

(2002) 03 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Revision Petition No. 348 of 2000

Jai Chand Soni and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5
Rajasthan Municipalities Act, 1959 — Section 203

Citation : (2003) 1 RLW 176 : (2002) 2 WLC 555

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Gopi Chand Garg, in Alok Garg, CRP Nos. 348, 425, 520, 521, 593 and 700/2k, C.K. Garg, in R.K. Agrawal, CRP Nos. 350, 351, 352, 425/2k, for the Appellant; G.K. Garg and S.M. Mehta, General and Shailash Prakash Sharma, Shyam Arya, for the Municipal Corporation Vimal Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Madan, J.—These ten civil revision petitions are directed against the judgments of the trial Court declining to grant temporary injunction in favour of the petitioners (plaintiffs) in their suits for permanent injunction, which have been affirmed by the appellate court. Since common questions of facts so also law are involved, these petitions were heard at joint request of the parties and are being disposed of by this common order.

2. Last four petitions filed by Shri R.K. Agrawal on behalf of the petitioners in CRP No. 349 to 352/2000 and first petition filed by Shri G.C. Garg on behalf of the petitioner in CRP No. 348/2000 are directed against common order dated 5.4.2k passed by the learned Additional District Judge No.5, Jaipur City Jaipur in their civil misc. appeal Nos. 16 to 19 & 15/2000, arising out of judgments dated 28.3.2k of the Additional Civil Judge (JD) No. 4, Jaipur City in civil misc. (TI) case Nos. 107/2k (Radha Govind), 109 & 110/2k (Lalchand), 108/2k (Manoharlal) & I51/2k (Jaichand).

3. Similarly 2nd to fifth petitions (supra) filed by Shri G.C. Garg on behalf of the petitioners in CRP No. 521/2k, 520/2k, 593/2k, 700/2k & sixth petition filed by Shri R.K. Agrawal on behalf of the petitioner in CRP No. 425/2k are directed against following judgments-

1. CRP No. 521/2k Common judgment dt. 16/5/2k of ADJ No. 5,
2. CRP No. 520/2k Jaipur City Jaipur in CMA No. 23/2k (Saroj) & CMA No. 24/2k (Dharamshala) against judgments dt. 5/4/2k of Addl. Civ. Judge No. 4, Jaipur City in TI case Nos. 131/2k (Saroj) & No. 130/2k (Dharamshala).
3. CRP No. 593/2k Judgment dt. 2/6/2k of ADJ No. 5, Jaipur City Jaipur in CMA No. 34/2k against judgment dt. 5.4.2k of Addl. Civ. Judge No.4, Jaipur in TI case No. 129/2k.
4. CRP No. 700/2R Judgment dt. 5.7.2k of ADJ No. 5, Jaipur City Jaipur in CMA No. 37/2k against judgment dt. 29/3/2k of Addl. Civ. Judge No. 4, Jaipur in TI case No. 150/2k.
5. CRP No. 425/2k Judgment dt. 1.5.2k of ADJ No. 5, Jaipur City Jaipur in CMA No. 22/2k against judgment dt. 28/3/2k of Addl. Civ. Judge No.4, Jaipur in TI case No. 104/2k.
4. In order to decide the controversy at issue as involved herein, facts of each suit out of which these petitions have arisen, are epitomised as follows after having been wrung out of the respective plaint, alone.

Re. Civil Writ No. 120/2000

(CRP No. 348/2000)

5. It was filed by plaintiff Jaichand Soni against the State of Rajasthan through Collector & Municipal Corporation Jaipur alongwith its officers seeking permanent injunction in respect of a shop No. P 50 situated at Khanda Modikhana, Kotwali Chhoti Chopar Jaipur measuring 27 sq. yards on the assertions made in the plaint that this suit shop was purchased by him & his brother Ridhkaran by a conveyance of Nazul building at an auction sale of 1973 for a highest bid at Rs. 27001/- by sale deed dated 27.12.1977 (xerox copy whereof was filed alongwith plaint & TI application), and whereafter his brother Ridhkaran released the suit shop in his favour of release deed 27.6.1981. It has also been averred in the plaint that under the garb of encroachments over verandah in the markets, the defendants are adamant to dispossess the plaintiff and demolish the suit shop and therefore, the defendants are sought to be restrained from they are sought to be restrained from doing so and to that effect temporary injunction was also sought.

6. In written statement of the defendant Nos. 2 to 4 (Municipality) it has been averred that the suit shop is the land of public street which could not have been sold by the State Government inasmuch as the Municipality was not party to the sale deed therefore, it was not binding on them and that apart the plaintiff had

encroached by putting walls, tin shed & shutter over public street land under the garb of sale deed, whereas such a piece of land was already declared as public street in the year 1954 and whereafter also before a Kurup Committee the plaintiff could have raised objection but having failed to do so, he has waived his right, because the Kurup Committee had already rejected objections raised for such sale of land of public street (verandah) and further Municipality's orders dated 18.1.86, 28.1.86, 7.3.86 & 17.3.86 issued under Sec. 203 of the Rajasthan Municipalities Act, 1959 were upheld, inasmuch as in S.B. Civil Writ Petition No. 1532/84 this Court (SB) issued an interim order on 28.2.85 was made absolute as to removal of verandah and/or encroachments over public street, inasmuch as order of the Single Bench was affirmed by the Division Bench in its judgment dated 18.3.87, besides in other *Prakash Chand Shukla v. M.C. Jaipur/JDA/State* (1), again orders were issued to remove such encroachments over the verandah & public streets under judgment dated 21.4.89 and latest by judgment dated 11.3.2000 in S.B. Civil Writ Petition filed by Jaipur Vyapar Sangh (2).

