

**(2003) 11 RAJ CK 0018**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 3377 of 1997**

Ganpat Lal and Others

APPELLANT

Vs

Rajasthan Housing Board and Others

RESPONDENT

**Date of Decision :** 13-11-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27  
Rajasthan Housing Board Act, 1970 — Section 50  
Rajasthan Tenancy Act, 1955 — Section 16

**Citation :** (2004) 2 RLW 1208 : (2004) 2 WLC 146

**Hon'ble Judges :** Bhagwati Prasad, J

**Bench :** Single Bench

**Advocate :** C.L. Jain, L.R. Mehta, for the Appellant; B.D. Purohit and R.L. Jangid, A.A.G., for the Respondent

## Judgement

B. Prasad, J.—Heard learned counsel for the parties.

2. Present writ petitions have been filed by the sons of Late Ram Chandra alias Chandriya by caste Mali, resident of Khema Ka Kuwa, Jodhpur. Petitioners claim that they had cultivatory possession of Khasra No. 125 and 123 situated in Village Suthala, Tehsil & District Jodhpur. In Khasra No. 125, they had 16 bighas and 11 Biswas and in Khasra No. 123, they had 9 Bighas land. In the record of 1943 A.D., the ancestors of the petitioners were recorded as tenants. Ram Chandra, father of the petitioners died on Jeth Sud 9 Svt. Year 2027 (corresponding to 1970 approximately) and the petitioners continued to be in cultivatory possession of the land as khatedar tenants.

3. Petitioners filed a suit on 11.2.1981 for declaration of khatedari rights and injunction. Notices issued u/s 91 of The Rajasthan Land Revenue Act, 1956 has also been challenged. These notices have been exhibited in the writ petition. These notices give a clear shadow to the claim of the respondents that, the State handed over the possession of the land to the Housing Board. On account of the aforesaid notices, the petitioners filed a suit in the Court of S.D.O., Jodhpur on

11.2.1981. It was pointed out that the land in question has been acquired and mutated in the name of Rajasthan Housing Board vide Mutation Nos. 94 and 104. On account of this, the petitioners were allowed to implead Rajasthan Housing Board as a party and amend the suit to implead Housing Board as a party.

4. The suit was contested by the defendants. According to the defendants, Khasra No. 123 having an area of 65 Bighas 18 biswas and Khasra No. 125 having an area of 54 Bighas and 16 biswas were recorded as Sawai Chak. After acquisition, the possession has been handed over to the Housing Board and it was denied on behalf of the Board that there is any cultivatory possession of the petitioners.

5. Five issues were framed by the S.D.O. Plaintiffs produced following documents:-

copies of parcha Khatoni dated 2.5.56, Boghori receipts V.S. 2008, 2009, 2010, 2011, 2015, 2018, 2019, 2020, 2021 and 2022, Jamabandies for the years 2009, 2012 to 2015, 2035-38, Dhal Banch for the years 2009 to 2024 (Dhal Banch is prepared every year for the purpose of collection of revenue after khasra Girdawari of Kharif in month of November) and Khasra Girdawaries for the years 2008-2011, 2012-2015, 2016-2018 and 2035-2038.

6. In support of the case, petitioners examined 5 witnesses including petitioner No. 3 Prem Sukh as P.W.5. The defendants did not produce any document for proving the alleged acquisition. It was contended on behalf of the Housing Board that the land in question has been allotted to them. The petitioners have claimed that no notice has been issued to them or to their father before any alleged allotment was made in favour of the Housing Board,

7. After trial of the suit, the S.D.O. decreed the suit vide judgment dated 9.5.1985 and the petitioners were declared as Khatedars of 9 Bighas in Khasra No. 123 and 16 Bighas 11 Biswas in Khasra No. 125. A decree for permanent injunction was also granted against the defendants restraining them from interfering with the possession of the petitioners.

8. The State of Rajasthan and the Housing Board separately preferred appeal against the judgment of the S.D.O. dated 9.5.1985 before the Revenue Appellate Authority. The Revenue Appellate Authority after considering the material on record and hearing the parties, dismissed the appeals by judgment dated 12.2.1986. The Rajasthan Housing Board and State of Rajasthan have filed two second appeals before the Board of Revenue. The Board of Revenue by its judgment dated 8.8.1997, allowed the appeals. The Board of Revenue also allowed the application of the Rajasthan Housing Board under Order 41 Rule 27 C.P.C. This order of the Board has been impugned.

