vii-a) "*Project Officer*" means an Officer appointed by the State Government to exercise the powers and perform the duties assigned to such officer under this Act;]

(viii) "*public purpose*" includes fair and equitable distribution of agricultural land among the various landless tenants;

³[(viii-a) "*Tehsildar*" means Tehsildar appointed under the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956) and includes any

1. Ins. by Raj. Act No. 16 of 1991 [1.7.1991]

2. Added by Rajasthan Act No. 23 of 1974.

3. Added by Raj. Act No. 5 of 2007, w.e.f. 31.5.2007 vide Noti. No. F.2(6)Vidhi/2/2007, dt. 1.6.2007—Raj. Gaz., Exty., Pt. IV-A, dt. 1.6.2007, p. 5(1). = **2007 RSCS/Pt.II/P. 295/H.241.**

officer authorised by the State Government, by notification in the Official Gazette, to perform the functions and exercise the powers of the Tehsildar under this Act;]

- (ix) "tenant" means any person holding land in a colony and includes his predecessors and successors-in-interest and transferees.

C O M M E N T A R Y

S Y N O P S I S

1. Clause (i), sub-clause (a)
2. Clause (ii)
3. Clause (vi)

1. Clause (i), sub-clause (a).—[1] *Collector—Interpretation of with reference to Sec. 22—Appointment of Colonisation Tehsildars to perform such functions and exercise such powers of Collector under Sec. 22—Validity of—Appointment not invalid on ground that all powers of Collector are not conferred on Tehsildars.*—The word 'such' used twice in this section to qualify the words 'functions' and 'powers' is neither a superfluous expression nor it is synonymous with the word 'All'. The word 'such' as an adjective is used for something that has been stated earlier or which is to be specified or exemplified in the portion which is to follow. The word 'such' means of the kind the like kind or the same kind. The word 'such' is used to avoid repetition of the expression already indicated described or specified or to denote the context which is about to be indicated, suggested or exemplified. In the context of Sec. 22 it is not possible to construe the expression "to perform such functions and to exercise such powers of the Collector under Section 22 of this Act" to mean "to perform all functions and to exercise all powers of the Collector under Sec. 22 of the Act". The use of the word 'such' was meant to carve out only some functions and powers of the Collector exercisable under Sec. 22. *State of Rajasthan vs. Kishansingh, AIR 1992 SC 1946.*

[2] *Notification dated May 30, 1978 is valid—*Judgment of Rajasthan High Court, reversed. **AIR 1992 SC 1946.** See comments under S.22

[3] Though the Sub-Divisional Officer has been given the power of the Collector for the purpose of allotment and cancellation of land allotment under the Rules, it does not mean that he becomes the successor in office of the Collector. Nor is the Collector predecessor in office of the Sub-Divisional Officer. The Officer enjoys only limited powers of the Collector specially delegated to him by the State Government. In such circumstances the S.D.O. could not have reviewed an order passed by the Collector. *Amriksingh vs. State of Rajasthan, 1982 RRD 641 (644).*

[4] *An Additional Collector is not included in the definition.*—The powers of the Collector can be exercised only by an officer who is appointed by the State Government to perform all or any of the functions and exercise all or any of the powers of the Collector under the Act. It is therefore necessary that a notification by the State Government be issued in this respect before the

Additional Collector exercises the powers of the Collector under Sec. 11 read with Sec. 14 of the Act. *Manphul vs. State of Rajasthan*, 1991 RRD 355.

[5] "Collector" includes Director of Colonisation — Order of demolition made by Director is not illegal.—The word "Collector" has been defined in Sec. 2 (i) of the Act. According to this definition, "Collector" means the Collector of the District and includes inter-alia any officer appointed before or after the commencement of the Act for the purposes of colonisation. There can be no doubt that the Director of Colonisation, Chambal Project, Kota was appointed for purposes of colonisation. He was therefore a Collector under the Act. The impugned order thus cannot be held to be without jurisdiction or unauthorized on the ground that the Director of Colonisation was not the Collector. *Badshah Ram vs. State of Rajasthan*, 1974 W.L.N. (U.C.) 236.

