
(2019) 05 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4113 Of 2017

Anil Bhandari And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 25, 173A, 173A(1), 173A(2), 173A(1)(2), 173A(1)(3), 173A(3), 173A(4), 297
Rajasthan Municipalities Act, 2009 — Section 182, 182(2), 183(3), 194(12), 327, 344
Rajasthan Municipalities (Change Of Land Use) Rules, 2000 — Rule 2(vi)

Citation : (2019) 05 RAJ CK 0040

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : M.R. Singhvi, Bhavit Sharma, Hukam Singh, Suniel Purohit

Final Decision : Dismissed

Judgement

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"i. the impugned notice/order dated 10.03.2017 (An.15) may kindly be quashed and set aside;

ii. the respondents No.2 and 3 may kindly be directed to process the application of the petitioners for renovation permission expeditiously as early as possible without insisting for conversion charges;

iii. Any other order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case, may be passed in favour of the petitioners;

iv. writ petition of the petitioners may kindly be allowed with costs."

2. The petitioners are claiming to have purchased a part of the property for which a free hold patta was issued by the erstwhile State on 29.10.1928. The

property was purchased by the petitioners in a piecemeal manner and the Municipal Corporation issued an order of sub division dated 13.12.2016.

3. The petitioners were running a showroom in the property and the petitioners claim to be using it for commercial purposes since 1988.

4. The genesis of the controversy lies in the fact that the petitioners applied for permission to renovate the existing premises, and the respondents before considering such application, required the petitioners to pay conversion charges. Such imposition of conversion charges is the subject matter of challenge in the present writ petition.

5. Mr.M.R. Singhvi, learned Senior Counsel assisted by Mr. Bhavit Sharma and Mr. Hukam Singh appearing on behalf of the petitioners submitted that the petitioners applied for permission to renovate the existing premises vide application dated 12.01.2017, and when the said application was not being considered, the petitioners served a notice upon the respondents pointing out that the property in question is a free hold property, and therefore, they were not liable to pay any conversion charges, and since the property in question was already being used as commercial, therefore, it was a simple case of renovation and the permission should be immediately granted.

6. Learned Senior Counsel for the petitioners further submitted that the petitioners also submitted before the respondents that the property was situated on the main Chopasni Road and as per the existing Master Plan, it is commercial land, and that, since the land use is not being changed, therefore, the petitioners are not liable to pay the conversion charges.

7. Learned Senior Counsel for the petitioners further submitted that inspite of inviting objections, the Municipal Corporation did not receive any objection, but the petitioners were informed vide notice dated 10.03.2017 to pay the conversion charges, and then only their prayer for permission to raise construction or to make renovation will be considered.

8. Learned Senior Counsel for the petitioners has drawn the attention of this Court towards the provision of the Rajasthan Municipalities Act, 1959, wherein an amendment was made by Section 25 of the Rajasthan Act No.21 of 1974, and Section 173A was brought to the Statute book, and for ready reference, the same is reproduced hereunder:-

"173-A- Power of the State Government to allow change in the use of land-. (1) Notwithstanding anything contained in this Act, where any land has been allotted or sold to any person by a municipality or the State Government subject to the condition of restraining its use for a particular purpose, the State Government, may if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed.

Provided that the rates of conversion charges may be different for difference areas and for difference purposes.

(2) The conversion charges so realized shall be credited to the Consolidated Fund of the State or to the fund of the municipality as may be determined by the State Government.

(3) Such charges shall be first charge on the interest of the person liable in the land the use of which has been changed and shall be recoverable as arrears of land revenue."

9. Learned Senior Counsel for the petitioners also submitted that since as per the aforesaid provision, there was no restriction on the change of land use in respect of a free hold property, therefore, change of land use, as made by the petitioners pertaining to the property in question way back in the year 1988, was not subject to payment of conversion charges.

10. Learned Senior Counsel for the petitioners further submitted that in the new law, i.e. Rajasthan Municipalities Act, 2009, which was enacted after repealing the Act of 1959, there is Section 344, which is a 'Repeal and Savings' Clause.

11. Learned Senior Counsel for the petitioners also submitted that since the property was being originally used for commercial purposes, therefore, there was no requirement of the conversion charges to be paid to renovate the existing commercial premises.

12. Learned Senior Counsel for the petitioners also laid much emphasis on the point that the existing master plan defined the location in question as commercial, and therefore, the notice dated 10.03.2017 was illegal.

13. In support of his submissions, learned Senior Counsel for the petitioners relied upon the judgment rendered by this Hon'ble Court in Sanjeev Sachdeva & Anr. Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No.13557/2013 decided on 05.05.2016), relevant portion of which reads as under:

"I have considered the submissions made by the learned counsel for the parties and have perused the material available on record.

The provisions of Section 173-A of the Act reads as under:-

"Section 173-A : Restriction on change of use of land and power of the State Government to allow change of use of land (1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any municipality, any other local authority or any other body or authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation. (2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal, area for the purpose other than that for which such land-use was or is

permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force. (3) Notwithstanding anything contained in sub-section (1) of sub-section (2), the State Government or any authority authorized by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use:-

(i) From residential to commercial or any other purpose; or

(ii) From commercial to any other purpose; or

(iii) From industrial to commercial or any other purpose; or

(iv) From cinema to commercial or any other purpose;

Provided that rates of conversion charges may be different for different areas and for different purposes.