9. To challenge the judgment of the Board of Revenue, present writ petitions have been filed. It has been claimed by the petitioners that the Board of Revenue had no jurisdiction to set aside the concurrent findings of fact regarding the

Khatedari rights of the petitioners and their actual possession on the land in question in second appeal u/s 224 of the Rajasthan Tenancy Act, 1955. The petitioners claimed that neither any document pertaining to acquisition was produced before the S.D.O., Jodhpur nor before the Revenue Appellate Authority. Thus, the S.D.O. decided the matter in favour of the petitioners holding that they were khatedar tenants of the land in question. Before the Board of Revenue, documents were produced by the Housing Board regarding acquisition etc., which could not have been allowed at the appellate stage. Thus, the judgment is based on documents produced in second appeal without being subjected to formal proof. Such documents have wrongly been made the basis of setting aside the judgments and decrees of the Courts below, which were founded on concurrent findings of fact.

10. The petitioners claimed that u/s 15 of the Rajasthan Tenancy Act, if a person proves himself to be a tenant in 2012 he automatically becomes a khatedar. Under the Tenancy Act, and one who pays lagan becomes a tenant u/s 5(43) of the Tenancy Act. Lagan was fixed in respect of the land in question. Demand was raised in the name of petitioners' father Shri Ram Chandra. This is clear from the entries in Dhal Banch and, therefore, the petitioners have rightly been held to be Khatedar tenants by the courts below. The Board of Revenue had failed to appreciate the fact that these findings were recorded in view of the overwhelming evidence on record.

11. In view of the observations of the courts below, the Board's finding that the petitioners' right could not be held to be khatedars, cannot be sustained. It, therefore, deserved to be quashed. It, therefore, deserved to be quashed. The Board of Revenue has held that document Ex.1 is inadmissible document. It could not have given this finding in second appeal, more particularly, when admissibility of the document was not challenged during the course of examination of PW.5 Prem Sukh and before the first appellate Court. There is deliberate non-reading and mis-reading of evidence, which is apparent on the face of the record.

12. The Board of Revenue has gone wrong to say that the petitioners have not produced any Khasra Girdawari subsequent to the filing of the suit. It was not right for the Board of Revenue to ask for documents which would come into existence after filing of the suit.

13. Petitioners have further claimed that no notice of the purported land acquisition was ever served on the petitioners or their father. No compensation was ever determined or paid to them. They were never dispossessed. Reliance placed by the Board of Revenue on the said land acquisition proceedings, is totally baseless and impugned judgment deserves to be quashed and set aside.

14. The petitioners further challenged the very fact of the acquisition. According to the petitioners, the case of the respondents is that the land in question was Sawai Chak/Khalsa. If the land was Sawai Chak/Khalsa, there was no question of

initiating any acquisition proceedings. According to the State, the land belongs to it. The land being already claimed by the Government, acquisition proceedings can only take place for the purpose of acquiring the lands which were in possession of Khatedars and when it was not a Government land.

15. In this background, the petitioners claim that the entire story built around the alleged acquisition is totally incorrect and, therefore, deserves to be quashed.

16. The petitioners further claimed that the findings of the Board of Revenue are wrong because the land in question has been recorded as Gair Mumkin Abadi. The land was not converted until 1985 from agriculture to Abadi. Until this period, it only continued to be agriculture land. To establish this claim, an order of the Land Conversion Officer has been filed. The petitioners claim that once the land had been converted, it could not have been re-converted. The land acquisition proceedings were filed before the Board of Revenue vide its application dated 15.9.1997, which were contested by the petitioners. Petitioners have claimed that no notice whatsoever was ever issued to them for acquisition of the land. No notice was also served on them for the mutation also.

17. Findings were based on the basis of the documents produced by the Housing Board under Order 41 Rule 27 C.P.C. for which they were not entitled. In second appeal, such opportunities are not given. Even if the stand of the State is taken to be true, the State cannot acquire its own land. Therefore, the entire acquisition proceedings were sham and ab initio void. The provision of Section 4(5) of the Rajasthan Land Acquisition Act, 1953 was not at all complied with and all proceedings for the alleged acquisition are ex facie invalid and cannot be held to be binding on the petitioners.