[6] A land auctioned by a colony Naib Tehsildar.—Held, he is not an Allotting Authority and auction is without authority. *Ganesh vs. The State of Rajasthan*, 1975 WLN (U.C.) 171.

[7] Tehsildar, Colonisation and Dy. Commissioner, Colonisation whether appointed as Collector within the meaning of.—It did not appear that the Tehsildar, Colonisation Secretary, Bhakra Mandi, Development Board and the Dy. Commissioner, Colonisation had been appointed "Collector" within the meaning of Sec. 2 (i) of the Act, so as to give them the authority to proceed under its provisions for purposes of re-entry under Sec. 22. Power of re-entry could be exercised only by Collector as defined in Sec. 2(i). Deputy Commissioner, Colonisation, is not a 'Collector' as defined, therefore notices to vacate given by him are without authority. *Ramlal vs. State of Rajasthan*, I.L.R. (1962) 12 Raj. 39=1962 R.L.W. 29.

2. Clause (ii).—[1] Order issued by State Government specifying villages in Tehsil Suratgarh—Village in question not included therein—Act would not apply and S.D.O. would not competent to pass any order regarding thereto—Order passed by S.D.O. quashed.—The expression 'colony' is defined in Sec. 2 (ii) of the Rajasthan Colonisation Act, 1954, which means any area to which the Colonisation Act shall apply by order of the State Government published in the Official Gazette. In exercise of the power conferred by Sec. 2 (ii) the State Government issued the order dated 21-1-1959 which specifies the villages in Tehsil Suratgarh. According to that, the village in question is not included in the list of villages of Tehsil Suratgarh and, as such, the areas of the village in question does not construe colony.

When the village in question is not included in the area issued u/s 2 (ii) of the Rajasthan Colonisation Act, then the S.D.O. is not competent to pass the impugned order. It is only when the village in question is included in the colony area as defined in Sec. 2 (ii) the S.D.O. can exercise the power. Thus, the order of the S.D.O. dated 15-12-1987 deserves to be quashed. *Prem Singh vs. State of Rajasthan*, 1990 (1) RLW 131.

[2] Govt. Notification No. F. 22 (12) Rev. A/50 dated 31st May, 1955—Municipal areas of Hanumangarh, whether brought under the control of the Colonisation authorities.—The municipal area of Hanumangarh was not brought under the control of the Colonisation authorities by the notification

dated May 31, 1955, which only refers to village Dabarwala and Janglat Hanumangarh and not to Hanumangarh itself. *Ramlal vs. State of Raj.*, **I.L.R. (1962) 12 Raj. 39=1962 R.L.W. 29.**

[3] Village Beedwala is a colony as defined u/Sec. 2(ii). *Chanan Singh & Anr. vs. Board of Revenue & Ors.*, **2006 (3) CDR 2027 (Raj.)**.

3. Clause (vi).—Land cultivated through brother is included in the expression “cultivation through the labour or any member of family” in clause (vi). *Narendra Kumar vs. State of Rajasthan*, **1989 RRD 13.**

3. Application of Act.—This Act shall apply to all lands in a colony.

COMMENTARY

SYNOPSIS

1. Rajasthan Colonisation (General Colony) Conditions, 1965—Applicability—Provisions for benefit of landholders
2. Term “Colony”—Meaning of—Act extended to Chak IX by publication of order of State Government in Gazette
3. Secs. 11 & 14
4. Applicability

1. Rajasthan Colonisation (General Colony) Conditions, 1965—Applicability—Provisions for benefit of landholders—Held, provisions apply to both landholders who acquired land before and after commencement of Act. The various provisions of the Act and the Conditions have been inserted for the benefit of the land-holders. It will be ridiculous to extend the benefits to one class of land-holders and to deny the same to the other class of land-holders simply because some of them came to acquire the lands before the commencement of the Act and the others acquired the lands after the commencement of the Act. *Dhokal Ram vs. Board of Revenue for Raj., Ajmer*, **1986 RLR 140 = 1986 RLW 166 = 1986 (1) WLN 40.**

2. Term “Colony”—Meaning of—Act extended to Chak IX by publication of order of State Government in Gazette—Held, *it is colony and Collector has ample powers to carve way out of petitioner's field.*—“Colony” means any area to which this Act shall be applied by order of the State Government published in the Official Gazette. Chak IX has been admittedly declared a colony for the purpose of the Act.