(4) Any person who has already changed the use of land in violation of the provisions of this Act in force at the time of change of use, shall apply to the State Government or any authority authorized by it under sub-section (3), within six months from the date of 6 of 12 commencement of the Rajasthan Municipalities (Amendment) Act, 1999 (Act No.19 of 1999) for regularization of said use and upon regularization of the change of use of land he shall deposit the amount contemplated under sub-section (3).

(5) Where the State Government or the authority authorized by it under sub-section (3), is satisfied that a person who ought to have applied for permission or regularisation under this Section, has not applied and that such permission can be granted or the use of land can be regularized, it may proceed to determine the conversion charges after due notice and hearing the party/parties and the charges so determined shall become due to the municipality and be recoverable under sub-section (7).

(6) The conversion charges so realized shall be credited to the fund of the municipality.

(7) Charges under section shall be the first charge on the interest of the person liable to pay such charges with respect to the land, the use of which has been changed and shall be recoverable as arrears of land revenue."

At the outset, it may be noticed that in terms of Annex.13, it is not in dispute that the land use of the plot in question in the Master Plan has been indicated as 'Commercial'.

A bare reading of the above provisions reveals that the Section is in two parts; while sub-sections (1) and (2) deals with the restriction on change of use of land, sub-sections (3) to (7) deals with the power of the State Government to allow change of use of land. While sub-section (1) provides that where a land was

originally allotted or sold to any person by the State Government, any Municipality, any other local authority or any other body or authority in accordance with the law for the time being in force, no person shall use or permit the use of any land situated in any municipal area for the purpose other than that for which such land was originally allotted or sold or otherwise than as specified under a Master Plan, wherever it is in operation. The said provision is confined to land originally allotted or sold by the State Government or local authority and the restriction imposed 7 of 12 is that the same cannot be used contrary to the purpose for which it was originally allotted or other than as specified under a Master Plan.

Sub-section (2) deals with the land other than which is covered by sub-section (1) i.e. land not allotted or sold by the State Government or any local authority for which a restriction has been imposed that no person would use or permit the use of any land situated in a municipal area for the purpose other than that for which such land use was or is permissible in accordance with the Master Plan, wherever it is in operation or under any law for the time being in force. The stipulation under sub-section (2) is that the land other than covered by sub-section (1) cannot be used for the purpose other than for which the land use is permissible in the Master Plan, wherever it is in operation. The further stipulation 'or under any law for the time being in force', apparently applies where no Master Plan is in force.

Sub-section (3), which starts with a non obstante clause and as already noticed deals with the power of the State Government to allow change of use of land, provides that where the land cannot be put to desired use on account of restrictions as contained in sub-section (1) and sub-section (2), the State Government or any authority authorized by it may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest on payment of conversion charges at such rates and in such manner as may be prescribed and it further provides for the change in use which are permissible. Sub-section (3) necessarily provides that the restrictions as imposed under sub-section (1) and sub-section (2) can be relaxed in public interest on payment of conversion 8 of 12 charges and the restrictions have to be read only as stipulated under sub-section (1), which in case of land allotted by the State Government or local authority is regarding the purpose for which the land was originally allotted or contrary to the use indicated in the Master Plan and under sub-section (2) is regarding land use permissible in accordance with the Master Plan and no other stipulation can be read into the said provisions.

In the present case, admittedly, the land in question has not been allotted by the State Government, municipality or any local authority and is part of a Patta issued in the year 1902, therefore, sub-section (1) has no application and it is only if the intended use falls foul of the Master Plan that sub-section (2) could be invoked for the purpose of demanding conversion charges under sub-section (3) read with sub-section (5) of the Act and not otherwise.

As already noticed more than once that the land use as indicated in the Master Plan is 'Commercial' and the petitioners are seeking to use the land in question for commercial purpose, apparently, the provisions of sub-section (2), which provides for restriction does not come into picture at all and consequently, there is no question of invoking sub-section (3) for the purpose of demanding conversion charges.

A submission was sought to be made by learned counsel for the respondent Municipal Corporation that even where the Master Plan indicates a particular land use and the land in question is already in use other than what is indicated in the Master Plan, a person seeking to use the land as indicated in the Master Plan would have to seek conversion as in the present case, though the land use indicated in the Master Plan is 9 of 12 'commercial', as the land was being used for residential purpose, the petitioners are required to seek conversion for putting the land to commercial use. A plain reading of the provision of sub-section (2) and (3) of the Act does not warrant any such interpretation, which is sought to be put by the learned counsel for the respondents.

As noticed hereinabove, it is only and only if the intended land use falls foul to the use indicated in the Master Plan that the restrictions contained in sub-section (2) would come into play and would result in demand of conversion charges under sub-section (3) or (5) and not otherwise. The golden rule of interpretation provides that the plain reading of the provision has to be employed unless the context requires otherwise and the plea sought to be raised by the learned counsel for the respondents is reading beyond what is contained in the provisions.