Re. Civil Suit No. 100/2000

(CRP No. 520/2000)

7. According to the plaint, plaintiff is Surya Bhagwan Agrawal Dharamshala and in the suit for permanent injunction so also application for temporary injunction, the plaintiff claimed relief of injunction for restraining the defendant (Municipality) from interfering with possession and demolition of a piece of land measuring 8 ft. x 8.6 ft. over which a shop & underground had been constructed in the Dharamshala situated at the corner of Chowkri Ghat Darwaja, Manak Chowk Choppar & Ramganj Bazar Jaipur. The suit shop land is stated to have belonged being in the ownership of one Surajmal Modi under a registered sale deed dated 10/11/1935 having been purchased from Gordhanlal & Harinarain on or about 10/11/1935 and whereafter Surajmal had died on 7.12.1935 and whereafter Surajmal had died on 7.12.1954 thereby whose ownership stood inherited in favour of Chuttanlal who also before his death executed a will in favour of 30.7.1963 in favour of his wife Vidhyadevi as her half of share and rest half of the share was gifted in favour of Dharamshala. It has also been averred that under the garb of a notification dated 17.7.54 which related to the declaration of verandah as public street, the defendant is likely to dispossess the occupier of the suit shop so also by way of demolition of construction thereon whereas the suit shop property has been in continuation possession of its owners so also transferees since 1935, nor there was any question of exercise of powers on the part of the defendant Municipality under Sec. 203 of the Act in respect of the suit shop & the underground therein. In written statement the defendant has reiterated the assertions as have been made in other similar suit which have been referred to herein above.

Re. Civil Suit No. 101/2000

(CRP No. 521/2000)

8. In the plaint, plaintiff Saroj Devi claimed that she had purchased half of undivided share of shop & its underground measuring 8 ft. x 8.6 ft. situated at the corner of Ramganj Bazar & Khanda Baiji & below Temple of Baiji in Manak Chowk Chowkri Ghat Darwaja Jaipur, under a registered sale deed dated 23.8.93 from its owner Chuttanlal Modi s/o Late Surajmal Modi, Anil Kumar Modi, Vidya Devi. It has been averred that the suit shop had since been owned by Surajmal father of Chuttanlal by virtue of a sale deed dated 10.11.1935 from Gordhanlal & Harinarain, having construction of Tin shed and underground also. Surajmal expired on 7.12.1954 and thereby the suit shop & its underground stood inherited to Chuttanlal & his family members and after death of Chuttanlal it was inherited to his wife Vidyadevi & other children by virtue of will dated 30.7.1963. It has also been averred in the plaint that Surajmal had mortgaged the suit shop property on 28.7.1939 with Fatehmal Kataria from which it appeared that this suit shop was in existence since 1935. Similar averments have been made as to the notification declaring the suit land as public street, as having been made in identical suit No. 100/2000.

Re. Civil Suit No. 99/2000

(CRP No. 593/2000)

9. Govind Narain claiming himself as Karta of HUF, alongwith Kunj Behari & Girraj Prasad have averred in their plaint that a shop measuring 8.5 ft x 8.5 ft duly closed from both the sides verandah situated at Chowkri Sarhad at north side of Aatish Chhatri in Tripolia Bazar Jaipur, was purchased by Keshavlal & Radheyshyam from its owners (Madanlal & Hanuman Bux) by a registered sale deed dated 18.10.1949 and before it, the suit shop stood mortgaged under its registered deed dated 21.7.1948 and it was got redeemed by Madanlal before getting sale deed executed in favour of Keshavlal & Radhey Shyam, whose sons are the plaintiffs, and presently it stands occupied by Proprietor of Goyal Lavajma Store & Goyal Safa Sherwani Store. However, it has been stated that plaintiffs are in possession of property which consists of two shops in the shape of verandah with its ceiling and rest of purchased property has been in possession of Radheyshyam & their family members since 1948 having verandah. Then similar averments have been made as to the notification declaring the suit land as public street, as having been made in identical suit No. 100/2000 and similar assertions have been made by the defendant Municipality in its written statement, which have been referred to herein above.

