
(2013) 10 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7410 of 2013

Hari Ballabh Baheti Charitable Trust and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 1 CDR 493 : (2014) 1 RLW 524

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Sachin Acharya, for the Appellant; G.R. Punia, A.A.G. and and Jamwant Gurjar and Anand Purohit, A.A.G. and and Pradhuman Singh for State, for the Respondent

Judgement

Dr. Vineet Kothari, J.—What should prevail - Truth or technicalities, substance or skeleton, substantial justice or just empty formalities - Is the question, which a judicially trained brain will answer in positive in favour of former, but the contentions raised by the petitioners in this batch of cases want it to be titled on the other side. But before it is finally answered, let us go back to the facts starting from 1940s. The Petitioner - Hari Ballabh Baheti Memorial Charitable Trust, Bhilwara and other petitioners - tenants of the Trust in the various shops constructed over the plot of land in question have filed the present set of writ petitions being aggrieved by the order passed by the District Collector, Bhilwara on 24.6.2013 directing seizure of the said property in question and taking the same in possession of the State Government of breach of the conditions of Patta issued in favour of one Hari Ballabh Bagtawarmal Baheti.

2. The facts are illustratively taken from the leading case in SBCWP No. 7410/2013 - Hari Ballabh Baheti Memorial Charitable Trust & Anr. v. State & Anr. and from one tenant's writ petition No. 7622/2013 - Ramesh Kumar Sindhi v. State of Rajasthan & Ors.

3. The facts in nutshell are like this.

4. The petitioner Trust has filed the writ petition through its Managing Trustee Shri Rajendra Kumar Baheti with the averments in the writ petition that a Bapi Patta was issued by District Hakim of Bhilwara on 13.11.1942 in the name of Hari Ballabh Bagtawarmal for construction of "Sarai" (Dharamshala) over the land situated in Bhilwara admeasuring 131 yards on eastern side, 123 yards on Eastern side, 50 yards on North and South side for "Nazrana" of Rs. 1575/-. Another Patta for strip of land adjacent to aforesaid plot was issued in favour of Bagtawarmal S/o Hari Ballabh on 10.8.1943 for Rs. 4098/- admeasuring 131 x 12 1/2 ft. The conditions imposed in the Patta dated 13.11.1942 by the District Hakim, Bhilwara was that the said land was being allotted for the purpose of construction of "Sarai" on payment of "Nazrana" and the land in question will be used only for the purpose of construction of "Sarai" thereon and no ownership right will be conferred on anybody and it at any point of time in future, the "Sarai" is not found to be working as such, then the said land in question will be used for the same purpose for general public (Rafai-Aam).

5. The petitioner has further stated in the writ petition that after the death of Hari Ballabh, his son Seth Bagtawarmal created a Trust on 2.10.1964 in the name of Seth Hari Ballabh Baheti Memorial Charitable Trust, Bhilwara, whereby, the aforesaid land was given to the said Trust & was to be used as Bahetion ki Dharamshala. The said Trust was registered as a Public Trust with the Devasthan Department under the provisions of Rajasthan Public Trust Act, 1959. The petitioner Trust has submitted that since then, the said Dharamshala" is being used for public at large for stay purposes and also for some social ceremonies. The shops constructed outside the Dharamshala on the periphery of the said land have been constructed with the due permission of local authorities. It is further stated in para 6 of the writ petition that petitioner Trust sought permission from the Municipal council, Bhilwara to use the said Dharamshala for the purpose of social ceremonies like marriages and the Municipal Council, Bhilwara duly granted such permission vide Annex.5 for the financial year 2012-13 under relevant Regulations framed by the State for the Municipal Councils for regulation of marriage places within the State of Rajasthan. The petitioner has also produced some documents relating to user of said "Dharamshala" for holding of "Geeta Cyan Yagya", "Chaturmas" of some saints and by producing the copy of Income Tax return for A.Y. 2012-13 declaring NIL income, the petitioner Trust has claimed exemption u/s 11(1) & (2) of the Income Tax Act being a charitable Trust.