Learned counsel for the respondents with reference to the Statement of Object and Reasons of the Amendment Act, 1999 by which the present Section 173-A came to be inserted sought to support the demand for conversion charges. The Statement of Objects & Reasons reads as under:-

"The existing provisions contained in Section 173-A of the Rajasthan Municipalities Act, 1959 provide that where any land has been allotted or sold subject to the condition of restraining its use for a particular purpose, to any person by a Municipality or the State Government, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of the land, to use it for any other person other than the purpose for which it was originally allotted or sold, on payment of such conversion charge as may be prescribed.

With a view to ensure planned and regulated development of the urban areas it is necessary to restrict and bar the change of use in certain circumstances of those lands also which were not sold or allotted by Municipality or the State Government. However, the 10 of 12 power of the State Government or any other authority authorized by it, to allow change of use of land, on payment of conversion charges is sought to be retained.

With a view to achieve the aforesaid objective, the existing section 173-A of the Rajasthan Municipalities Act, 1959 is proposed to be substituted"

A bare perusal of the Objects & Reasons reveals that the object indicated is to ensure planned and regulated development of the urban areas to restrict and bar the change of use in certain circumstances of those lands also which were not sold or allotted by Municipality or the State Government and to give power to the State Government to allow change of use of land on payment of conversion charges.

The source for ensuring planned and regulated development is the Master Plan which provides for the designated land use of particular area and once the land use of the area has been marked as 'Commercial', it cannot be said that if within that area a residential building or a vacant plot is put to commercial use, the same would be against the planned and regulated development of the said urban area and, therefore, the plea raised in this regard has no substance.

A feeble attempt was made to rely on the Rules of 2000 and the definition contained in Rule 2 (vi) of the Rules, which deals with 'change of land use'. However, it would be seen that the said Rules have been framed under Section 297 read with Section 173-A of the Act and the stipulations contained in the Rules have to be read only in context of the provision i.e. Section 173-A of the Act and cannot be termed as an independent stipulation imposing/requiring payment of conversion charges de hors the provision i.e. Section 173-A of the Act.

So far as the judgment in the case of Kishan Lal Pungalia (supra) relied upon by the learned counsel for the respondents is 11 of 12 concerned, a perusal of the said judgment reveals that reliance was placed on the law as laid down by this Court which pertain to unamended Section 173-A of the Act and this Court after referring to the amended provisions of Section 173-A of the Act held against the petitioner therein. The judgment nowhere deals with the aspect as to whether for putting a land to a use as stipulated in the Master Plan, any conversion at all can be demanded under Section 173-A of the Act and, therefore, the said judgment also has no application.

The applicability of Section 173-A (2) can also be examined with reference to Section 182 of the Rajasthan Municipalities Act, 2009, which Act has replaced the Act of 1959, wherein, sub-section (2) only has been replaced, which now reads as under:-

"182. Restriction on change of use of land and power of the State Government to allow change of use of land.-

(1).....

(2) In case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land was being used on or before the commencement of this Act."

A bare look at the above provision would reveal that same is poles apart from

what was stipulated under Section 173-A (2) of the Act and the very fact that the provision contained in the old Act has been drastically amended, which appears to be in tune with the submissions sought to be made by the learned counsel for the respondents, necessarily means that the provisions of Section 173-A (2) of the Act do not envisage a situation as sought to be projected by the learned counsel for the respondents.

Consequently, the demand raised by the respondents vide demand notice dated 2/4/2004 (Annex.8) and reiterated vide 12 of 12 demand notice dated 27/9/2013 (Annex.12) cannot be sustained being contrary to the provisions of Section 173-A (2) & (3) of the Act.

In view of the above discussion, the writ petition filed by the petitioners is allowed, the demand notice dated 2/4/2004 (Annex.8) and 27/9/2013 (Annex.12) are quashed and set aside. No orders as to costs."

14. Learned Senior Counsel for the petitioners also relied upon the judgment rendered by this Hon'ble Court in Suresh Kothari & Ors. Vs. State of Rajasthan & Ors., reported in 2004(2) CDR 884 (Raj.), relevant para 6 of which reads as under:-

"6. Sec.173-A as it stood prior to 30.9.1999 was as under:-

"173-A. Power of the State Government to allow change in the use of land.- (1) Notwithstanding anything contained in this Act, where any land had been allotted or sold to any person by a municipality or the State Government subject to the condition of restraining its use for a particular purpose, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed:

Provided that the rate of conversion charges may be different for different area and for different purposes.

(2) The conversion charges so realised shall be credited to the Consolidated Fund of the State Government or to the fund of the municipality as may be determined by the State Government.

(3) Such charges shall be the first charge on the interest of the person liable in the land the use of which has been changed shall be recoverable as arrears of land revenue."

Sec.173-A as it was amended on 30.9.1999 is as under:-

"173-A : Restriction on change of use of land and power of the State Government to allow change of use of land (1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any municipality, any other local authority or any other body or

authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation.

(2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal, area for the purpose other than that for which such land-use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force.