Re-Civil Suit No. 110/2000

(CRP No. 700/2000)

10. As per the plaint, shop No. 247 (Municipal No. 16-17) situated at Khanda Kotwali Jaipur was claimed to be owned by Thakur Jawahar Singh (fore father of Gopal Singh (plaintiff No.1) who had derived ownership by virtue of a mortgage

deed made in his favour by one Balabux Khandelwal on or about phalgun Badi 30 Samvat year 1935. Jawahar Singh had two sons Shrinath & Shyam Singh. Shrinath had one daughter Bhanwari Bai and Shyam Singh had son named Berisal Singh. Berisal Singh had executed his will dated 15.5.47 and registered on 10.7.47 in favour of Bhanwari Bai who had son named Chhatar Singh and after their death, plaintiff No.1 being son of Chhatar Singh has acquired the suit shop known as Ekdalia also by way of his right of inheritance. Plaintiff No.2 claims himself to be tenant of plaintiff No.1 right from the period of his forefathers since 1922-23. The underground to this suit "Ekdalia" is also claimed since then. The plaintiff also averred that on or about 29.1.1962 a notice was issued by the Municipality alleging illegal possession of verandah land, to Gulabchand (father of plaintiff No.2, against which in reply again right of ownership of Bhanwari Bai was claimed since the time of her fore fathers, and accordingly house tax was assessed for the period of 1960 to 1964 and such a tax was also got deposited by Bhanwari Bai with the defendant Municipality. In these circumstances permanent injunction and temporary injunctions were sought by the plaintiff.

Re. Civil Suit No, 79/2000

(CRP No. 349/2000)

11. Radha Govind (plaintiff) in his plaint averred that a Nazul verandah No. P 10 situated at Topkhana Desh Kishanpol Bazar Jaipur was taken on rent from the State of Rajasthan and whereafter on negotiation basis, this nazul verandah (re-serial numbered 161) measuring 6.47 sqm. land was purchased by him for a consideration of Rs. 9400/- from the State Government under registered sale deed dated 24.7.79 duly signed by Chief Engineer PWD (B & R) Rajasthan Jaipur on behalf of the Governor of the State.

Re. Civil Suit No. 81/2000

(CRP No. 350/2000)

12. Lalchand plaintiff, in his suit for permanent injunction alongwith TI application claimed that a nazul verandah No. P12, (re-serial numbered as 163) measuring 7.24 sqm. situated at Topkhana Desh Kishanpol Bazar Jaipur earlier was on rent with him but subsequently it was got purchased by him for a consideration of Rs. 10,500/- from the State Government under registered sale deed dated 24.7.79 duly signed by Chief Engineer PWD (B & R) Rajasthan Jaipur on behalf of the Governor of the State.

Re. Civil Suit No. 82/2000

(CRP No. 351/2000)

13. Lalchand plaintiff in his suit for permanent injunction alongwith TI application claimed that a nazul verandah No. P 13, (re-serial numbered as 164) measuring 7.24 sqm. situated at Topkhana Desh Kishanpol Bazar Jaipur earlier was on rent

with him but subsequently it was got purchased by him for a consideration of Rs. 10,500/- from the State Government under registered sale deed dated 24.7.79 duly signed by Chief Engineer PWD (B & R) Rajasthan Jaipur on behalf of the Government of the State.

Re. Civil Suit No. 80/2000

(CRP No. 352/2000)

14. Manoharlal Agrawal plaintiff in his suit for permanent injunction alongwith TI application claimed that a nazul verandah No. P 111, (re-serial numbered as 162) measuring 6.13 sqm. situated at Topkhana Desh Kishanpol Bazar Jaipur earlier was on rent with him but subsequently it was got purchased by him for a consideration of Rs. 8,900/- from the State Government under registered sale deed dated 16.4.79 duly signed by Chief Engineer PWD (B & R) Rajasthan Jaipur on behalf of the Government of the State.

15. In last aforesaid civil suit Nos. 7972k, 8172k, 8272k & 8072k it has been identically averred that the suit nazul lands were sold by the State Government pursuant to Rajasthan Nazul Shop (Management & Disposal) Rules, 1971 duly amended by notification dated 3.2.77, and therefore, till 1979, the State Government did not declare this nazul land as public street, nor the plaintiff has ever been declared as trespasser over this nazul land and he has been in continuous possession firstly as tenant and after sale deed, as owner since about 1973 and in these circumstances the plaintiff claimed that provisions of Sec. 203 of the Act are not attracted in his case nor suit nazul land having shop duly constructed over it is illegally encroached verandah.

Re. Civil Suit No. 78/2000

(CRP No. 425/2000)

16. Nathulal Jain (plaintiff) in his suit for permanent injunction alongwith TI application against defendant Municipality & State of Rajasthan claimed shop No. 249 & its underground situated at the corner of Chaura Rasta facing three shutters towards chaura Rasta & two shutters towards Tripolia Bazar Jaipur is constructed over a land purchased by Firm Maliram Nemichand which had taken huge finance from Rajasthan Finance Corporation in the year 1970 but could not repay the financed amount thereby the financial corporation filed a civil suit No. 3/70 which was decreed and pursuant to execution of that decree, that suit shops were put to auction wherein bids were put only by the persons who were tenants therein, amongst whom the plaintiff was also one of them as tenant since 1948, and ultimately after getting measurement of the shop through Commissioner of the Court, the plaintiff acquired right of ownership by way of acceptance of his bids being highest in that auction under execution of the decree passed by the District Judge, Jaipur City. It is also the case in the plaint that upon having acquired ownership, the plaintiff got the suit shop renovated by incurring huge expenses thereon over the furniture, light and furnishing fittings.

