

THE RAJASTHAN COLONISATION (EVICTION OF TRESPASSERS) RULES, 1975

C O N T E N T S

Rules	Pages
1. Short title and commencement.....	537
2. Definition.....	542
3. Form of notice.....	542
4. Warrant for arrest to direct trespasser to be brought out.....	542
5. Warrant of committal of trespasser to Jail.....	543
6. Classification of civil prisoner.....	543
7. Food and Clothing from private sources.....	543

THE RAJASTHAN COLONISATION (EVICTION OF TRESPASSERS) RULES, 1975

[Notification No. G.S.R. 200 (38)/F. 4 (23) Rev./Col/75, dated 24-11-1975—Raj. Gaz., Exty., Pt. IV, Sub-part I, dated 27-11-75]

In exercise of the powers conferred by section 22 read with section 28 of the Rajasthan Colonisation Act, 1954 (Rajasthan Act 27 of 1954), the State Government hereby makes the following rules to provide for eviction of trespassers, namely:—

1. Short title and commencement.—(1) These Rules may be called the Rajasthan Colonisation (Eviction of Trespassers) Rules, 1975.

(2) They shall come into force at once.

C O M M E N T A R Y

SYNOPSIS

1. Trespasser-meaning of.
 - (a) Origin & cause of action.
 - (b) Requirments of.
 - (c) Encroachment on land not specified.
 - (d) Dispossession prior to Act, remedy.
2. Who are trespassers.
 - (a) Possession of land taken illegally.
 - (b) Forcible dis possession of subtenant.
 - (c) Possession without lawful authority.
 - (d) Persons lawfully enters but holds possession.
 - (e) Retaining possession after termination of tenancy.
3. Not trespassers.
 - (a) Admitted to continue possession for money.

- (b) Denial of title.
- (c) Holding over not trespasser.
- 4. Other relevant provisions.
- 5. Land Revenue Act & Tenancy Act.

1. Trespass-meaning of.—Section 55(44) of the Rajasthan Tenancy Act, 1955 defines the expression Trespasser as under :—

“(44) ‘Trespasser’ shall mean a person who takes or retains possession of land without authority or who prevents another person from occupying land duly let out to him”.

- (a) *Origin & cause of action.*—The relative rights and duties of owner and trespasser on the one hand and of mortgagee on the other are wholly different and arise from different causes of action and cannot have the same origin. *Kishanlal vs. Jeetmal*, **1967 RRD 76.**
- (b) *Requirements of*—The land mentioned in section 183 or indeed in any part of the Rajasthan Tenancy Act must be as defined in section 5(24) of the Act before a suit could lie under the Tenancy Act in respect to it. *Shantilal vs. Nand Kishore*, **1968 RRD 257.**
- (c) *Encroachment of land not specified*—Held plaintiff entitled to possession of suit land—Executing court to demarcate boundaries and remove trespassers. *Nathulal vs. Devilal*, **1968 RRD 313.**
- (d) *Dispossessed prior to Act Remedy of.*—The plaintiff respondents were the Khatedar tenants in the suit land and they were dispossessed by the defendant appellants. Therefore under the old law prior to the coming into force of the Rajasthan Tenancy Act recovery of possession of the suit and claim of mense profits was the only remedy available to the plaintiff respondents. *Shersing vs. Umedsingh*, **1966 RRD 236.**

2. Who are Trespassers.—

- (a) *Possession of land taken illegally* — Held, suit triable by revenue court. Where the averment in the plaint was that the land in dispute belonged to the plaintiff, and the defendant has taken possession of it illegally, it was held, that in view of section 183 read with section 207 of the Rajasthan Tenancy Act the suit was exclusively, triable by a revenue court. If a question of proprietary right in respect of the land is raised in the suits the revenue court should as provided by section 239 frame an issue on the question and refer that issue only to the competent civil court for decision. *Ganpatsingh vs. Mst. Agran*, **1959 RLW 402.**
- (b) *Forcibly dispossessing sub-tenant*—Land let out by A to B-C employed to assist B in cultivation assumes possession—Whether C is a trespasser.—A let out his field to B for a year under an agreement in writing. B employed C to assist him in

cultivation. C eventually assumed possession and turned out B. A then filed a suit for possession of the field and for mesne profits. Held, that C was a trespasser within the meaning of section 5(44) and section 183 of the Rajasthan Tenancy Act. The suit for ejection of trespasser was covered by S. No. 23 the third schedule and S.No. 17 and 18 provided for a suit of arrears of rent—The suit was, therefore, covered by the schedule and was exclusively triable by a revenue court under section 207 of the Act. The circumstances that B had entered into possession after having executed an agreement in favour of A did not alter this position in any way. *Roopa vs. Mansalal*, 1958 RLW 189.