(3) Notwithstanding anything contained in sub-section (1) of sub-section (2), the State Government or any authority authorized by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use:-

(i) From residential to commercial or any other purpose; or

(ii) From commercial to any other purpose; or

(iii) From industrial to commercial or any other purpose; or

(iv) From cinema to commercial or any other purpose;

Provided that rates of conversion charges may be different for different areas and for different purposes.

(4) Any person who has already changed the use of land in violation of the provisions of this Act in force at the time of change of use, shall apply to the State Government or any authority authorized by it under sub-section (3), within six months from the date of 6 of 12 commencement of the Rajasthan Municipalities (Amendment) Act, 1999 (Act No.19 of 1999) for regularization of said use and upon regularization of the change of use of land he shall deposit the amount contemplated under sub-section (3).

(5) Where the State Government or the authority authorized by it under sub-section (3), is satisfied that a person who ought to have applied for permission or regularisation under this Section, has not applied and that such permission can be granted or the use of land can be regularized, it may proceed to determine the conversion charges after due notice and hearing the party/parties and the charges so determined shall become due to the municipality and be recoverable under sub-section (7).

(6) The conversion charges so realized shall be credited to the fund of the municipality.

(7) Charges under section shall be the first charge on the interest of the person liable to pay such charges with respect to the land, the use of which has been changed and shall be recoverable as arrears of land revenue."

In our opinion the amendment which has been brought into force on 30.9.1999

does not cast the obligation as has been pleaded before us on behalf of Municipal Council in the present case. The reading of unamended and amended section would reveal that there was no such restriction with regard to change of use prior to 30.9.1999 and the land in question as claimed to be Pattasud ancestral property of the petitioners and, therefore, it cannot be said that it was the land allotted or sold to the petitioners by the State Government for any particular purpose."

15. On the other hand, learned counsel for the respondents submitted that merely because the petitioners are having a free hold patta, that would not entitle them to use the property in question as commercial, without getting proper conversion orders.

16. Learned counsel for the respondents also refutes the submission that just because the land is being demarcated as commercial in the master plan, then the conversion charges are not to be paid.

17. Learned counsel for the respondents further submitted that the demarcation of the land as commercial in the master plan only entitles the petitioners to pay the conversion charges and get it converted into a commercial usage place.

18. Learned counsel for the respondents also submitted that the case of Sanjeev Sachdeva & Anr. Vs. State of Rajasthan & Ors. (supra), as cited on behalf of the petitioner, is not applicable in the present case and denied that the petitioners are entitled for commercial usage simply because of Section 173-A sub section (2), as asserted on behalf of the petitioners.

19. Learned counsel for the respondents further submitted that the petitioners' case is covered under sub clause (2) of Section 182 and the petitioners are liable to pay the conversion charges as per the notice dated 10.03.2017.

20. Learned counsel for the respondents also submitted that the judgment in the case of Sanjeev Sachdeva & Anr. Vs. State of Rajasthan & Ors. (supra) has been challenged before the Division Bench of this Hon'ble Court by way of filing special appeal bearing D.B. Civil Special Appeal (Writ) No.460/2016, which is pending adjudication.

21. Learned counsel for the respondents further submitted that there is an alternate efficacious remedy of appeal under sub-section (12) of Section 194 of the Act of 2009, and therefore, the petitioners could be relegated to such appeal.

22. In support of his submissions, learned counsel for the respondents relied upon the judgment rendered by this Hon'ble Court at Jaipur Bench in Gayatri Tiwari Vs. State of Rajasthan & Ors., reported in 2017(4) CDR 1901 (Raj.), wherein the earlier judgments in the cases of State of Rajasthan & Ors. Vs. Pareshar Soni, reported in (2007) 14 SCC 144 and Sanjeev Satcheva & Ors. Vs. State of Rajasthan & Ors. (supra), have been considered by this Hon'ble Court.

23. The relevant portion of the judgment in the case of Gayatri Tiwari Vs. State

of Rajasthan & Ors. (supra) reads as under:-

"14. I have considered rival submissions of the parties and scanned the matter carefully.

15. The brief facts of the case show allotment of land initially in the year 1916 followed by its sale on 11.11.1943. It was on payment of 'nazarana' of Rs. 30,000/-. The land was subsequently gifted to Pradyumn Kumar Tiwari and the petitioner vide gift deed dated 13.4.1957. The petitioner submitted building plans for its approval on 5.11.2007. The respondents initially sought clarification from the petitioner vide their letter dated 29.11.2007 but, thereupon, nothing was heard by the petitioner. She gave notice for demand of justice on 27.9.2011 followed by a writ petition in the year 2011. The writ petition was disposed of vide order dated 14.11.2011 requiring her to take appropriate remedy and, accordingly, a detailed representation was submitted to the respondents. The petitioner was asked to get conversion of land under section 182 of the Act of 2009.

16. The record of the case shows that petitioner's case was processed from time to time and at different levels. The opinion of Additional Advocate General was also sought. The matter was then sent to the Law Department to seek their opinion as well. The Law Department had given a detailed opinion after considering the judgment of the Apex Court and relevant provisions of law. The Corporation thereupon issued a letter dated 22.3.2012 requiring the petitioner to get conversion of the land.