6. The impugned proceedings in the present case commenced with serving of a notice by the District Collector, Bhilwara vide Annex.7 dated 12.6.2013, wherein, the respondent District Collector notified the Trustees Shri Rajendra Baheti and Vijendra Baheti, both sons of late Shri Ram Swaroop Baheti, that the said property is being used for last 20-30 years for commercial purposes with a private profit motive mainly as a marriage place/Vatika & not as a "Sarai" and on the basis of inquiry report of SDO, Bhilwara it was found that the said property was transferred to petitioner Trust on 2.9.1964, which was illegal and since the

land in question was given only for the purpose of constructing "Sarai" (Dharamshala), the change of user to commercial manner on account of unauthorized transfer of property to the Trust and commercial user of the same, the said property deserved to be resumed in the possession of State Government to ensure the originally envisaged user only and the petitioner Trust may stop the commercial user of the same and if against the said notice they have any cause to show, the notice may be replied with evidence within a period of three days.

7. The petitioner Trust instead of appearing before the Collector, Bhilwara, sent, its reply by registered AD post vide Annex.8 on 21.6.2013 raising some preliminary objections to the said notice and also replied the notice on merits, inter alia, contending that the "Sarai" still exists and is being used for public purposes only and by re-employment of funds, some A.C. rooms were constructed in which "Chaturmas" of saints was held and Trust is duly registered with the Devasthan Department. In the reply, it is also stated that the said property is being used for marriage ceremonies by giving it free of cost to the poor and middle class families, for which a licence was duly obtained from the Municipal Council, Bhilwara and thus there was no violation of the conditions of Patta and it was not a profit making institution as alleged in the notice and, therefore, the proceedings in the impugned order may be dropped.

8. The learned District Collector, Bhilwara passed the order dated 24.6.2013 rejecting the contentions raised by the petitioner Trust in the reply and held that on account of commercial user of the purported "Sarai" (Dharamshala) by the petitioner Trust and illegal transfer of the property to the petitioner Trust, the property in question deserved to be resumed to the possession of the State Government to ensure its user only as a "Sarai" and not a marriage place/Vatika. A copy of the said order has been placed on record as Annex. 12 along with the rejoinder filed by the petitioner, as the petitioner submitted that the said order was not served upon it on 24.6.2013 but the same was served upon one of the tenants and respondent District Collector seized the said property on 24.6.2013 itself, therefore, after serving a telegram, a copy of which is placed on record as Annex. 11 with the writ petition, the petitioner has approached this Court by way of filing the present writ petition during summer vacations on 25.6.2013, and on 26.6.2013 the Vacation Judge of this Court passed an interim order. The said interim order is quoted below for ready reference:---

Hon"ble Mr. Arun Bhansali, Vacation Judge

Dr. Sachin Acharya, for the petitioner/s.

Heard learned counsel for the petitioner.

Issue notice.

Issue notice of Stay application also Rule issued is made returnable on 5.7.2013. Notices be filed in two sets. Upon filing, one set of notices be given "dasti" to

counsel for the petitioner for service and another set of notices be sent through registered post acknowledge due.

In the meanwhile and until further orders, the respondent No. 2 is directed to unseal the "dharamshala" & "office of the trust" portion of the property in question. It is made clear that rest of the property which includes shop etc. shall not be unsealed and they shall remain under seal.

Further the petitioner shall not use (sic) "dharamshala" premises for any activity other than religious and charitable and would not let out the premises for marriage purpose till further orders.

The respondents are further remained from demolishing the property in question in any manner.

Sd/-

(Arun Bhansali), VJ.

9. In the connected writ petitions filed by the tenants, in one of such writ petition SBCWP No. 7422/2013 - Ramesh Kumar Sindhi v. State & Ors., another coordinate bench passed the following interim order on 16.07.2013:

P.K. Lohra, J.