It has also been averred that Firm Maliram Nemichand partners of whom were Gappulal & Damodarlal had purchased a piece of land over which the suit shop is situated, in the year 1942-43 from the State Government and then it got constructed a hotel reknown as Hind Hotel besides shops & showrooms over that purchased land and got let out them to various tenants including the plaintiff on the suit shop in the year 1948.

Re. Assertions of the Municipality

17. In all written statements of the defendant Municipality in civil suit Nos. 101/2K, 99/2K, 119/2K, 79/2K, 81/2K, 82/2K & 80/2K Similar assertions have been made as to the notification declaring the suit land as public street, so also as to the encroachments allegedly on nazul lands, as having been made in identical suit Nos. 100/2K & 120/2K, referred to above and therefore, they are not repeated here in order to avoid duplicacy.

18. Out of total aforesaid ten suits, only in suit Nos. 120/2K & 119/2K the State of Rajasthan through Collector Jaipur has been arrayed as defendant alongwith Municipality, but neither written statement nor reply to the TI application has been filed on behalf of the State. However, the defendant Municipality has filed reply to the TI application in each of aforesaid ten suits.

19. After hearing in all the suits except that of Govind Narain (CS No. 99/2K & CRP No. 593/2K) on the TI applications the learned trial Court by different judgments declined to grant temporary injunction in favour of the plaintiffs (petitioners) against which civil misc. appeals though were preferred but they were also dismissed by the appellate court under the judgments as indicated above. In Govind Narain's suit No. 99/2K though temporary injunction was granted by the trial Court but in appeal of the defendant Municipality it was reversed declining TI in favour of the plaintiffs, Hence these revision petitions, out of which first six ones have been filed by Shri G.C. Garg and rest of four by Shri R.K. Agrawal.

20. After issuing notice to the respondents and Advocate General, the records were called, besides report of Kurup Committee made pursuant to observations under order dated 23.7.86 of this Court (SB) in earlier writ petitions (supra). Even during the pendency of these petitions, by notification dated 30.5.2000 reconciliation 7 settlement committee was constituted by the State Government so as to explore possibility of an amicable settlement of the subject matter at issue between the parties, and therefore, by order dated 15.9.2000 of this Court in these petitions, a liberty was also given to the petitioners to represent their case before such settlement committee if they are so advised. However, it was made specific clear that in case of failure to any settlement, the matter shall be heard and decided on merits.

21. Upon failure to resolve the dispute in between the parties before Settlement Committee this Court had left with no option except to hear the arguments of the learned counsel for both the parties.

22. First 1 would like to look at the decisions cited by the learned counsel for the petitioners.

Re. Citations made by Shri G.C. Garg

23. In *Roopi Bai v. Mahaveer* (3), while deciding first appeal this Court held that when a fact pleaded in plaint is not specifically denied, but mere ignorance about its existence is pleaded, in such cases unless by necessary implication it amounts to denial of the facts pleaded, mere plea of ignorance amounts to admission of fact. This court relied upon the decision in *Jahuri Shah v. Dwarka Prasad* (4).

24. In *Peer Gulam Naseer v. Peer Gulam Jelani* (5), this Court deciding revision petition held that courts should not decide finally the controversy raised in pleadings by parties at the stage of deciding TI application and serious questions raised can be finally decided only after parties may have led the evidence. It was a case where this Court held that the lower appellate acted without jurisdiction in holding in misc. appeal against TI order of trial Court that suit was not maintainable for want of statutory notice.

25. In *Krishan v. Kalya* (6), this Court deciding civil misc. appeal under O. 43 R.I (r) against order on TI application held that substantive questions disputed in suit ought to have been decided after evidence decided by trial Court in decision of application.

26. In *Chauthmal v. State of Rajasthan* (7), this Court (DB) held that on a proper interpretation of the Act and Rajasthan Land Revenue Act, it appears reasonably to hold that Section 92(2)(e) of the Municipalities Act refers to property not only vesting in but also belonging to the Municipal Board and the property belonging to the Government and not to the Municipal Board, cannot be covered by Section 92(2)(e) of the Act. It has further been held that Nazul lands belonging to the Government and not to the Board therefore cannot vest in the Municipal Board and that the Local Self Government Department notification dated 8.10.1958 therefore cannot have the effect of vesting Nazul lands in Municipal Boards under Clause (2)(e) of Section 92 of the Act, and in these circumstances, the D.B. held that the decision of the learned Single Judge holding the sale void on account of non-compliance of proviso to Section 80(1) of the Act therefore, cannot be sustained.

27. In *Gopal Lal Maheshwari v. Satya Narain* (8), this Court held that Court can issue directional temporary injunction inasmuch as the question whether the person having possession over the property is a trespasser or it belongs to Municipal Corporation cannot be decided at the time of disposal of application under Order 39 Rule 1 & 2, CPC.