17. The first issue for my consideration is as to whether judgment of the Apex Court in the case of Pareshar Soni (supra) has application to the case in hand. If the said judgment is applicable then nothing more is required but grant relief.

18. The judgment in the case of Pareshar Soni (supra) was given after considering unamended provisions of the Act of 1959. Section 173A of the Act of 1959 was amended in the year 1999, however, it was not applied in the case of Pareshar Soni (supra) for the reason that demand for conversion of land was raised on 23.5.1997 i.e. prior to the amendment. The case was accordingly considered as per the unamended provisions. The judgment specifically mentions that amended provisions of 1999 would not apply to the case as is coming out from para 19 and 20 of the judgment aforesaid and are quoted hereunder -

"19. We, therefore, have to accept the conclusion of the Division Bench that the property had neither been allotted by the Municipal Corporation or by the State Government or that any restriction had been placed on its user. Consequently, the question of demanding conversion charges for change of user would also not arise and the amended provisions of sub-section (4) of Section 173-A would also have no application to the case, since it is controlled by the very opening words that no person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government. If the basis on which subsection

(4) of Section 173-A could be applied is not available to the petitioner the demand raised by it towards conversion charges is also not maintainable.

20. We, therefore, have no hesitation in holding that Section 173-A as amended in 1999 would not apply to the case of the respondent and the Division Bench of the Rajasthan High Court at Jodhpur had correctly allowed the appeal by the respondent."

19. It is also a fact that subsequent to the judgment aforesaid when similar writ petition was allowed at Principal Seat, Jodhpur followed by dismissal of the appeal by the Division Bench, the matter travelled to the Supreme Court in the case of Sanjeev Sachdeva. The Apex Court refused to apply the judgment in the case of Pareshar Soni (supra). The matter was, however, remanded back to the Municipal Corporation, Jodhpur for afresh consideration. It is a fact that subsequently the writ petition in the case of Sanjeev Sachdeva was decided by the Principal Seat, Jodhpur on 5.5.2016. In the light of the judgment in the case of Sanjeev Sachdeva by the Apex Court, the judgment in the case of Pareshar Soni (supra) would not apply because Pareshar Soni's case was decided as per unamended provision of section 173A of the Act of 1959. The amendment in the provision was made in the year 1999 and now the Act of 2009 exist. In view of above, prayer of the petitioner to allow the writ petition in reference to the judgment in the case of Pareshar Soni (supra) cannot be accepted when it was not accepted by the Apex Court subsequently in the case of Sanjeev Sachdeva (supra).

20. The further issue is as to whether case of the petitioner can be considered under the Act of 1959 or it is to be under the Act of 2009. To decide the aforesaid issue, reference of the facts needs to be given again.

21. It is not in dispute that building plans were submitted for approval on 5.11.2007. No decision on the aforesaid was taken till the Act of 2009 came into effect. It is not a case where the Corporation refused to approve the building plans or raised demand of conversion charges prior to year 2009. The order in this case was passed on 22.3.2012. In view of the above, the provisions of the Act of 1959 cannot be applied after its repeal. Section 344 of the Act of 2009 save an order or decision etc. It does not exist in this case. For ready reference, section 344 of the Act of 2009 is quoted hereunder -

"Section 344 - Repeal and Savings

(1) On and from the commencement of this Act, the Rajasthan Municipalities Act, 1959 (Act No. 38 of 1959) shall stand repealed.

(2) Without prejudice to the provisions of the Rajasthan General Clauses Act, 1955 (Act No. 8 of 1955),-

(a) such repeal shall not affect the validity or invalidity of anything already done or suffered or any action already taken under the repealed enactment or the rules, regulations and byelaws made thereunder; and

(b) all Municipal Corporations, Councils, Boards or other municipal authorities established under the Rajasthan Municipalities Act 1959, (Act No. 38 of 1959) shall, notwithstanding such repeal, be deemed to have been established under this Act and all Municipalities constituted, members nominated, appointed or elected, committees formed, limits defined, appointments, rules, orders and bye-laws made, notifications and notices issued, taxes imposed, contracts entered into and suits and other proceedings instituted under the repealed enactment shall so far as they are not inconsistent with the provisions of this Act, be deemed to have been respectively constituted, nominated, appointed or elected, formed, defined, made, issued, imposed, entered into and instituted under this Act."

22. No order was passed before coming into effect the Act of 2009. In view of above, case of the petitioner can be considered only under the Act of 2009. It is otherwise settled law that after repeal of the Act, consideration cannot be made under it otherwise it would be nothing but riding on the dead horse. Once the Act is repealed, it cannot be revived for any purpose other than for what it has been saved under the repeal and saving clause.

23. In the light of the aforesaid, I have no hesitation to hold that case of the petitioner cannot be considered under the Act of 1959 which does not exist now after repeal by the Act of 2009. I am thus unable to accept the argument of learned counsel for the petitioner to apply the Act of 1959 and not the Act of 2009.