The Collector, therefore, had ample powers to carve out a way in the petitioner's field. His action cannot be said to be unauthorised. *Dhokal Ram vs. Board of Revenue for Raj., Ajmer*, **1986 RLR 140 = 1986 RLW 166 = 1986 (1) WLN 40.**

3. Secs. 11 & 14.—Allotment-application discussed by Collector—Order upheld by Revenue Board—No error on face of record—Held, writ is not maintainable. *Govind Singh vs. Board of Revenue*, **1985 (2) WLN 663.**

4. Applicability.—The agricultural lands situated in a colony are governed by the provisions of the Act and the Conditions for all purposes without any distinction. It is immaterial for the applicability of the Act and

the Rules whether the grant was made before the commencement of the Act or was made after the commencement of the Act. If these provisions are given effect to, a new way can be carved out by the Collector in the fields of the tenants by virtue of the powers granted to him under Condition 8(2) of the Conditions. Condition 8(2) authorises the Collector to create a right of way not only in favour of the Government or persons or any class of persons or for public generally, but also in favour of single person. *Dhonkalram vs. Board of Revenue*, 1986 RRD 372.

4. Power to withdraw a colony from the operation of the Act.—The State Government may at any time, by notification in the ¹[Official Gazette], withdraw a colony or any part of a colony from the operation of all or any of provisions of this Act. ²[The State Government may also authorise a Collector to exercise the aforesaid powers in respect of a minor irrigation project for whole colony area or any part thereof within the local limits of the district.]

5. Applicability of tenancy and land revenue laws.—(1) Except as otherwise provided in this Act, the laws relating to agricultural tenancies, land, the powers, duties, jurisdiction and procedure of revenue courts, the survey and record operations, the settlement and collection of revenue, rent and other demands and the partition of estates and tenancies, for the time being in force in a colony, shall, in so far as may be applicable, apply to tenancies held and to proceedings conducted under this Act.

(2) Nothing in such laws shall, however, be so construed as to vary or invalidate any rule made, or any condition entered in any statement of conditions issued, by the State Government under this Act.

COMMENTARY

SYNOPSIS

1. Applicability of other laws.
2. Extent of applicability.
3. Scope of Section 5.
4. Application of Land Revenue Act.
5. Powers of Board of Revenue.
6. Review when competent.
7. Regularisation.
8. Circular—Value of—Duty to produce.
9. State whether party—Competency of.
10. Application of Section 5(b).
11. Writ Petition—Scope.

1. Applicability of other laws.—[1] By this section, the provisions of Rajasthan Land Revenue Act, which provide *suo motu* review under Sec. 86 have been made applicable to proceedings under the Rajasthan Colonisation

1. Subs. by Raj. Act No. 27 of 1957.

2. Ins. by Raj. Act No. 16 of 1991 [1.7.1991].

Act and the Rules made thereunder. *Gurdev Singh vs. State of Rajasthan*, **1992 RRD 393**.

[2] Though the Sub-Divisional Officer has been given the power of the Collector for the purpose of allotment and cancellation of land allotment under the Rules, it does not mean that he becomes the successor in office of the Collector. Nor is the Collector predecessor in office of the Sub-Divisional Officer. The Officer enjoys only limited powers of the Collector specially delegated to him by the State Government. In such circumstances the S.D.O. could not have reviewed an order passed by the Collector. *Amriksingh vs. State of Rajasthan*, **1982 RRD 641 (644)**.