Mr. Sachin Acharya, for the petitioner.

Learned counsel for the petitioner submits that the action initiated by the District collector for sealing the shop in question is without jurisdiction and the said action is in clear defiance of the principles of natural justice.

Issue notice. Issue notice of the stay application also. Rule is made returnable on 26.7.2013.

Meanwhile, the respondent No. 2 the District Collector, Bhilwara is directed to unseal the shop in question. It is made clear that this interim order shall not create any right to equity in favour of the petitioner regarding ownership.

Connected with SBCWP No. 7410/2013.

Sd/-

(P.K. Lohra), J.

10. Learned counsel for the petitioner, Dr. Sachin Acharya vehemently submitted that not only the impugned order dated 24.6.2013 passed by the learned District Collector is absolutely illegal and has been passed in breach of the principles of natural justice but even the interim order of this Court was not complied with and the seizure of the property continues until now and, therefore, suo moto contempt action deserves to be initiated against the respondents.

11. The respondent State has filed a reply to the writ petition and has contested

the said writ petitions and Mr. G.R. Punia, Addl. Advocate General & Sr. Advocate assisted by Mr. Jamwant Gurjar and Mr. Anand Purohit, Addl. Advocate General & Sr. Advocate assisted by Mr. Pradhuman Singh have vehemently opposed the submissions made at the bar by the learned counsel for the petitioners and have raised preliminary objections as to maintainability of the writ petitions on the ground of disputed questions of facts being involved in the present cases while refuting any breach of principles of natural justice by the respondent District Collector and they urged and the petitioner in fact had started using the said property for long as a commercial property for their own benefit with a profit motive and have admittedly converted the "Sarai" (Dharamshala) into a marriage place/Vatika and they are charging rentals upto Rs. 1 lac per day for the same and during inquiry neither any passengers or public people were found to be residing in the said premises and upon inquiry from the neighbouring people, they stated that the property in question is being used for lac many years as a marriage place only. They further urged that admittedly, the petitioner has got the said property registered as a marriage place/Vatika with the Municipal Council, Bhilwara and thus no longer the same is used as a "Sarai" (Dharamshala) for charitable purposes and in view of such admission by the petitioner Trust itself, the District Collector, Bhilwara was perfectly justified in resuming the possession of the property in question with the State Government only to ensure the compliance with the conditions of Patta, as the conditions of the Patta admittedly stood violated by the petitioner Trust.

12. Learned counsels for respondent State also questioned the property being transferred to so called Public Trust constituted in 1964 without any specific approval of the State Government and the mere registration of public Trust with the Devasthan Department under the provisions of the Rajasthan Public Trust Act, 1959 or its registration as a charitable Trust under the Income Tax Act does not validate such transfer and thus the conditions of Patta having been admittedly violated, the impugned order of learned District Collector cannot be questioned by the petitioner Trust. They also submitted that there was no non-compliance of the interim order passed by this Court on the part of the respondents, who on the contrary soon upon service of the interim order passed by this Court gave the letter to the petitioner on 2.7.2013 itself to remain present at the site and to specify which portion of the property in question was being used as "Dharamshala" and "Office of the Trust" so that the same may be unsealed, whereas, the other portion of the property was directed by the Court to remain under the seal. But nobody appeared on behalf of petitioners. They also brought to the notice of the Court the undertaking given by Bagtawarmal on 12.7.1993 vide Annex.R/2 before the Municipal Council, Bhilwara that the land in question will only be used for "Sarai" (Dharamshala) and there will no commercial use of the said property and, therefore, with the change in use of said "Sarai" into a marriage place as well as breach of the conditions of Bapi patta issued in their favour, the impugned order passed by the District Collector, Bhilwara was justified and writ petition deserves to be dismissed.

13. I have heard the learned counsel for the parties at length at the admission stage and perused the record of the case as well as the judgments cited at the bar.