24. The further issue is as to whether direction under the impugned letter dated 22.3.2012 has rightly been issued asking the petitioner to seek conversion of land under section 182 of the Act of 2009. Before dealing with the issue, it would be necessary to make reference of section 173A of the Act of 1959, as was then existing. It is to have clarity of the law existing from time to time.

25. "Section 173-A of the Act prior to its amendment was as follows:

173-A (Power of the State Government to allow change in the use of land -

(1) Notwithstanding anything contained in this Act, where any land has been allotted or sold to any person by a municipality or the State Government subject to the condition of restraining its use for a particular purpose, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed. Provided that the rates of conversion charges may be different for different areas and for different purposes.

(2) The conversion charges so realised shall be credited to the Consolidated Fund of the State or to the fund of the Municipality as may be determined by the State Government.

(3) Such charges shall be the first charge on the interest of the person liable in

the land the use of which has been changed and shall be recoverable as arrears of land revenue."

26. After amendment in the year 1999, section 173A reads as under:

"173-A. Restriction on change of use of land and power of the State Government to allow change of use of land.-

(1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any municipality, any other local authority or any other body or authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation.

(2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land-use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force.

(3) Notwithstanding anything contained in subsection (1) or subsection (2), the State Government or any authority authorised by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use:--

(i) from residential to commercial or any other purpose; or

(ii) from commercial to any other purpose; or

(iii) from industrial to commercial or any other purpose; or

(iv) from cinema to commercial or any other purpose:

Provided that rates of conversion charges may be different for different areas and for different purposes.

(4) Any person who has already changed the use of land in violation of the provisions of this Act in force at the time of change of use, shall apply to the State Government or any authority authorised by it under sub-section (3), within six months from the date of commencement of the Rajasthan Municipalities (Amendment) Act, 1999 (Act No. 19 of 1999) for regularisation of said use and upon regularisation of the change of use of land he shall deposit the amount contemplated under sub-section (3).

(5) Where the State Government or the authority authorised by it under sub-section (3), is satisfied that a person who ought to have applied for permission or regularisation under this section, has not applied and that such permission can be granted or the use of land can be regularised, it may proceed to determine

the conversion charges after due notice and hearing the party/parties and the charges so determined shall become due to the municipality and be recoverable under sub-section (7).

(6) The conversion charges so realised shall be credited to the fund of the municipality.

(7) Charges under this section shall be the first charge on the interest of the person liable to pay such charges with respect to the land, the use of which has been changed and shall be recoverable as arrears of land revenue."

27. Both the provisions are referred in para 14 of the judgment in the case of Pareshar Soni (supra). The Apex Court decided the case of Pareshar Soni (supra) in reference to unamended provision. In the subsequent judgment of the Apex Court in the case of Sanjeev Sachdeva, it was clarified that the judgment in the case of Pareshar Soni (supra) would not apply to a case coming subsequent to the amendment. The Act of 1959 was then repealed and the provision came in the shape of section 182 under the Act of 2009, and it is also quoted hereunder for ready reference -

"Section 182 - Restriction on change of use of land and power of the State Government to allow change of use of land (1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any Municipality, any other local authority or any other body or authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation.

(2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land was being used on or before the commencement of this Act.

(3) Notwithstanding anything contained in sub-section (1) or subsection (2), the State Government or any authority authorized by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and after inviting and hearing objections from the neighbourhood in such manner as may be prescribed with respect to the following changes in use, namely: -

(i) from residential to commercial or any other purpose; or

(ii) from commercial to any other purpose; or

(iii) from industrial to commercial or any other purpose; or

(iv) from cinema to, commercial or any other purpose; or

(v) from hotel to commercial or any other purpose; or

(vi) from tourism to commercial or any other purpose; or

(vii) from institutional to commercial or any other purpose:

Provided that rates of conversion charges may be different for different areas and for different purposes.

(4) Where the State Government or any authority authorized by it under sub-section (3), is satisfied that a person who ought to have applied for permission or regularization under this section, has not applied and that such permission can be granted or the use of land can be regularized, it may proceed to determine the conversion charges after due notice and hearing the party or parties and the charges as may be prescribed, shall become due to the Municipality and be recoverable under sub-section (6). The Municipality may hold camps for expediting this work and take the assistance of any agency as well:

"Provided that regularization of land use change shall not be permitted in cases where the original land use was for a public purpose such as education, medical or any charitable purpose and the allotment was made at any concessional rate unless the difference in the original rate of allotment and the prevailing is paid and specific consent of the authority which made the original allotment has been obtained.

(5) The conversion charges so realized shall be credited to the fund of the Municipality.

(6) Charges under this section shall be the first charge on the interest of the person liable to pay such charges with respect to the land, the use of which has been changed, and shall be recoverable as arrears of land revenue."