28. In *Krishna Ram Mahale v. Shobha Venkat Rao* (9), the Apex Court observed that it is well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except

by recourse to law. It was a case where the plaintiff had filed suit for recovery of possession of premises upon which she had entered as a licensee to conduct business of restaurant and she was subsequently dispossessed by the licensor unlawfully and behind her back, immediately thereafter she filed suit for recovery of possession and hence the Court held that she was entitled to decree for recovery of possession and that since she was unlawfully dispossessed it could not be said that the license having expired long back and the plaintiff not being entitled to renewal of licence could only ask for damages for unlawful possession.

Re. Citations relied on S/Shri C.K. Garg & R.K. Agrawal

29. In *Shankar Ramchandra v. Krishnaji* (10), the Apex Court held that when the aid of the High Court is invoked on the revisional side it is done because it is a superior Court and it can interfere for the purpose of rectifying the error of the Court below; and Section 115 CPC circumscribes limits of jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court because it is only one of the modes of exercising power conferred by the statute basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense.

30. In *Vinod Kumar v. Surjit Kaur* (11), the Apex Court held that the High Court is fully justified in rejecting the concurrent finding of fact when both the courts have based their findings on conjectures and surmises and they have lost sight of relevant pieces of evidence which have not been controverted.

31. In *Bangalore City Corporation v. M. Papaih* (12), relating to a suit filed for a decree of perpetual injunction restraining the defendant Corporation from interfering with possession of plaintiff over the suit land and the decree was granted by the trial court but reversed in first appeal against which plaintiff's second appeal was allowed by the High Court restoring decree of the trial Court, the Apex Court held that foundation of claim of plaintiff was title which was pleaded in earlier part of plaint and for deciding the nature of a suit the entire plaint has to be read and not merely the relief portion and the plaintiff did not leave any manner of doubt that the suit has been filed for establishing title of the plaintiffs and on that basis getting an injunction against the Corporation.

32. In *Bishandas v. State of Punjab* (13), the Apex Court observed as under :

"...The decisions show that a person who bonafide puts up constructions on land belonging to others with their permission would not be a trespasser, nor would the building so constructed vest in the owner of the land by the application of the maxim *quicquid paintatur solo, solo credit*. It is, therefore, impossible to hold that in respect of the dharamasala, temples and shops, the State has acquired any rights on the land belonging to the State. If the State though that the constructions should be removed or that the condition as to resumption of the land should be invoked, it was open to the State to take appropriate legal action for the purpose...."

33. In *Toyal Bros v. Gram Panchayat Chichorwari* (14), this Court held that what is implied by phrase "prima facie case" is that there should be serious question to be tried in the suit and that on the facts before the court, it cannot be said that the case based on those facts is wholly untenable and not maintainable.

34. In *Bhauroo Singh v. Dulari* (15), it was a case where the trial Court while granting temporary injunction had referred to a contract of sale for purpose of its satisfaction that consideration had been received and the land had been handed over to plaintiffs and the trial Court did not record any finding whether that document was one of sale or not which could conclusively decide rights of parties, it cannot be held that order of temporary injunction is perverse, capricious or has been passed in disregard of principles of law and practice. This Court held that in deciding matters of grant of temporary injunction, the Court is not required to go into evidence with a critical attitude for its closer scrutiny and it is only required to see that all three necessary ingredients for grant of temporary injunction exist in whose favour.

35. In *Chandra & Co. v. Rajasthan State* (16), this Court held that the exclusion of the remedy provided under Sec. 6 of the Specific Relief Act, 1963 as against the Government cannot lead to the inference that the State is free to act in an arbitrary manner by taking the law in its own hands by forcibly dispossessing a person in possession of property without having recourse to the process of law. It has also been held that State as owner of property does not enjoy higher rights than the citizen in the matter of taking possession of its property, because adequate provisions are made by legislature prescribing special procedure for eviction of persons in unauthorised occupation of government properties e.g. Section 91 of the Rajasthan Land Revenue Act, 1956 in case of agricultural land, and Public Premises (Eviction of Unauthorised Occupants) Act, 1956 for urban properties. These enactments enable the State to follow the procedure laid down therein as against on unauthorised occupant.

36. In *Karam Singh v. State* (17), this Court while invoking writ jurisdiction held that where a person in possession of certain land on the strength of lease given by the Municipal Council was dispossessed even without notice to him the action was illegal and the remedy is to take action in the manner allowed by law.

Re. Citations relied by Shri S.M. Mehta

37. Tout au contraire Shri S.M. Mehta learned Advocate General laid much stress by relying on the following decisions -

38. In *Citizens of Bundi v. Municipal Board* (18), while deciding second appeals this Court held that a place of park or chowk or maidan or public square is not a very material as they are different forms and manifestations of basic concept of public use, public utility and public purposes and as such these public places cannot be sold by local authority or State. It was a case of suit for permanent injunction where though it was found that public place in which people of city in general have been exercising customary rights of recreation, entertainments,

games, meetings and public functions cannot be sold by municipality and as such permanent injunction was granted against the defendants (Municipality) but curiously enough as is evident from observations made in paras 30 and 32 of the decision it is clear that constructions and allotments already made before injunction was granted, were not disturbed. Be that as it may, such an injunction was granted after proper appreciation of the evidence on record, whereas instant revision petitions relate to grant of temporary injunction.