18. Petitioners claim that record which has been called by the Hon"ble Court would show that the impugned judgment of the Board of Revenue is based on suspicions and surmises and is not founded on record and deserves to be set aside. It has been prayed that the findings of The Board of Revenue deserves to be set aside. It has further been stated in the writ petition that the Court below has violated its own judgment in the matter of Rajasthan Housing Board v. Bhanwar Lal.

19. Per contra, learned counsel for the respondents has submitted that it cannot be disputed that the land acquisition proceedings in respect of Khasra Nos. 123 and 125 about which dispute has been raised, land acquisition proceedings were initiated by the State Government. The proceedings were initiated in the following manner: -

A. Regarding Khasra No. 123 village Suthla, measuring 63 bighas 18 biswas;

(a) Notification u/s 4 of Land Acquisition Act was published on 26.2.1976.

(b) Notification u/s 6 & 17 of the Act were published on 2.9.1976.

(c) Award passed by the Land Acquisition Officer, Jodhpur on 28.10.1976.

(d) Possession of Khasra No. 123 was given to Rajasthan Housing Board on 16.9.1978.

(e) Mutation carried-out in favour of Rajasthan Housing Board on 23.1.1980.

B. Regarding Khasra No. 125 village Suthla measuring 70 bighas 16 biswas;

(a) Notification u/s 4 of Land Acquisition Act was issued on 16.8.1979.

(b) Notification u/s 6 & 17 issued on 8.2.1980.

(c) Award passed by the Land Acquisition Officer on 16.7.1980.

(d) Possession given to the Housing Board on 13.11.1980.

(e) Mutation carried out in favour of Rajasthan Housing Board vide mutation No. 104 on 11.5.1981.

20. No objection was ever raised on behalf of the petitioners regarding acquisition proceedings which were finally concluded on 16.9.1978. The land acquisition proceedings have never been challenged by the petitioners in any court till filing of reply in this Court. The land acquisition proceedings being gazetted, a judicial notice can be taken regarding them.

21. The acquisition proceedings were validly taken up by the State, which has never been impugned by the petitioners. No compensation was ever claimed by the petitioners on the day when the acquisition proceedings concluded. There was no declaration in favour of the petitioners that they were Khatedar tenants prior to the decision of the court of S.D.O. Khasra No. 123 and 125, according to the Government record, were recorded as Sawai Chak.

22. The petitioners had trespassed on the land after its possession was handed-over to the Rajasthan Housing Board and, therefore, proceedings u/s 91 of the Land Revenue Act were initiated. After issuance of such notice, the suit was filed in the Court of S.D.O. Jodhpur on 21.2.1981. It was about two years after the conclusion of the acquisition proceedings. The acquisition proceedings were never called in question in the suit and rightly so. In the suit, a declaration about khatedari rights were sought by the petitioners. The petitioners had claimed cultivatory possession which could have been decided by the S.D.O., Jodhpur because the land had already been acquired by the State and possession was handed-over to the Rajasthan Housing Board in relation to Khasra No. 123 on 16.9.1978 and in relation to Khasra No. 125 on 13.11.1980.

23. The Board of Revenue while accepting the appeal of the answering respondent, has observed that original Parcha Khatoni or its certified copy which is the Record of Right was never produced by Ganpat Lal. The document produced on record is only a photo-copy. This copy did not contain any seal or signature of issuing authority. Thus, this document was neither the original nor its certified copy. It is only a photo-copy which is inadmissible in evidence. Tehsildar, Jodhpur vide its report dated 1.3.1993 had asserted that no such

Parcha Khatoni was ever issued as per their record. Thus, the only proof which the petitioners had produced for establishment of their right was nonest. On the basis of photo-copy, Khatedari rights could not be declared in favour of Ganpat Lal who was only having possession as trespasser. The other documents produced by the petitioners are not the record of rights.