[3] There is no provision regarding appeal and revisions to be heard under this Act. The provisions of the Rajasthan Tenancy Act and the Rajasthan Land Revenue Act relating to agricultural tenancies and the powers and duties as well as jurisdiction and procedure of revenue courts in matters covered by this Act have been made applicable by this section. It means by implication the order of the Assistant Commissioner and Deputy Commissioner Colonisation becomes appealable to the Colonisation Commissioner in accordance with Section 75 of the L.R. Act. The Colonisation Commissioner has also been designated as Revenue Appellate Authority as well and the second appeal would lie against the order of the Colonisation Commissioner cum RAA to the Board under Sec. 76. Where the remedy available under Sec. 75 of the L.R. Act has not been exhausted by filing an appeal against the order of the Dy. Commissioner (Colonisation) before the Colonisation Commissioner-cum-RAA the revision is not maintainable before the Board. *Ramrikh vs. Sahai Ram*, **1980 RRD 449**.

[4] It is clear from the provisions of Section 5 read with Sec. 20 of the Act that unless there is something contrary in the Rules or the conditions made by the State Government, the provisions of the Act will not apply to those tenancies which existed at the time of commencement of the Act, but those tenants would be bound by the conditions set out in the Schedule to the Act. A bare reading of the conditions will show that there is no provision so far as grant of a right of way to or through those tenancies which existed at the time of the commencement of the Act. Before the conditions can apply it is necessary that the grant must have been made in respect of land to which the Act has been applied. The Act may apply to all lands in the colony, but the conditions will only be applicable to such land in a colony in respect of which a grant has been made. *Shantilal vs. Punamchand*, **1985 RRD 518**.

[5] Notice by Tehsildar under Sec. 22 of the Act is not an order, hence no revision is competent. *Dhanpat vs. State of Rajasthan*, **1991 RRD 381**.

[6] *Application of Tenancy laws.*—The section makes applicable all laws relating to agricultural tenancies etc., to the tenancies held and the proceedings as conducted under the Act. *State vs. Lunkaran*, **1965 R.R.D. 316 (318)**.

[7] Section 5 of the Rajasthan Colonisation Act applies to an agricultural holdings. Thus under Rule 17, R.A.A. was competent to hear appeal against the order of Collector (Colonisation). His order being the judicial order,

second appeal lie to the Board of Revenue under Sec. 76(d) of the Rajasthan Land Revenue Act. Thus Rule 17 is no hurdle to second appeal. Revision (as contemplated under Rule 17) was treated as second appeal, where the revision was filed within the limitation of appeal. *Ratan vs. Madho*, 1972 R.R.D. 6.

2. Extent of applicability.—[1] According to Sec. 5(1) of the Rajasthan Colonisation Act, the general rules of Revenue Laws are applicable with the exception of those otherwise provided in the Act or the rules. Rule 23 (2) is special provision applicable to Appeals & Revisions. According to Rule 23 (2) no order or pre conditions attached to powers under the rule. The expression 'in appeal or otherwise' in Rule 23(2) indicates that the revision petition lies against order passed under appellate jurisdiction or in any other manner. There is no reason why a revision against the order rejecting stay application shall not lie. Revision is maintainable under Rule 23 (2) alone and Sec. 5(1) of the Colonisation Act bars revision under Sec. 84 of the Land Revenue. *Savitridevi vs. State of Raj.*, 1979 R.R.D. 344; *Ladu Ram vs. State of Rajasthan*, 1979 R.R.D. 473.

[2] *Definitions to be adapted.*—The expressions defined under the Rajasthan Land Revenue Act, 1956 and the Rajasthan Tenancy Act, 1955 and the rules made thereunder shall *mutatis mutandis* apply for the implementation of this Act.

3. Scope of Section 5.—[1] *Mutation proceedings.*— Sec. 5 of the Raj. Colonisation Act applies to all laws relating to Agricultural tenancies and Land Revenue Laws etc. and proceedings conducted by Colonisation Commissioner cum Revenue Appellate Authorities relating to mutations are appellable orders before the Board of Revenue. *Pukha vs. Gopal*, 1970 R.R.D. 548; *State vs. Loonkaran Madan Mohan*, 1965 R.R.D. 316, **Followed**.