28. The provisions quoted above reveals changes therein from time to time. As per section 182 of the Act of 2009, no person can use the land other than for which it was originally allotted or sold to any person by the State Government, Municipality or any other local authority or any other body or authority in accordance with law or otherwise than specified under a master plan. Sub-section (2) is quite relevant as it provides that if the land was not allotted or sold and not covered under sub-section (1), no person shall use or permit to use such land other than for which it was being used on or before the commencement of the Act. As per section, 173A(2), then existing, permission to use land was as per the master plan which does not exist in subsection (2) of section 182 of the Act of 2009 thus under subsection (3) of section 182, conversion charges are required to be paid, if land use is to be changed. The issue in reference to amended provision of section 173A of the Act of 1959 has been discussed by the Apex Court in the case of Municipal Corporation, Jodhpur v. Sanjeev Sachdeva. Paras 11 to 13 of the said judgment are quoted hereunder:

"11. A bare reading of un-amended Section 173-A(1) of the Act would indicate that the conversion for change of Land Use charges could only be realized if the land was allotted by the Municipality or the State Government and there was a

condition for restraining use for a particular purpose only. Therefore, in the absence of land being allotted by the State Government/Municipality and in absence of any specific stipulation regarding use of land, the conversion charges could not be claimed. This was the ratio laid down in Pareshar Soni's case (supra) interpreting the un-amended Section 173-A of the Act. The Legislature, with a view to ensure planned and regulated ' development of the urban area felt it necessary to charge for the change of use in certain circumstances of those lands which were not sold or allotted by municipality or by the State Government, Further it is also felt that such a change of user be permitted only "in public interest". In this connection, we may refer to the Statement of Objects and Reasons of the Amendment Act, 1999, which reads as under:

"The existing provisions contained in Section 173-A of the Rajasthan Municipalities Act, 1959 provide that where any land has been allotted or sold subject to the condition of restraining its use for a particular purpose, to any person by a Municipality or the State Government, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of the land, to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charge as may be prescribed.

With a view to ensure planned and regulated development of the urban areas it is necessary to restrict and bar the change of use in certain circumstances of those lands also which were not sold or allotted by Municipality or the State Government. However, the power of the State Government or any other authority authorized by it, to allow change of use of land, on payment of conversion charges is sought to be retained.

With a view to achieve the aforesaid objective, the existing Sec. 173-A of the Rajasthan Municipalities Act, 1959 is proposed to be substituted.

12. The Amended Section 173-A not only restricts the change of use of land, as the same has been allotted by the municipality or the State Government, but also put restrictions if the land has been allotted by any other local authority. Section 173-A(2) covers the cases which are not even covered by Section 173-A(1) and brings in its fold even the change of use of land which is not in consonance with the Master Plan. Further Section 173-A(1)(2) and (3) also contemplates a situation wherein the State Government is entitled to levy conversion charges if the change in use from one purpose to other purpose. Amendment was necessitated since the State Legislature thought the provision of Section 173-A (un-amended) stood as an impediment for proper planning of urban areas. In other words, with a view to ensure planned and regulated development of urban areas, it was felt that some restrictions have to be imposed and it was for that purpose that Section 173-A was amended.

13. We may, in this respect, also indicate that, in exercise of powers conferred under Section 297 read with Section 173-A of the 1959 Act, 2000 Rules were promulgated. It is under the above-mentioned Rules that the Respondents filed

an application on 16.7.2003 for change of land use from residential to commercial. Following those Rules, the Corporation issued public notice inviting objections. Later, the Land Use Committee met and approved the conversion for which a demand notice of Rs. 5,70,300/- was raised by the Corporation on 2.4.2004. We are of the view that the demand is legal and valid and in accordance with the provisions of Section 173-A, as inserted by Amendment Act 19 of 1999 read with 2000 Rules. We are also of the view that the Rajasthan High Court has committed an error in applying the judgment of this Court in Pareshar Soni's case (supra) which was dealing with the unamended provision of Section 173-A."

29. The documents on record do not show that land was allotted for commercial purpose. The petitioner has made a reference of use of land for commercial purpose before commencement of the Act of 2009 but opening para of sub-sec. (2) of Section 182 needs allotment or sale of the property for the purpose now to be used otherwise conversion of the land is required. The use of the property before commencement of the Act of 2009 has also been given under sub-sec. (2) of Sec. 182 but provision has to be read in totality. The land use before commencement of the Act of 20.09 is to be co-related to use of land as per the allotment or sale of the property, otherwise there would be no purpose to provide use of land for the purpose for which it is allotted or sold. If use of the land prior to commencement of the Act alone is taken into consideration then the first part of Sec. 182(2) would become redundant.

30. If the legislative intent was to permit land use as was prior to commencement of the Act of 2009 then provision aforesaid would not have been enacted in the manner it exist. The amendment made in the year 1999 has otherwise been considered by the Apex Court along with the Rules of 2000. In view of above, proper reading of Sec. 182 of the Act of 2009 and Rules would show that for the use of the land other than for the purpose for which it was allotted or sold, compliance of sub-sec. (3) of Sec. 182 is required. In the light of the aforesaid, respondents had rightly issued the letter dated 22.3.2012. I do not find any illegality therein in the light of the discussion made above.