14. The sheet anchor of the arguments of learned counsel for the petitioners, Dr. Sachin Acharya was the breach of principles of natural justice by the District Collector. He urged that the copy of the inquiry report referred to in the notice Annex.7 dated 12.6.2013 was never supplied to the petitioner and no inquiry was held by the learned District Collector nor reply of the petitioner was considered by the said authority and having acted in a hot haste, there has been a palpable breach of principle of natural justice and the impugned order deserved to be quashed.

He also urged that the notice Annex.7 dated 12.6.2013 proceeded on foregone conclusions that the land question was illegally transferred to the petitioner Trust and was being used for commercial purposes and, therefore, having prejudged the issue, the learned District Collector has not applied his mind to the factual realities and, thus, the impugned order deserves to be quashed.

15. In the considered opinion of this Court, this contention of the learned counsel for the petitioner has no force. Merely because the notice was served on the basis of an inquiry report of the SDO, Bhilwara referred to in the said notice Annex.7 dated 12.6.2013, the sum and substance of which is narrated in detail in the said notice itself, it cannot be said that failure to independently supply the copy of such inquiry report vitiates the notice itself. The notice contained the allegations on the basis of which the learned District Collector found, prima facie, that the conditions of Bapi patta stood violated and the land in question on which "Sarai" (Dharamshala) was constructed was being used for commercial purposes apparently with a profit motive and, therefore, the petitioner Trust was called upon to show cause against the said notice. The petitioner instead of appearing before the learned District Collector through authorized representative, has chosen to merely send a reply by registered AD post on 21.6.2013 in which he raised all the contentions against the said notice that there was no violation of conditions of Bapi Patta; that there was no commercial use of the property; that the accounts were duly furnished to the Devasthan Department where the petitioner Trust was registered and admittedly, the petitioner has also claimed that the property in question was being used for performing marriage ceremonies, however, it was also contended that from poor and middle class persons no charges were taken.

16. The petitioner admittedly, did not appear before the learned District Collector within three days given in the notice Annex.7 dated 12.6.2013 or even thereafter upto 24.6.2013 and rest contended with the sending of the reply by registered AD post on 21.6.2013 and consequently the learned District Collector after considering the said reply passed the impugned order on 24.6.2013 giving his detailed findings that on account of transfer of property and admitted commercial user of the same, the said property deserved to be taken in possession of the

State to ensure that the property in question is used for public purposes as a "Sarai" only and accordingly the property in question was sealed by the District Collector on 24.6.2013.

17. It may be stated here that mere giving of short time in the notice, namely of three days, does not render the notice itself as illegal and without jurisdiction. The District Collector being the Custodian of the land of State Government, which was allotted to the forefathers of the petitioner Trustees, was very well within his jurisdiction to issue the notice Annex.7 dated 12.5.2013 upon the report made by the SDO, Bhilwara that the property was being used in violation of the conditions of Patta itself. It was for the petitioner Trust to adduce the relevant evidence before the learned District Collector for establishing that there was no misuse of the conditions of Patta. No evidence worth the name was produced by the petitioner Trust before the learned District Collector, nor even, significantly, the petitioner Trust even asked for more time to do so. If the time given of three days appeared to be short, the petitioner Trust could very well pray for some more time to the District Collector but not having done so and rest contented with the sending of reply by registered AD post, the petitioner Trust cannot make any grievance about alleged breach of the principles of natural justice now. No foregone conclusions can also be said to have been made by the District Collector in the impugned notice Annex.7 dated 12.6.2013. Allegations coupled with the tentative conclusions were only made to be rebutted, if the petitioner Trust could do so with the help of evidence, which the petitioner Trust failed to do.