[2] *In auction sale*—Land auctioned by a colony Naib Tehsildar—Held, he is not an Allotting Authority and auction is without authority. *Ganesh vs. The State of Rajasthan*, 1975 W.L.N. (UC) 171.

[3] *Cancellation of allotment & resumption of allotment for breach of conditions*—Plaintiff claimed that he was tenant of half share in suit and inherited from his father. Defendant claimed sole ownership on basis of will made in his favour—Such will is not a transfer—Breach of conditions of Secs. 7, 9 & 11 may result in resumption of tenancy. *Jagirsingh vs. Dansingh*, 1974 R.R.D. 341.

[4] A land allotted by Khudkasht Commissioner in Bhakra Project area—Sold by them in Aug. 66—No prior permission was obtained—Whether Collector can resume land? *Jaisingh vs. State of Raj.*, 1978 R.R.D. 351.

[5] *Landless person*—Section 5 of the Rajasthan Colonisation Act read with Sec. 5(26-A) of Raj. Tenancy Act and Sec. 10(3) of the Rajasthan Land Revenue Act—Appellant a field man in Agricultural Department employee holding land in other village is not an agriculturist by profession he cannot be deemed to be a Landless person. Such case is not covered by Sec. 5(26-A) of the Rajasthan Tenancy Act nor the case is covered by Rule 5 (a) of the Rajasthan Medium and Minor Irrigation Projects Government Land Allotment Rules, 1968. *Gajendra Singh vs. State*, 1974 R.R.D. 168.

[6] *Principles of natural justice*—A mutation recorded by Assistant Colonisation Commissioner without notice to the opposite party. The principles of natural justice violated thus entire proceedings vitiated. *Pukha vs. Gopal*, **1970 R.R.D. 548**. See *Mahendra Singh vs. State*, **1980 R.R.D. 431**.

[7] Where it is found that a third person-transferee in contravention of rules or conditions is in possession of land, notice to such transferee in possession is necessary as of natural justice. Where civil rights are involved, notice to the person is mandatory. Where such notice is not served, revision shall lie & accepted. *Smt. Darshan Kaur vs. Mool Singh*, **1975 R.R.D. 369**; *Sangram Singh vs. Election Tribunal*, **A.I.R. 1955 S.C. 425, Followed**.

4. Application of Land Revenue Act.—[1] *For appeals*—Rule 23 of the Rajasthan Colonisation (Allotment & Sale of Government Land in R.C.C. Area) Rules, 1975 read with Rajasthan Land Revenue Act, 1956 — Sec. 75 & 78. The Rule 23 provides limitation for appeal against orders of Allotting Authorities. Impugned order was passed by the D.C. (Colo.) who was not an Allotting Authority. Such order was deemed to have been passed under Sec. 14 read with Sec. 11 of the Colonisation Act. D.C. (Colo.) was prior to Rev. Appellate Authority. Thus an appeal against the order made by D.C. could be presented within 60 days under Sec. 78 of the Rev. Act read with Sec. 5 of the Act. *Raghunath Ram vs. State of Raj.*, **1979 R.R.D. 573**.

[2] *For revision*—Section 84 Rajasthan Land Revenue Act — Scope of—Direct revision petition, without first availing the opportunity of appeal, is not maintainable, unless there is jurisdictional error committed therein. *State vs. Moti Singh*, **1981 R.R.D. 530**.

[3] Section 84 of the Rajasthan Land Revenue Act—Revision—The Rule 18 of the Rajasthan Colonisation (Bhakra Project Government Land Allotment and Sale) Rules, 1955 did provide for first appeal but was silent as to revision (before 15-5-1981). As the Sec. 5 of the Act applies to all sorts of agricultural holdings thus revision lies to the Board under Sec. 84 of the Rajasthan Land Revenue Act. *Ramjilal Jat vs. Ramjilal Brahmin*, **1972 R.R.D. 274**.