31. Learned counsel for petitioner has made reference of the judgment of this court in the case of Sanjeev Sachdeva, SB Civil Writ Petition No. 13557/2013, decided on 5.5.2016 by the Principal Seat at Jodhpur. Therein, similar issue was considered by this court. In the said case, demand notice was given prior to the Act of 2009. It was after remand of the case by the Apex Court. It was considered under the Act of 1959 but Rules of 2000 were not referred before the court which was considered by the Apex Court in that case itself. There exist further change in the provision to permit land use. In the said judgment, court held that the argument of learned counsel for Municipal Council, Jodhpur requiring conversion of land in reference to section 182 of the Act of 2009 cannot be accepted otherwise the position would have been different. The relevant para of the said judgment is also quoted hereunder -

"The applicability of Section 173-A (2) can also be examined with reference to Section 182 of the Rajasthan Municipalities Act, 2009, which Act has replaced the Act of 1959, wherein, subsection (2) only has been replaced, which now reads as under:-

"182. Restriction on change of use of land and power of the State Government to allow change of use of land.-

(1).....

(2) In case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land was being used on or before the commencement of this Act."

A bare look at the above provision would reveal that same is poles apart from what was stipulated under Section 173-A (2) of the Act and the very fact that the provision contained in the old Act has been drastically amended, which appears to be in tune with the submissions sought to be made by the learned counsel for the respondents, necessarily means that the provisions of Section 173-A (2) of the Act do not envisage a situation as sought to be projected by the learned counsel for the respondents.

32. The observation aforesaid was made in reference to the argument in reference to the provisions of the Act of 2009.

33. Taking into consideration the discussion made above, I find no merit in this writ petition. Hence, it is dismissed with no order as to costs."

24. Learned counsel for the respondents further submitted that the Hon'ble Court has held in *Gayatri Tiwari Vs. State of Rajasthan & Ors.* (supra) that in *Sanjeev Sachdeva* (supra) the demand notice for conversion charges was given prior to the Act of 2009 and it was also of case of remand by Hon'ble Apex Court and the present controversy is governed by Section 182 of the Act of 2009. Thus, as per learned counsel for the respondents, the judgment in *Sanjeev Sachdeva's* case (supra) was distinguished by this Hon'ble Court, while rendering the judgment in *Gayatri Tiwari Vs. State of Rajasthan & Ors.* (supra).

25. After hearing learned counsel for the parties as well as perusing the record of the case, alongwith the precedent laws cited at the Bar, this Court finds that the petitioners have not been able to show any record to substantiate that their land was allotted for commercial purposes. The mere use of land for commercial purposes cannot substitute the purpose for which the land has been allotted.

26. This Court also finds, on a bare reading of Section 182 sub section (2) of the Act of 2009, that any allotment or sale of the property needs to be conformed to the use, for which it has been made. Any change in the allotment or sale of property would not entitle a person to the purpose, otherwise than what the property in question is meant for. The use of the property before the

commencement of the Act of 2009 is clearly stipulated. The Act of 2009 also does not wish to demarcate the law as prospective or retrospective, and on a bare reading, it does not wish to permit the land use, as was prior to the commencement of the Act of 2009.

27. This Court further finds that the precedent law of Gayatri Tiwari Vs. State of Rajasthan & Ors. (supra) is the judgment which has been followed by another Hon'ble Single Bench of this Court in Narayan Swaroop Srivastava Vs. State & Ors. (S.B. Civil Writ Petition No.7387/2016 decided on 01.10.2018). The judgment in the case of Narayan Swaroop Srivastava (supra) reads as under:

"By way of this writ petition, the petitioner Narayan Swaroop has approached this Court for assailing the notices dated 31.03.2016 and 02.06.2016 issued by the Deputy Commissioner, Nagar Nigam, Jodhpur to the petitioner's brother Bhagwan Swaroop and to restrain the respondents from interfering in the commercial use of the property in question.

I have heard and considered the arguments advanced by learned counsel for the parties and have gone through material available on record.

Admittedly, the petitioner and his family members are using the residential premises in question for commercial use without getting the same converted as per law. This Court in the case of Smt. Gyatri Tiwari Vs. State of Rajasthan reported in 2017 (3) WLC (Raj.) 562 has held that even for putting free hold plots to commercial use, the land holder would have to pay the commercial conversion charges in accordance with Sections 182 and 344 of the Rajasthan Municipalities Act, 2009.

In this background I find no illegality or infirmity in the impugned notices so as to for interfere therein while exercising this Court's extra ordinary writ jurisdiction. Furthermore, the petitioner, if so advised, can always challenge these notices by filing revision petition under Section 327 of the Rajasthan Municipalities Act, 2009.

In view of the above discussion made herein above, the writ petition fails and is hereby dismissed."

28. This Court also finds that since the petitioners are using the premises in question for commercial purposes without getting the same converted as per law, the precedent law of Gayatri Tiwari Vs. State of Rajasthan & Ors. (supra) is completely in application and the land holder would require to pay commercial conversion charges in accordance with Section 182 and Section 344 of the Act of 2009. Thus, this Court does not find any illegality or infirmity in the impugned notice so as to make any interference while invoking the extraordinary writ jurisdiction.

29. This Court also finds that the precedent law cited on behalf of the petitioners are not applicable to the facts of the present case.

30. For the foregoing reasons, the present writ petition is dismissed. Stay Application No.3878/2017 also stands dismissed accordingly.