18. This Court also finds little force in the contention of learned counsel for the petitioner that since the public Trust was created in 1964, which was registered with the Devasthan Department and its accounts were being furnished, therefore, there was no breach of the conditions of Patta. There is nothing on record that such transfer of property to the public Trust was approved by the State Government at any point of time in any manner. How could the land in question allotted in the individual name of forefathers of the petitioner Trustees be transferred to the public trust created by allottee's son in 1964 without the permission and approval of the State Government, since that Patta clearly stipulated that no ownership rights are being vested in any body.

19. The mere fact that the said public Trust is registered with the Devasthan Department of the State Government does not confer any right or title on the petitioner Trust or its Trustees to claim that the land belonged to the public trust. Even the copy of Trust deed has not been placed on record either before the learned District Collector or even before this court, therefore, it is not known for what purpose the same was created and what property vested in the Trust in the absence of any such evidence, the learned District Collector was justified in coming to the conclusion that the property in question has been transferred to public Trust unauthorizedly.

20. As far as change of use of the property in question is concerned, the admission of the petitioner itself is enough. Admission is the best evidence and it

does not require further corroboration. The fact that the petitioner Trust got itself registered as a marriage place or Vatika with the Municipal Council, Bhilwara under the provisions of the relevant Rules and Regulations for management of marriage places in the State of Rajasthan recently enacted vide Notification No. 643 dated 28.7.2009 shows that the conditions of Bapi Patta" to use the said land only for construction of a "Sarai" was lost. Even the construction of shops and the commercial activities done in those shops given on rent by the petitioner Trust is a commercial activity. Assuming for arguments sake as contended by the learned counsel for the petitioner that such rental income was created to be deployed for charitable or public purposes of maintaining the "Sarai" (Dharamshala), nonetheless the fact remains that it is a commercial use of the land in question. No such permission is granted in the Patta itself and the stipulations are only regarding construction of "Sarai" (Dharamshala) and not the shops thereon. Therefore, subsequent grant of permission for construction of shops by the Municipal Council also does not make it a valid use of the land in question.

21. Thus, the stark fact or the reality is that not only the petitioner Trust got the said land and building transferred to its own name in a dubious manner but admittedly the change of user to commercial purposes does not leave any manner of doubt that the conditions of Patta stood violated. Even if the rooms constructed on the land in question are partly used as "Sarai" (Dharamshala) for passengers, it does not dislodge the fact that the main user of the said property is now changed to marriage place/Vatika and the original purpose of the Patta is lost.

22. Therefore, this Court is of the opinion that the learned District Collector cannot be said to have erred in holding that the conditions of the Patta having been breached, the land in question deserved to be resumed by the State Government to ensure its use only as a "Sarai" for public at large. The jurisdiction of the District Collector to initiate such proceedings cannot be challenged as the District Collector is the Custodian of the land belonging to the State Government and since it was made clear in the Patta Annex. 1 and 2 that ownership right of the land in question are not being transferred even on payment of "Nazrana" and the land in question is only to be used for specific purpose of constructing "Sarai" (Dharamshala) with the further stipulation that if at any point of time in future it is found to be not being so used, the State can ensure its user for public purposes, therefore, resuming the possession of the land in question with the State Government only to ensure its user for public purposes as "Sarai" only cannot be said to be without jurisdiction or illegal. The petitioner Trust or the Trustees cannot be allowed to make profit for their private gain at the cost of property or land which actually belongs to the State Government. The challenge to the impugned order is, therefore, repelled and rejected.