[4] An order rejecting an appeal on the ground of limitation is an order covered by Rule 23 (2) of the Rules and a revision shall be to the Board. Section 77 (1) (a) of the Land Revenue Act does not stand as bar to such revision. *Mahendra Singh vs. State*, **1980 R.R.D. 431**.

[5] An order of allotment was passed by the Collector under Rule 17 A. The person aggrieved by the order preferred revision under Sec. 83 of the Rajasthan Land Revenue Act. The Rule providing for appeal and revision was newly inserted on dated 25-5-1981. Thus prior to the date of 25-5-1981 there was no rule providing for revision. Thus Sec. 83 of the Land Revenue Act could be resorted to for revision read with Sec. 5 of the Act, still the person was not eligible to move revision application without restarting to an appeal first. He ought to have exhausted the remedy available by appeal then could prefer revision otherwise not as required by Sec. 76 of the Rajasthan Revenue Act. *Govind Ram vs. State of Rajasthan*, **1973 RRD 523**.

[6] *Rules for appeal & revision*—As the Act is silent about the remedies

by way of appeal and revisions, thus provisions of rules shall govern the remedy.

[7] *Aggrieved party*—A party is said to be aggrieved by an order if it operates *resjudicata* against him or he is a party to the no proceedings, *Shri Mangilal vs. Chotu*, 1973 RRD 566.

[8] A person injured or damaged in a legal sense is said to be an aggrieved party. The question whether a person is 'aggrieved' for the purpose of complaining against another, is to be determined by the nature of the injury or the offence and the special circumstances of each case. Any fanciful or sentimental grievance alone is not suffice; there must be *injuria* or a legal grievance, i.e. such grievance as the law can appreciate and not a state-prorations-*valuntas rasons*. 3 Cr. L.J. 187.

[9] No court shall take cognizance of an offence falling under certain specified sections of the Indian Penal Code except on a complaint by some aggrieved person by such offence. (Section 198, 199 Cr. P.C.), the object behind it to limit the rights of complaint to individuals who has suffered legal injury—for example in case of defamation, person defamed is aggrieved person, in case of bigamy committed by wife, her husband is aggrieved person, in case of infringement of copyright, the owner of copyrights i.e. owner of books and publication is the aggrieved person, in insolvency matters, each of the creditors is an aggrieved person by an order of discharge or scheme of arrangement.

The petitioner-appellant enjoys the status of mere trespasser. He was not a party to the proceedings. He has no *locus standi*, therefore his appeal must be dismissed. *Sirya vs. State of Rajasthan*, 1978 R.R.D. 633.

[10] The main dispute with regard to the interests in village Gochar, the non-applicant was the resident of the village in which the disputed Gochar Land situate. Held, non-applicant was the necessary party to appeal. *Shri Jethusingh vs. Shri Chimansingh*, 1975 R.R.D. 137=1975 K.S. 58.

[11] A person can be said to be aggrieved if apart from general interest such as a person as a member of public may have, he has a particular or special interest in the subject matter supposed to be wrongly decided. *Thiruvengadem vs. Muthu Chetiar*, A.I.R. 1970 Mad. 34 (37).

[12] *Basic principle*—The true principle is to determine whether the applicant has an interest distinct from the general inconvenience which may be suffered by the law being wrongly administered. *M.S. Transport Ltd. vs. Raman & Raman*, AIR 1961 Mad 180 (FB).

[13] *Appeal*—Aggrieved person—*Locus standi* of a trespasser—This objection could well be raised at the stage of first appeal or lastly at the stage of second appeal but kept silent. Such object was first raised in review petition against second appeal, held plea is barred. *Laxmibai vs. Durga*, 1981 R.R.D. 569.

[14] The expression does not mean who suffers from psychological or imaginary injury. An aggrieved person must necessarily be one whose rights or interests are affected or jeopardized. *Gram Sabha vs. Ramraj Singh*, 1968 All. W.R. (H.C. 844).