(c) *Possession without lawful authority—Held, trespasser liable to ejection.*—Under section 183 a person retaining possession of the land without any lawful authority is liable to ejection on the suit by a person entitled to admit him as a tenant. Such a person who retains possessions should be a trespasser which then according to Sec. 5(44) means also a person retaining possession of land without authority. *Madho vs. Kalyan*, 1960 RRD 89.

(d) *Person lawfully enters but holds possession when asked to vacate, trespasser.*—[1] A mere licensee or a person holding permissive possession on grounds of natural love and affection could in our opinion would clearly be a licensee. His licence could be revoked by a clear notice to quit and if a person who lawfully entered into a possession of holding refuses to vacate possession he would clearly be a trespasser within the term defined under section 5(44) of the Rajasthan Tenancy Act. *f vs. Kishanlal*, 1968 RRD 178.

[2] *Retaining possession without lawful authority—Whether a trespasser.*—Undoubtedly, the defendants-respondent entered upon the disputed land lawfully, that is, with the permission of the plaintiff-appellant, but the latter has now withdrawn the permission and the possession of the defendant respondent is, therefore, without any legal authority. In other words, the defendant respondent is retaining Possession unlawfully, and in that sense he is a trespasser within the meaning of section 5(44) of the Rajasthan Tenancy Act. The plaintiff appellant is, therefore, entitled to seek his ejection under Section 183 of the Act. *Bhagirath vs. Denandar Kumar*, 1967 RRD 199.

[3] *Surrender not proved—Whether defendant treated as trespasser.*—Where the plaintiff pleaded lease to the defendant for one year only after expiry of term the surrender by the defendant is alleged, held where surrender is not proved, the defendant cannot be treated as ejected. *Mohanlal vs. Ramdeo*, 1964 RRD 20 but it also contains those persons who retain possession of land without authority. Therefore the moment the plaintiff-respondent terminated the defendant appellants

authority to retain the land, defendant clearly became a trespasser and was liable to ejection under section 183 of the Rajasthan Tenancy Act. *Hiralal v. Harakraj*, **1967 RRD 286**.

- (e) *Retaining possession after termination of tenancy*—Held, it amounts to trespass.—[1] In the definition of the term 'trespassers' a person who takes possession without lawful authority is included.

Section 183 & 187 and Administration of Evacuee Property Act, 1950 Section 46 and Evacuee Interest (Separate) Act, 1951—Section 20 and 2(b)—Property ceased to be evacuee property after sale by Custodian to plaintiff.

He is the owner of what was composite evacuee property and vested as such in the Custodian. It was transferred in accordance with law to the plaintiff who is a bonafide purchaser for value. The rights, title and interest of the evacuee in this property came to an end with this transfer, if not at the time of its vesting under the Act. *Dewaram vs. Bhomaram*, **1973 RRD 322**.

[2] *After abandoning possession—Whether brother not having disputed land is a trespasser*.—Unless the disputed land could be treated as having been abandoned by the tenant, the defendant admittedly his real brother, could not be called to have trespassed over it. The plaintiffs were not in possession of the land, nor could they be called to be in constructive possession thereof, nor entitled to immediate possession thereof, unless the land was taken to have been abandoned, by the tenant. Hence it needed no logic to establish that in the course of the lease period and before its expiry, the plaintiffs had any business to claim possession of the disputed land unless, it was proved that the land had been abandoned by the tenant. *Jai Kumar vs. Ladhu Ram*, **1961 RRD 167**.

3. Not trespasser.—A person who is in lawful possession is not a trespasser. It is undoubtedly lawful possession from which he can not be dispossessed except through the due process of law. He is certainly not a trespasser. *Boduram vs. Bhura*, **1977 RRD 484**.

- (a) *Defendant admitted on land after accepting money—Whether defendant is a trespasser*.—When money by way of premium was accepted from the defendant and he was allowed to retain the possession of the land, he could not be a trespasser and even if he had been allowed to retain possession admitted to the land lawfully, his having been allowed to retain possession lawfully was in itself sufficient to term him not a trespasser. The letting for consideration consenting to further retain possession is equivalent to lawfully entering upon and retaining the land by the defendant as such he cannot be termed to be a trespasser. *Anirudh vs. Mandir Shri Nirithya Gopalji*, **1959 RRD 182**.