24. The Marwar Tenancy Act came into existence on 6.4.1949 i.e. in Samvat Year 2006-2007. The entries of Girdhwari & Lagan receipt produced by the petitioners in the Court of S.D.O., Jodhpur related to Samvat Years 2018 to 2021. There is no record shown by the petitioners that at the time prior to Samvat 2018, he was ever in cultivatory possession. There is no document on record showing that on 6.4.1949 when Marwar Tenancy Act came into force, petitioners were recorded as Khatedar tenants of the land situated at Khasra Nos. 123 and 125 and in the record of Tehsildar, Jodhpur, the land is recorded as Sawai Chak.

25. The document Ex.1 Parcha Khatoni produced by the petitioners before the S.D.O. Court was neither original nor a certified copy of the Parcha Khatoni. It was only a photo copy of alleged document. It is worthwhile to mention that the photo-copy did not contain seal and signature of the issuing authority. Thus, the suit was decreed on the basis of a document which was neither original nor certified copy and thus, was inadmissible in evidence.

26. According to the answering respondent, the Board of Revenue has dealt with the point in detail in para 10 of the judgment. It has been observed that the S.D.O., Jodhpur and the Revenue Appellate Authority committed error in declaring the petitioners as Khatedars on the basis of photo-copy having no seal and signature on Parcha Khatoni which was neither issued from settlement office nor its certified copy was ever produced. The only evidence produced by the petitioner of revenue receipts pertaining to Samvat Years 2018 to 2021 Ex.12 & Ex.16. On the basis of entries in Girdwari, no Khatedari right could be declared in favour of the petitioners.

27. The petitioners have further not shown as to how they came in possession of the disputed land. There is no initial conferment of right established by the petitioners. It is also relevant to note that entries in Dhal Bach or Lagan receipts are not the record of rights. They were not sufficient to confer right of Khatedar on the petitioners. The petitioners have not produced any revenue receipts pertaining to Samvat 2006 & 2007 when Marwar Tenancy Act came into force. The revenue receipts produced in the trial Court also did not contain full particulars of the land for which the Lagan was paid. The receipts relate to village Khema ka Kuwa whereas the land in dispute is situated in village Suthla.

28. The claim of the petitioners that the respondents have not produced any record, is incorrect. The entire proceedings of acquisition from the date of issue of notification u/s 4 of the Land Acquisition Act till completion of proceedings and handing-over possession of the land, were produced as Annexures R/1 to R/8. The land in question was validly acquired by the State Government situated at

village Suthla. The documents were rightly accepted by the Board of Revenue and before the decision of appeal, the Board had taken the documents on record. The land acquisition proceedings relating to issuance of notification under Sections 4 & 6 of the Land Acquisition Act are public documents. These documents do not require any further evidence. Thus, the claim of the petitioners that documents were produced, is based on misconception of law. The documents were taken into consideration after filing of application under Order 41 Rule 27 C.P.C.

29. The answering respondent has submitted that the land in question was sold by the petitioners after the suit was decreed by the S.D.O. Court, Jodhpur on 9.5.1985. The judgment of the S.D.O. is not conclusive. The appeal was pending. The petitioners did not have any title worth the name in their favour and, therefore, they could not pass a better title. The petitioners were trespassers on the land and proceedings u/s 91 of the Rajasthan Land Revenue Act, 1956 were initiated against them. Before the filing of the suit, the land stood legally acquired. The proceedings of acquisition have so far not been challenged. The Court could not have interfered with the findings of the acquisition.

30. The declaration of rights in favour of the petitioners was without jurisdiction. The land after acquisition and allotment to the Rajasthan Housing Board become the Abadi Land. Once the land stood allotted to the Housing Board, then subsequently on filing the suit, Revenue Court had no jurisdiction because the land had ceased to be agriculture land. The land having been allotted to the Housing Board for development of residential purposes, it became abadi land. Thus, the judgment of the S.D.O. Court is without jurisdiction and void ab initio. It is also relevant to take note of the fact that the Commissioner appointed by the S.D.O., Jodhpur noticed that development work for construction of road was in progress. There were vehicles carrying the building material on behalf of the Housing Board. The land was not in possession of the petitioners. They have made efforts to create a drama of showing possession.

31. The question of payment of compensation or award to the petitioners according to the answering respondent, does not arise because they were not having any title. No objection was raised at the time when the acquisition proceedings were initiated. No challenge has ever been raised. The land has been recorded as Sawai Chak. Therefore, the petitioners cannot be permitted to show that the acquisition proceedings are not valid under Sections 4 and 6. The notifications are published in gazette and therefore, the knowledge of the petitioners is presumed.