39. In *Noor Mohd v. Nagar Nigam Jaipur* (19), in a revision petition against the order refusing permission for construction on land forming part of public thoroughfare allotted to private person by connivance of municipal employees, this Court (per myself) held such allotment and execution of sale deed as illegal and not liable to be interfered with. While in the instant case there is no order for refusal of construction by the Municipality rather in some of the suits, the permissions were long back accorded treating the suit land not as public place or verandah.

40. In *Gobind Prashad Jagdish Prashad v. New Delhi Municipal Committee* (20), it was a case where the Municipality declared the verandah in front of the shop owned by the appellant in the Connaught Circus, New Delhi, as public street u/s 171(4) of the Punjab Municipal Act, 1911 and it was affirmed by the trial Court by having dismissed the suit of the plaintiff, against which first appeal was also dismissed, rather second appeal and letters patent appeal both were dismissed by the Delhi High Court and in these circumstances, the matter was before the Apex Court. The Apex Court also dismissed the plaintiffs appeal with costs. Again the facts and questions involved in aforesaid decision before the Apex Court had undergone ordeal of trial court, appeals after having an opportunity to lead evidence and its appreciation. Here it is not such a situation and in this revision petition the only question for consideration is as to whether the plaintiffs have prima facie case requiring property investigation and inquiry during trial on the basis of sale deeds or otherwise documents placed on record while pressing on the TI petitions seeking maintenance of status quo as to their possession over the suit land.

41. During the course of hearing, much stress was laid on behalf of the plaintiffs (petitioners) in all the revision petitions that as would be evident from pleadings of the parties including the plaint and reply to the TI application, prima facie the possession over the suit shop or property is established by the plaintiff since beginning the execution of the respective sale deeds irrespective of the fact whether they were executed either before Notification dt. 28.5.1954 or subsequent thereto either in between the plaintiffs and the State Government in respect of the nazul land, or between the plaintiffs and the vendors private party in respect of the land over which the suit property or shops are situated, which are alleged by the defendant Municipality as verandahs or land of public streets under the garb of aforesaid notification dated 28.5.1954. Learned counsel for the petitioners strenuously contended that almost in all suits, most of the suit

premises or property or shops were constructed after having obtained permission granted by the Municipality, of due constructions over the land purchased by each of the plaintiffs immediately after the sale by the State Government or the private vendors, inasmuch as the house taxes due upto the year 1999 were being paid to the Municipality. Even otherwise, according to the learned counsel for the plaintiffs, keeping in view the notification dated 28.5.1954 the personal property especially the suit shops of the plaintiffs herein cannot be declared as Sarvajanik Marg because the notification itself held that it is not applicable in relation to private property and that apart, it may have prospective effect and not retrospective and therefore it cannot be made applicable to the suit properties which were purchased by predecessors in title of the plaintiffs much before the notification dated 28.5.1954 came into application for declaration of public streets.

42. It has also been contended by the learned counsellor the plaintiffs that the State Government had no powers to declare the verandahas in question as Sarvajanik Marg particularly in view of the registered sale deeds having been executed in favour either of the plaintiffs or their predecessors in title in respect of the suit properties or shops, and that apart, even after having issued notification dated 28.5.1954 declaring verandahas as public streets or thorough fares, the State Government's PWD authorities have sold the nazul lands which are suit shops of some of the plaintiffs herein, in the years 1973 or 1975 or 1977 much after the aforesaid notification dt. 28.5.1954, inasmuch as some of suit properties were sold by the State Government and purchased by the plaintiffs by way of public auction or under court's decree where they were highest bidders which were accepted by execution of registered sale deeds in their favour.

43. In a set of four petitions (CRP Nos. 349/2k to 352/2k), Shri R.K. Agrawal for the plaintiffs (petitioners) strenuously urged that the petitioners being in occupation of the suit premises (nazool verandahs) as tenants of the State Government were sold out for valuable consideration vide registered sale deeds in the year 1973 or therefore, having been made on negotiation with the Apex Committee of the Government of Rajasthan under the Rajasthan Nazool Shop (Management & Disposal) Rules, 1971 (amended by Government notification No. f. 30(3) CAB/75/dt. 3.2.1977) and according to recitals of sale deeds, vendor (Government of Rajasthan) sold the nazool verandah creating absolute right in favour of the purchasers (plaintiffs) and moreover for which house taxes were being paid to the Municipality and the petitioners have been carrying on their businesses for last about 30 years. Even as per Shri Agrawal, in cases of the petitioners (CRP No. 349/2k to 352/2k) the situation being different than others, there are no shops adjacent to the verandahs, therefore, the question of access of the shop does not arise because they like others have not misused their possession as shop keepers by encroaching upon verandah converting them into a part of the shop by further putting shutters and closing the verandahs whereas the nazool verandahs in case of these four petitioners had been sold for the purpose of user as shop itself. Shri Agrawal also pointed out that even this Court

in Jaipur Vyapar Mahasangh v. State (supra) excluded "Ikdalias" by laying down that if the suits were filed objecting to the removal of encroachments of Ikdalias, such encroachment under Ikdalias would abide by the result of civil suits and therefore all statutory authorities were directed to verify such encroachment and if found as such were restrained from removing those encroachments over Ikdalias till the decision of the suits.