- (b) *Sub-tenancy not proved—Whether possession is without lawful authority.*—A person denying the title of the Khatedar and continuing to retain possession of land even when asked by the Khatedar thereof to quit the land and not able to prove any relationship of sub-tenancy cannot but be called to be occupying the land without any lawful authority and be termed as the trespasser thereon and as such his defensive plea can be rejected. *Madho vs. Kalyan, 1960 RRD 89.*

Sec. 183 and section 5(44)—Plaintiff alleging that during this long illness he took loan from defendant and gave him possession of land—Held, even if defendant was in possession with some sort of consent he was now a trespasser. *Hiralal vs. Harakraj, 1967 RLW 51 (RS).*

- (c) *Tenants holding over are not trespassers.*—The appellants numbers one to five are no doubt tenants of holding in dispute and they continued to hold over the land after the expiry of the lease. But the appellants Nos. six to sixteen were clearly trespassers. There is no doubt that as far as trespassers are concerned, they were rightly ejected by the two subordinate courts u/s 183 of the Rajasthan Tenancy Act. But in view of the fact that the appellants nos. One to five were not trespassers but tenants holding over they cannot be ejected. *Mogji vs. Inderajeetsingji, 1963 RRD 188.*

4. Other Relevant provisions.—Section 91 of the Rajasthan Land Revenue Act 1956 provides for removal of unauthorised occupiers of Government land and the Tehsildar is empowered to initiate the proper proceedings there under for removal.

Section 183 of the Rajasthan Tenancy Act, 1955 provides remedy by suit for ejection of the trespassers by the tenant.

The primary distinction between the two is that in the former case state is the aggrieved party who initiates eviction proceedings through the Tehsildar where as in the later case an individual tenant's rights are injured and provides suit for ejection of such trespassers. The Rajasthan Public Premises (Eviction of unauthorised occupants) Act, 1964 (Raj. Act 2 of 1965) is also an enactment to eject the trespassers. But this Act provides independent rules to deal with the trespassers namely. The Rajasthan colonisation (Eviction of Trespassers Rules, 1975 which provide exhaustive rules to deal with the trespassers. The provisions of section 91 of the Rajasthan Land Revenue Act and Section 183 of the Rajasthan Tenancy Act read with section 5 of the Rajasthan colonisation Act would only apply where the Rajasthan colonisation (Eviction of Trespassers) Rules 1975 are silent in that respect.

5. Land Revenue Act and Tenancy Act.—[1] *Section 183 Tenancy Act and Land Revenue Act Section 91—Ejection proceedings*—Section 91 of the Land Revenue Act authorises a Tehsildar to order a summary eviction of a trespasser from any land occupied by him without lawful authority. Before

taking such proceedings and passing such orders, the Tehsildar is required to issue under sub-section (3) a notice specifying such land setting out a date by which the alleged trespasser is required to vacate such land or to appear and show cause why he should not be so evicted therefrom. After following the procedure under sub-section 4 the Tehsildar can order the removal of the trespasser from such land and take possession thereof. Hence the procedure followed by the Tehsildar was held one as laid down by this section No Such procedure has been laid down to be followed under section 183. Rajasthan Tenancy Act. That section only contemplated the issuing of a notice. Where in the notice issued by the Tehsildar there was no reference to section 183 and procedure followed was allowed as one prescribed under section 91 of the Land Revenue Act. It was held that a mere writing at the end of the matter of the Tehsildar that the application be disposed of under the provisions of section 183 of the Rajasthan Tenancy Act does not render the proceeding to have been commenced to be one under section 183 but entitled them to be regarded as having been taken under Sec. 91 of the Rajasthan Land Revenue Act. *Rao Shri Manohar Singh vs. The State*, **1960 RRD 20**.

[2] An Officer is to evict trespasser on Government land. The Board of Revenue can not intervene if an admitted trespasser is sought to be evicted. *Kalu vs. State of Rajasthan*, **1977 RRD NUC 98**.

[3] *Adverse possession—Ingredients of plea.*—The person in possession must claim hostile title to the real owner. Mere continued possession to the length of beyond 12 years alone ipsofacto do not make adverse possession. The essential requirement is that the person in possession must claim hostile title against the real owner. The plaintiff admitted Khatedari rights in defendant and also paying rent to such khatedar. Held no Hostile title resulting in no adverse possession. *Krishna vs. Bhera*, **1981 RRD 549**.

[4] 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 objection was first raised in review petition against second appeal, held plea is barred. *Laxmibai vs. Durga*, **1981 RRD 569**.

2. Definition.—In these Rules, unless the subject or context otherwise requires,—

- (a) “Act” means the Rajasthan Colonisation Act, 1954 (Rajasthan Act 27 of 1954),
- (b) “Section” means section of the Act;
- (c) “Form” means a form appended to these rules.