32. The claim of the petitioners that the State could not have acquired its land, is ill-founded. No such claim was raised by the petitioners before the Land Acquisition Officer. Reliance has been placed by the answering respondent on Section 4(1) of the Rajasthan Land Acquisition Act, which reads as under:-

"4. Publication of preliminary notification and powers of officers thereupon-

(1) Whenever it appears to the [appropriate Government] that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language] and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)]."

33. Such notices are published for knowledge of the persons who are having any kind of possession over the land to be acquired and u/s 5-A, no objection has been raised. The land has been recorded as Sawai Chak. Thus, the petitioners could not raise any objection subsequent to the acquisition. The acquisition proceedings were taken up because the land may have some historical, religious or archaeological importance. Effected persons could approach the concerned authorities in relation to the land which is sought to be acquired. Further arguments of the petitioners in this regard are misconceived. The proceedings of acquisition were lawfully taken. There was no dispute or challenge raised by the petitioners at any stage. Acquisition proceedings were taken in the year 1976 in respect of Khasra No. 123 and in respect of Khasra No. 125, acquisition proceedings were taken up in 1978 and because conclusive and cannot be challenged as the time gap is too large.

34. There is no proper challenge for acquisition which have become conclusive and final. The answering respondent has submitted that once the acquisition proceedings are concluded, no writ petition against such acquisition can be filed. No Civil or Revenue suit for declaration of Khatedari right would also be moved in Civil or Revenue Court. Therefore, the judgment of the Court below is not liable to be interfered. This would amount to perpetuate the illegality. Possession was taken over after completion of valid acquisition. After valid acquisition, a tenant shall loose his tenancy rights when the land has been acquired by the State in terms of Section 63 of the Rajasthan Tenancy Act. Section 63 of the Rajasthan Tenancy Act reads as under:-

"Section 63. Tenancy when extinguished

The interest of tenant in his holding or a part thereof, as the case may be, shall be extinguished-

(i) .....

(ii) .....

(iii) when his land has been acquired under the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act No. XXIV of 1953);

(iv) .....

(v) .....

(vi) .....

(vii) .....

(viii) ....."

35. The land having been acquired under the Rajasthan Tenancy Act, the tenancy rights if existed stood extinguished. The petitioners could not have filed a suit for declaration of Khatedari rights on the basis of cultivatory possession, in the light of acquisition proceedings. According to the answering respondent, in terms of Section 16 of the Rajasthan Tenancy Act, Khatedari rights could not be declared in respect of land acquired for public purposes. The suit filed in the S.D.O. Court, Jodhpur, was misconceived and the entire proceedings were nonest and void ab initio. The suit was further without jurisdiction as per Section 207 of the Rajasthan Tenancy Act and Schedule-III. Section 207 of Rajasthan Tenancy Act reads as under:-

"Section 207. Suits and applications cognizable by revenue court only-

1. All suits and application of the nature specified in the Third Schedule shall be heard and determined by a revenue court.

2. No court other than a revenue Court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application."

36. The decree of the S.D.O. being without jurisdiction is a nullity as the land was abadi land.

37. The respondent further raised a very important question about issuance of notice to the Rajasthan Housing Board which is required to be given u/s 50 of the Rajasthan Housing Board Act, which reads as under:-

"Notice of suit against Board:

No person shall commence any suit against the Board or against any officer or servant of the Board or any person acting under the orders of the Board, for anything done or purporting to have been done in pursuance of this Act, without giving to the Board, officer or servant or person two months previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of."

38. There was no notice issued by the petitioners and any suit without notice, must fail. Thus, the entire proceedings before the Court below, were just a complete sham.

39. A notification u/s 4(1) of the Land Acquisition Act issued for acquisition of land if not challenged immediately can not be challenged subsequently. There was no challenge u/s 5-A. The entire acquisition proceedings were concluded

and, therefore, the Court below has rightly held that the petitioners have no right to be declared as Khatedars.