23. The other writ petitions filed by tenants of the petitioner Trust also sail in the

same boat. They cannot have any better right of interest than their landlord i.e. the petitioner Trust. However, since in the impugned order the learned District Collector has stated that possession of the property is being taken only to ensure that the property continues to be used for public purposes only and which order has been upheld by this Court and the property in question was seized by the District Collector in pursuance of the said order, the running business of the shops of the other petitioners other than the petitioner Trust does not deserve to be stopped for the time being, since no useful purpose will be served in stopping day-to-day business activities by sealing the shops in question also. Therefore, to the extent of property other than shops, the learned District Collector would be free to ensure the user of the said property for public purposes as a "Sarai" in terms of the conditions of the Patta. The rentals of these shops would be deposited by all the petitioners-tenants henceforth with the District Collector, Bhilwara, since the possession of the entire property has been taken over in pursuance of the impugned order dated 24.6.2013 by the District Collector, Bhilwara. The District Collector, Bhilwara will be free to appoint a Committee comprising of himself, one Asstt. Collector and one representative of the petitioner Trust or the family to manage the day to day affairs of the said "Sarai" (Dharamshala) and shops so that commercial use of the property as a marriage place/Vatika can be checked and restricted. The rentals of shops will be used only for good maintenance and up-keep of the said property to be used only as a "Sarai" (Dharamshala) as originally intended in the "Bapi Patta" (Annex.1 & 2).

24. A brief discussion of the cases cited at the bar by the learned counsel for the petitioners, though they are distinguishable on facts, would be appropriate, before the writ petitions are disposed of.

In *Bishan Das and Others Vs. The State of Punjab and Others*, heavily relied upon by the learned counsel for the petitioners, the Dharamshala, Temple and Shops were constructed out of the joint family funds by one Lala Ramji Das in the year 1909, who later on died in 1957 and his family members, who were managing the said property were sought to be evicted treating them as trespassers and upon the matter reaching the Hon'ble Apex Court, the Apex Court found as under:

The admitted position, so far as the present proceeding is concerned, is that the land belonged to the State; with the permission of the State Ramji Das, on behalf of the joint family firm of Faquir Chand Bhagwan Das, built the dharamshala, temple and shops and managed the same during his life time. After his death the petitioners, other members of the joint family, continued the management. On this admitted position the petitioners cannot be held to be trespassers in respect of the dharamshala, temple and shops; nor can it be held that the dharamshala, temple and shops belonged to the State, irrespective of the question whether the trust created was of a public or private nature. A trustee even of a public trust can be removed only by procedure known to law.

He cannot be removed by an executive fiat. It is by now well settled that the maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country; see *Thakoor Chunder Parmanick v. Ramdhone Bhattacharjee* (1866) 6 W.R. 228; *Lala Beni Ram v. Kundan Lal and Narayan Das Khettry v. Jatindranath*. These decisions show that a person who bona fide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by the application of the maxim *quicquid plantatur solo, solo credit*. It is, therefore, impossible to hold that in respect of the dharamshala, temples and shops, the State has acquired any rights whatsoever merely by reason of their being on the land belonging to the State.

The Hon'ble Supreme Court held in favour of the appellants that since the appellants were in bona fide possession of the constructions in question and could be evicted by a decree of competent civil court in a properly instituted proceedings and they could not be so evicted by the executive fiat. Here in the present case, the facts are absolutely different and since the original purpose of the Patta has been lost on account of admitted commercial user of the property as a marriage place and also transfer of the property to the Trust without State's approval, therefore, the re-possession has been ordered by the District Collector only to ensure the user of the land according to the terms of the Patta. The petitioners have not been evicted. It cannot be said that the same cannot be done by a quasi judicial order passed by the learned District Collector, after giving an opportunity of hearing to the petitioners adopting a due process of law.

25. Learned counsel for the petitioners also relied upon the judgment of Hon'ble Apex Court in the case of *Secretary, Taliparamba Education Society Vs. Moothedath Mallisseri Illath M.N. and Others*, in which the Hon'ble Supreme Court was seized with the case of lease for the purpose of educational institution and despite concurrent findings of two courts below, the High Court in Second Appeal u/s 100 CPC upheld the termination of lease. On the question whether the lessor will have absolute right of re-entry, the Hon'ble Supreme Court held as under:

The question whether the property was allowed to be trespassed was gone into by the trial Court and a finding was recorded that they did not acquiesce to the trespass and in fact there was no trespass. It has not been established that user of the property was for purposes other than those for which it was intended. It is true that the shops were constructed on some portion of the land but the rent derived therefrom is being used for the maintenance and running of the educational institution. Therefore, the user was not detrimental to the purpose for which lease was granted. It is also an admitted position that some of the rooms were let out for cultural purposes and marriage purpose, but that is not detrimental to the running and imparting of education to the students. Obviously, these acts are done to augment the funds of the Society for proper management. Under those circumstances, the trial court and the appellate Court came to the

concurrent conclusion that there is no misuse or contravention of covenant No. 6 of the lease. The High Court was grossly in error in trenching upon appreciation of evidence u/s 100 CPC and recorded reverse finding of fact which is impermissible.

This judgment is also clearly distinguishable on facts and there is no parity on facts in the two cases. Here the petitioner Trust running a marriage place for private gains cannot be said to be in bonafide possession of the property and no evidence was produced by it for whatever claims it made in its reply. Therefore, the citation is of little help to the petitioners before this Court.

26. In Jagat Singh Rathore Vs. State of Rajasthan and Others, the coordinate Bench of this Court dealing with a case of Hotel Pushkar Palace in Pushkar, Ajmer the construction of which was sought to be demolished by the State for maintaining the "Prestige of the Lake", the Court held that the executive officer of the Municipal Board could not invoke Section 170 of the Rajasthan Municipalities Act, 1959 for the said purpose and quashing that action, the learned Single Judge of this Court held as under:

the Board owed a constitutional duty to the petitioner to be fair, just and reasonable in its action. Before any notice could be issued to the petitioner, the Board was legally required to carry out a survey to see which hotel, restaurant, house or institution fell within the corridor of 100 ft. of lake. Admittedly, the Board singularly failed to carry out such a survey. Despite the lack of all these empirical data, the Board started spewing one notice after another, in its hot haste to implement the Bye-laws 1991.

Curiously from 1991, when the Bye-laws 1991 were promulgated, till 2006 the Board seems to have been hibernating. It hardly seems to have taken any effective steps for cleaning, beautifying, upgrading and maintaining the Pushkar Lake. Suddenly, in 2006, in a maverick fashion, the Board started issuing notices. It started invoking powers that did not exist It started exercising the powers under the provisions, which were inapplicable in the case of petitioner. In its zeal to restore "the prestige" surrounding the lake, the Board demolished the petitioner's property.

Thus, the learned Single Judge quashed the impugned notice of the Municipal Board and declared the action of the Board as illegal.

Again with great respect, the facts of the present case are entirely different and as noted above, since re-possession of the property has been taken only to ensure user of the property in terms of original Patta for which the land was given, namely for construction of "Sarai" for public and passengers and no demolition, of the property has been done by the order of the learned District Collector, thus, no illegality or arbitrariness is found in the said order. If one is bound by the conditions of Patta, it cannot be said to be illegal.

27. The judgment of another learned Single Judge of this Court in the case of

Chandra and Co. Vs. State of Rajasthan and Others, in which it was held that Section 6 of the Specific Relief Act, 1963, which does not apply against the Government, does not imply that the Government is free to dispossess a person in juridical possession of property otherwise than in due course of law.

In that case, the petitioner had been in possession of the cinema theater and during the pendency of the proceedings for eviction for petitioner, the petitioner was dispossessed from the said cinema theater and, therefore, the Court observed like this.

The facts of that case are also clearly distinguishable from the facts of cases in hand, hence this judgment is also of little help to the petitioners.

28. The other judgments cited in the case of State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, State Trading Corporation of India Ltd. Vs. State of Mysore, & Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, on the contention relating to breach of natural justice, this Court has already found that there is no breach of principles of natural justice and, therefore, these judgments are of little help to the petitioners. In view of the above discussion, this Court finds no force in the challenge laid to the impugned order of the learned District Collector, Bhilwara and the writ petitions are disposed of as indicated above in para 23 and 24. No order as to costs.