3. Form of notice.—Notice ¹[x x x] sub-section (3) of section 22 shall be in form ‘A’.

4. Warrant for arrest to direct trespasser to be brought out.—Every

1. Deleted vide Notfn. No. G.S.R. 8/F. 4 (31) Rev/Col./76, dated 16- 4-1979, published in Rajasthan Gazette, Part IV-C. Sub-part I, Ordinary, dated 19- 4-1979.

warrant under section 22 for the arrest of the trespasser shall direct the officer entrusted with its execution to bring him before the Collector with all convenient speed. Such warrant shall be in Form 'B'.

COMMENTARY

*Powers of Authorities to evict by force—See section 22—*There is no provision of law which empowers a State Government by force or show of force to evict a person who is in actual possession of immovable property. If the State Government were of the opinion that the State had the superior title or the better right to possession it is open to them to bring appropriate action against him and to secure his eviction in accordance with the provisions of law.

It appears that perhaps the State authorities wanted to oblige the purchaser of this land by taking resort to the provisions of section 22 of the Colonisation Act and handing over the possession thereof to the purchaser. I do not think that the mandate of sec. 22 of the Rajasthan Colonization Act in any manner empowers the colonization authorities to take this fashion. *Karansingh & ors. vs. The State of Rajasthan, 1971 WLN 151-1971 RLW 558 = AIR 1971 Raj. 265.*

5. Warrant of committal of trespasser to Jail.—When any person is brought under a warrant issued under Rule 4, the Collector shall make an order for the detention of the trespasser in the civil prison. The warrant of committal to civil Jail shall be in Form 'C'.

6. Classification of civil prisoner.—The Collector shall, after taking into consideration the social status of the trespasser send his recommendation to the Superintendent of Jail about the classification of the prisoner as superior class or ordinary class. On receipt of this recommendation, the Superintendent shall treat the superior class civil prisoner as 'B' Class in-mate and the ordinary class civil prisoner as 'C' class in-mate as prescribed in the Rajasthan Prison Rules, 1951.

7. Food and Clothing from private sources.—A civil prisoner under these rules can supplement his diet and clothing from his private sources.

FORM 'A'

[See Rule 3]

Notice under section 22 of the Rajasthan Colonisation Act, 1954.

In the Court of Collector District Miscellaneous case
No..... of 19 ... State Versus S/oCaste Resident
of

Whereas you have committed trespass on Government unoccupied land
belonging to Khasra number of village Tchsil measuring
..... during the agriculture year

Notice is hereby given to you that you should vacate the said land
before (date) or to appear in person or by a pleader on the

day of 19 ... at O'clock in the noon and to show cause as to why you should not be evicted there from. You are also required to show cause why penalty for committing trespass during the said agricultural year on the said land should not be imposed up to 50 times the annual rent or assessment as the case may be.

Take further notice that you had committed trespass on the same land in the agriculture year This notice is being given to you in respect of subsequent trespass in the year You are required to show cause why you should not be committed to civil prison for a term which may extend to three months and to pay penalty up to 50 times the annual rent or assessment as the case may be.

Also take notice that on your failure to appear on the said date, time and place the case shall be decided in your absence.

Given under my hand and the seal of the Court, this day of 19

Seal

Collector
.....District.

FORM 'B'

[See Rule 4]

Warrant of arrest in execution of order under section 22 of the Rajasthan Colonisation Act, 1954

In the Court of Collector District Miscellaneous case No..... of 19 State Versus S/o Caste Resident of

To

The Bailiff of the Court.

Whereas Shri S/o caste resident of was ordered to be committed to civil prison in the above noted case;

These are to command you to arrest the said Shri and to bring him before the court with all convenient speed.

You are further commanded to return this warrant on or before the day of 19 ... with an endorsement certifying the day on which and the manner in which it has been executed or the reasons why it has not been executed.

Given under my hand and the seal of the court, this day of 19 .

Seal

Collector,
..... District.

1. Strike out if not applicable.

FORM 'C'

[See Rule 5]

Warrant of Committal of trespasser to Civil Jail under Section 22, Rajasthan Colonisation Act, 1954.

In the Court of Collector District Miscellaneous case
No..... of 19 State Versus S/o Caste
Resident of

To,

The Officer In-charge of the Jail,

at

Whereas who has been brought before this court this day of
..... 19 ... under a warrant in execution of the order made and pronounced
by the said court on the day of 19 and by which order it was
directed that the said Shri should be committed to civil prison for
..... for committing subsequent trespass on unoccupied Government land;

You are hereby commanded and required to take and receive the said
Shri into the civil prison and keep him imprisoned herein for a
period not exceeding

Given under my signature and the seal of the Court, this day
of 19

Seal

Collector
..... District.