44. Shri C.K. Garg & Shri R.K. Agrawal have taken me to go through some of the clause in the sale cum conveyance deeds executed in favour of the petitioners (CRP No.349/2k to 352/2k) which makes it crystal that the vendor (State of Rajasthan) transferred the verandahs (described in appended schedule) to the petitioners (purchasers) so as to hold as absolute owner and as per these deeds, the vendor inter-alia covenanted with the purchasers (petitioners-CRP 349/2k to 352/2k) that the property sold was free from encumbrances and would be enjoyed by the purchasers without interruption or disturbances by the vendor or any person claiming under him, whomsoever.

45. Learned counsel for the plaintiffs petitioners vociferously contended that the plaintiffs being not members of Vyapar Sangh, when the matter of Verandahs came to be decided by this Court either in the year 1985 or subsequent thereto latesty in the year 2000. Writ Petition No. 246/2k was filed on 10.3.2000 by was of public interest litigation in a representative manner and not in an individual capacity, by an organisation to which none of the present petitioners were the members or the parties.

46. The plea of the Government was that it was not competent to sell the suit property. Albeit the State did not file the reply but the Municipality took plea that the State was not competent to sell or dispose of the property atleast "verandah" over which the plaintiffs have been trespassers.

47. Contrarily, learned counsel for the petitioners urged that once the sale deeds have been executed by way of agreement/conveyance deeds duly signed on behalf of the Governor of the State of Rajasthan, by their Officers therefore the property under such deeds never vested with the Municipality, inasmuch as the Municipality is silent on the issue since 1977 with regard to sale made and has also been receiving the house tax and above all the fact of auction was with its knowledge, therefore, only recourse available to the respondents was to seek cancellation of such sale deeds executed on behalf of the State Government in favour of the plaintiffs.

48. It has also been contended that the ownership or possession of the plaintiffs over the suit shops or properties has never been disputed or denied by the Municipality inasmuch as mere denial is no denial, rather is an admission in view of Order 8 Rule 5 CPC and further the notification in question is an administrative one, by which property rights cannot be taken away and moreover even if disputed questions of fact cannot be decided while deciding temporary injunction application as they are required to be decided in suit, itself, but the courts below

have erred in holding each of the plaintiffs as trespasser which has resulted in deciding disputed questions of fact requiring complete trial of issues as to title at the initial stage and thus have misconstrued material controversy without considering material on record especially (1) as to the applicability of notification of 1954 on which the Municipality has laid much stress, and further (2) as to factum of continuous possession of the plaintiffs over the suit shops/properties for last more than 46 years since the time of their predecessors in title to which the Municipality has never been objecting.

49. Lastly learned counsel for the petitioners contended that in case the petitioners are dispossessed during the pendency of their suits, each of them shall suffer irreparable loss inasmuch as the very purpose of instituting permanent injunction shall be frustrated and defeated rendering the suit itself infructuous while prima facie case & balance of convenience in view of registered sale deeds and title over the suit shops are in their favour.

50. On the other hand, Shri S.M. Mehta learned Advocate General and Shri Shyam Arya learned counsel for the respondent State and the Municipal Corporation contended that the crucial challenge to the notification dt. 28.5.54 published in the gazette of Rajasthan on 17.7.54 stands decided by this Court in S.B. Civil Writ Petition No. 246/2k (RLW 2000 (3) Raj 1621), and that apart, declaration of verandahs of Jaipur City as public streets or thorough fare by issuance of aforesaid notification dated 14.3.1946 and 17.4.54 clearly established that these verandahs are properties of Jaipur Municipality, over which the plaintiffs have no right to continue their encroachment inasmuch as the State Government or any one else has got power to sell such public verandahs and in this view of the matter, the trial Court as well as appellate court have rightly dismissed T.I. application, while relying upon the decisions in *Citizens of Bundi v. Municipal Board Bundi* (supra), *M/s Gobind Parsad Jagdish Parshad v. New Delhi Municipal Committee* (supra).

51. Shri Mehta further pointed out that the decision in *Jaipur Vyapar Mahasangh v. State* (supra), was challenged in SLP (Civil) No. 5273-5275-2000 before the Apex Court but the SLP was dismissed as withdrawn on 28.3.2000 and therefore, these petitions do not call for any interference in view of the decision in *Jaipur Vyapar Maha Sangh* (supra).

52. No doubt, notification dated 17.7.54 was sought (in *Jaipur Vyapar Mahasangh v. State* (supra)), to be declared void and inoperative. But that writ petition (CWP No. 246/2000) was dismissed on the ground of laches holding that it was presented against the notification dated 17.7.54 after 46 years and further that equitable and discretionary relief against the notification dated 17.7.54 cannot be issued to perpetuate the illegal encroachments made by the traders over verandahs constructed on Municipal land connecting footpaths because the encroachers must be prepared to do justice to others and learn to edify supremacy of rule of law, upon which our democratic policy is founded.