40. I have heard the learned counsel for the parties and perused the record.

41. Land in question, regarding which the petitioners claim the right, has been the subject matter of acquisition in relation to both the Khasras i.e. Khasra No. 123 and Khasra No. 125. Complete acts of acquisition have taken place. There had been no challenge to the proceedings of acquisition. The proceedings of acquisition were complete for Khasra No. 123 by 16.9.1978 and for Khasra No. 125 by 13.11.1980. Subsequently, these lands have also been mutated in the name of the Rajasthan Housing Board. These proceedings have never been challenged in the High Court, at any point prior to the filing of the suit for declaration by the petitioners.

42. The petitioners had filed a suit for declaration of Khatedari rights. In terms of Section 16 of the Rajasthan Tenancy Act, no such right could be claimed. Section 16 of the Act reads as under:-

"16. Land in which Khatedari rights shall not accrue- Notwithstanding anything in this Act or [in any other law or enactment for the time being in force in any part of the State] Khatedari rights shall not accrue

(i) .....

(ii) .....

(iii) .....

(iv) .....

(v) .....

(vi) land acquired or held for a public purpose or a work of public utility;

(vii) .....

(viii) .....

(ix) .....

(x) .....

(xi) .....

(xii) .....

(xiii) .....

(xiv) ....."

43. The statutory provisions make it clear that Khatedari rights could not be

accrued to any person desirous of getting such rights conferred on him, if the land in question has been subject matter of acquisition. The land being the subject matter of acquisition, it cannot be said that any Khatedari rights accrued to the person concerned. The effect of acquisition has been considered by the Madras High Court in the case of Kasturi Pillai v. Municipal Council, Erode (1), and it has been observed as under:-

"Learned counsel for the appellant submits that the award in this case is void, as also all proceedings subsequent thereto. Section 9(3) of the Land Acquisition Act makes it imperative that the occupier of the land should have notice of the intended acquisition by the Government. Any proceedings taken under the Act without complying with that condition are null and void.

Learned counsel for the respondents submits that the defendant had notice of the award and he had no other course open to him, if he felt himself aggrieved, than to ask for a reference u/s 18. Section 12 states that the award is final and conclusive subject to the result of the reference u/s 18. The fact that notice did not issue to any party interested or that the latter was ex parte in the enquiry by the Collector, will not nullify the award.

The cases cited by the appellant's vakil do not apply. Neither of them bears on the acquisition of land.

Under Section 16 of the Land Acquisition Act (I of 1984) the making of an award and taking possession of the land vest the property absolutely in the Government. It has been argued that, if notice on the occupier has not been served in accordance with Section 9(3) and Section 45, the subsequent proceedings and the award are void.

Assuming that such service has not been sufficiently proved in the present case, Section 12 provides that the award shall be final and conclusive, whether the persons interested have appeared or not, as to the question which can be dealt with by the Collector u/s 11, subject to the right of the party to require a reference to the Court u/s 18. The declaration made by the Government u/s 6 is conclusive evidence that the land is needed for the purposes sanctioned by the Act. All that the parties interested can urge before the Collector is that the area of the land is not properly stated, the compensation proposed is insufficient and the amount has been wrongly divided amongst them. The defendant had notice of the award u/s 12 and his remedy was, therefore, to apply for a reference u/s 18, and no other remedy is provided by the Act.

We think that the decisions cited by the learned Vakil for appellant have no bearing on the point. That reported in Rameswar Singh v. Secretary of State for India (1) does not relate to the acquisition of land, but merely decides that the owner of a franchise can sue for damages when land necessary for the exercise of his rights has been acquired without notice to them; it does not deal with the validity of the award and the vesting of the land thereunder. That reported in Mysore Balakrishna Rao v. Secretary of State for India (2) decides that a Forest

Officer exercising judicial functions does not acquire jurisdiction until notices of his proceeding has been given to the party interested. The Collector in making his award is not acting judicially. In any case the award must be regarded as passing title to the property u/s 16 until it has been set aside, and we think that cannot be treated as void in a suit in ejectment."

44. It has been canvassed on behalf of the petitioners that State cannot acquire land belonging to itself. This is a question which could be argued only if there was a challenge to the acquisition, prior to the filing of the suit. There having been no challenge to the acquisition, this argument is not available to the petitioners.

45. Further this argument is being raised by the petitioners on the strength of a decision rendered in the case of Hari Chand and Ors. v. Secretary of State (2). In this case, it has been held as under:-

"In the present case the Government's position being that they were the owners of the site, it would have been manifestly idle for them to have proposed to acquire what was already their own, and therefore when they sought to put in force the provisions of the Land Acquisition Act they naturally requisitioned what was not their own but what they desired to acquired, namely the buildings on the land."

46. This case does not answer the question involved in the case. It is some thing different to call a situation as idle, then calling it illegal. The petitioners have placed reliance for the same proposition on a decision of the Hon'ble Supreme Court in the case of The Collector of Bombay v. Nusserwandji Rattanji Mistri and Ors. (3). If a reading of the Supreme Court decision is made, then the proposition is not absolutely supported. It has been observed as under:-

We are unable to accept this contention. When the Government acquires lands under the provisions of the Land Acquisition Act, it must be for a public purpose, and with a view to put them to that purpose, the Government acquires the sum total of all private interests subsisting in them. If the Government has itself an interest in the land, it has only to acquire the other interests outstanding therein, so for public user. In the matter of the Land Acquisition Act: The Government of Bombay v. Esupali Saleb bhai Batchelor, J. observed:

"In other words Government, as it seems to me, are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government directs that the entire compensation based upon the market value of the whole land, must be distributed among the claimants."

There, the Government claimed ownership of the land on which there stood buildings belonging to the claimants, and it was held that the Government was bound to acquire and pay only for the superstructure, as it was already the owner of the site. Similarly in Deputy Collector, Calicut Division v. Aiyavu Pillay,

Wallies, J. (as he then was) observed:

"It is, in my opinion, clear that the Act does not contemplate or provide for the acquisition of any interest which already belongs to Government in land which is being acquired under the Act, but only for the acquisition of such interests in the land as do not already belong to the Government."

With these observations, we are in entire agreement. When Government possesses an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants, but that would not make it the subject of acquisition. The language of Section VIII of Act No. VI of 1857 also supports this construction. Under that section, the lands vest in the Government "free from all other estates, rights" titles and interests", which must clearly mean other than those possessed by the Government, It is on this understanding of the section that the award, Exhibit P, is framed. The scheme of it is that the interests of the occupants are ascertained and valued, and the Government is directed to pay the compensation fixed for them. There is no valuation of the right of the Government to levy assessment on the lands, and there is no award of compensation therefor.

We have so far assumed with the respondents that the right of the Government to levy assessment is an interest in land within the meaning of Section VIII of Act VI of 1857. But is this assumption well-founded? We think not. In its normal acceptation, "interest" means one or more of those rights which go to make up "ownership". It will include for example, mortgage, lease, charge, easement and the like, but the right to impose a tax on land is a prerogative right of the Crown, paramount to the ownership over the land and outside it. Under the scheme of the Land Acquisition Act, what is acquired is only the ownership over the lands, or the inferior rights comprised therein. Section 3(b) of the Land Acquisition Act No. I of 1894 defines a "person interested" as including "all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act, and a person shall be deemed to be interested in land if he is interested in an easement affecting the land". Section 9 requires that notices should be given to all persons who are interested in the land. u/s 11, the Collector has to value the land, and apportion the compensation among the claimants according to their interest in the land. u/s 16, when the Collector make an award "he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrance". The word "encumbrance" in this section can only mean interests in respect of which a compensation was made u/s 11, or could have been claimed. It cannot include the right of the Government to levy assessment on the lands, The Government is not a "person interested" within the definition in Section 3(b), and, as already stated, the Act does not contemplate its interest being valued or compensation being awarded therefor.

It is true that there is in Act No. VI of 1857 nothing corresponding to Section 3(b) of Act No. I of 1984, but an examination of the provisions of Act No. VI of 1857 clearly shows that the subject-matter of acquisition under that Act was. only ownership over the lands or its constituent rights and not the right of the Government to levy assessment, The provisions relating to the issue of notices to persons interested and the apportionment of compensation among them are substantially the same. Moreover, u/s VIII the Government is to take the lands free from all other "estates, rights, title and interest", and "interest" must, in the context, be construed ejusdem generis with "estates" etc., as meaning right over lands, of the character of, but not amounting to an estate, and cannot include the prerogative right to assess the lands. It must accordingly be held that the effect of the land acquisition proceedings was only to extinguish the rights of the occupants in the lands and to vest them absolutely in the Government, that the right of the latter to levy assessment was not the subject-matter of those proceedings, and that if after the award the lands were not assessed to revenue, it was because there could be no question of the Government levying assessment on its own lands."

47. The aforesaid proposition laid down by the Hon"ble Supreme Court says that it is any kind of interest, which it liable to be acquired. An acquisition can be made to settle all doubts regarding any kind of right which may be available to be claimed by any person. The act of the State in going for acquisition proceedings was justified in the background that the petitioners have claimed right over the land. Thus, it cannot be said that the land which was entered in the name of the State, had no other right title or interest of any other person which was not liable to be acquired.

48. From yet another angle, it can be seen that in agricultural matters, land belongs to State. Khatedar-tenants only have a heritable right which can be said to be a vested right, a kind of interest in the property. The ownership of land is not with the khatedar. Land-holder is State through Tehsildar. What is possessed by a khatedar tenant is a heritable and a transferable right, not the ownership of the land. What is acquired in case of agricultural land is interest of the tenant which is only heritable and transferable. Thus, also it can not be said that land belonging to State can not be acquired. In fact the agricultural lands belong to State but they are subjected to acquisition because there is heritable and transferable interest in the tenant. Thus in this view of the matter also, it can not be said that there was any ownership of land vested in the petitioners. It was only some interest, if at all the same can be said to be there. State when acquires an agricultural land, it acquires other interest only, not the ownership. A reference in this regard may be made to u/s 7 of the Rajasthan Tenancy Act, which reads as under:-

#### "7. Applicability of Act to State Government

In respect of land held by tenants directly from the State Government the provisions of this Act shall apply. Unless expressly provided otherwise; as if the

State Government were the land-holder acting through the Tehsildar."

49. Until the declaration of the rights in favour of the petitioners by the trial Court, there was no conferment on petitioner but still they had raised a claim. Thus such claim or the claims akin to that of the petitioners can always make a case for acquisition. At the time when conferment of khatedari rights was sought, the right was not available for being conferred, because of the operation of law as has been referred to hereinabove in Section 16(4) of the Rajasthan Tenancy Act. Thus, so long as the acquisition proceedings are not disturbed, the petitioners get no right. The act of acquisition put forward by the State as a defence, is not one which can be said to be one without foundation. Its cognizance by Board of Revenue was right. Application under Order 41 Rule 27 C.P.C. was there. Further judicial notice could also be taken of the fact of acquisition.

50. The petitioner had filed a suit for declaration of tenancy rights which was barred by a legal embargo. Thus, the land acquisition proceedings having not been challenged, are not available to be challenged on account of delay.

51. In view of the decision of this Court reported in the case of Navin R. Kamani v. State of Rajasthan and Ors. (4), which is based on various Supreme Court decisions, the petitioners cannot challenge the acquisition proceedings on account of delay. The delay is of about 20 years. Thus, the fact of acquisition will loom large for every purpose as an embargo on any right sought to be claimed by the petitioners.

52. The suit filed by the petitioners for conferment of khatedari rights is prohibited in law. It is bad on another count for not giving a notice u/s 50 of the Rajasthan Housing Board Act, which prohibits filing of a suit without notice. Thus, the grounds on which the present writ petitions are filed, are not available to the petitioners. The decree passed in favour of the petitioners being a decree without jurisdiction, was rightly disturbed by the Board of Revenue.

53. It may also be noticed that the basis of the declaration has been Ex.1, a photo-copy of khatoni. Corresponding entries to Ex.1 are not existing in revenue records. The document is not an authenticated document. If the existence of Ex.1 is not established, then any right declared on the basis of Ex. 1 can not be sustained. In extra ordinary jurisdiction of this Court, illegalities are not permitted to be sustained.

54. It will thus be seen that at the point of time when the suit was filed, whatever rights the plaintiffs had got, extinguished. No right could subsist in the face of a concluded acquisition. Thus, on the day when suit was filed, there was no right to sue available to the petitioners. In absence of a right to sue there could not be any infringement of the same. Without there being any infringement of right to sue, no cause of action arose in favour of the petitioners. Thus, the suit itself was not maintainable.

55. In view of the aforesaid discussion, the writ petitions are not likely to succeed and deserve to be dismissed. Consequently, the petitions are dismissed with no order as to costs.