53. Having considered the rival contentions of the parties and carefully perused relevant documents on record, I find that except in CRP 593/2000 (wherein the trial Court granted temporary injunction but reversed by the appellate court) both the courts below while deciding TI application categorically held the plaintiffs as trespasser or encroacher over the verandahs either situated on suit nazool land or suit properties (having been allegedly purchased the plaintiffs through registered sale deeds not only from the State Government in public auction but also from the predecessors in title of the plaintiffs) on the basis of notification dated 28.5.1954 published in Rajasthan Rajpatra on 17.7.1954 to which the controversy as to its applicability in cases of the plaintiffs has yet to be finally decided in the main suit, itself, in view of specific pleading that being an administrative order, such a notification was not applicable as the plaintiffs property has never been vested in the Municipal Corporation inasmuch as in cases of some of the plaintiffs, they have purchased nazool lands from the State Government even much after aforesaid notification declaring verandahs as public streets, in the year 1973 either in public auction or on negotiation under the Rajasthan Nazool Shop (Management & Disposal) Rules, 1971 and even in CRP No. 425/2k though the plaintiff has been in possession of the suit land from 1948 as tenant and their landlord had acquired property rights on the basis of a patta originally issued by the erstwhile Jaipur State/Municipal Commissioner, but the plaintiffs (CRP No. 425/2k) have purchased such suit land in an auction sale under court decree in Execution case No. 3/1970 in respect of Hind Hotel mortgaged with Rajasthan Financial Corporation. I have already discussed the pleadings wrung out of each of the plaintiffs suit, but without reiterating I must hasten to point out that the courts below ought not to have finally decided or adjudicated the question of ownership atleast at the time of deciding the injunction application. However, both the courts below ought to have considered though could not have decided finally, the possessory rights or property rights especially when the defendant did not deny facts of ownership of the plaintiffs over the suit shop or nazool land or alleged verandahs or properties and the Municipality merely contended denial for want of knowledge, while such a denial is no denial rather an admission in view of Order 8 Rule 5 CPC. Be that as it may, in my considered view, the courts below have merely adverted to single aspect i.e. notification of 1954 declaring verandahs as Sarvjanik Marg and failed to consider other significant aspects of controversy raised in the suit for permanent injunction, i.e. possessory and ownership rights acquired by each of the plaintiffs on the basis of registered sale deeds, so as to establish prima facie case in their favour and irreparable loss in case of non grant of temporary injunction. However, it cannot be forgotten that serious questions have been raised in the suit, itself by each of the plaintiff and the defendant Municipality in their pleadings either in the plaint or written statement or the reply to the TI application and these serious questions can be finally decided only after the parties to the suits may have led their respective evidence to the pleadings, and not at the stage of considering application for temporary injunction.

54. Here I must browse through serious questions raised in the suit itself, amongst others- (1) Whether it was within the scope & ambit of powers of the defendant State of declare verandahs in question as Sarvjanik Marg pursuant to notification of 1946 or 1954 notwithstanding execution of sale deeds by the State Government in this regard much after the issuance of 1954 notification in the years 1972, 1973, or 1975 or 1977? (2) Does it not establish collusiveness and connivance of officials of State Government of the defendant Municipality? (3) It is open to the defendants to gloss over the matter by pleading ignorance on the issue of accountability ? (4) Should the responsibility be not fixed as regards officers who signed on behalf of the Governor of the State of Rajasthan as vendors in the registered sale deeds in favour of the plaintiffs for the nazool land or suit shops, for having permitted sale of verandahs in this manner on the principle of accountability and why drastic actions were not taken against them notwithstanding in view of notification of 1954 for declaring such verandahs as public streets? (5) Whether the nazool property auctioned by the State was vested in the Municipality? (6) Whether the suit shops or alleged verandahs over nazool land sold by the State or predecessors in title of the plaintiffs had ever vested or belonged to the Municipality? (7) Whether plaintiffs having settled possession over the suit land/property since long back either before or after 1954, are trespassers? (8) Whether notwithstanding notification of 1954 the suit land/property could be transferred in favour of the plaintiffs or whether the State Government was competent to sell the suit nazool property? (9) Whether Section 203 of the Rajasthan Municipalities Act does apply in view of specific plea of the plaintiffs that they had not made encroachment or obstructions upon public land? (10) Whether the property rights can be taken away by administrative notification? (11) Whether notwithstanding notification of 1954, the Municipality has objected to the settled possession of plaintiffs as claimed by them since long back either before or after 1954? (12) Whether, the Municipality has accepted the sale of suit property without any objection rather by charging not only house tax till the year 2001 but also by granting permission to construct shops over the suit nazool land/property? (13) Whether at the interlocutory stage it can be said that the sale executed by the State is voidable when no declaration has ever been sought by the Municipality nor sought cancellation of sale deeds in question executed in favour of the plaintiffs by the State in accordance with Articles 298 & 299 of the Constitution?

55. Thus viewed, it cannot be forgotten that the suits in cases of the present petitioners plaintiffs involved and raised serious questions of disputed facts in view of the pleadings of the parties and which cannot be decided at the stage of considering application for temporary injunction rather they cannot be eschewed as irrelevant for and moreover, these questions require serious consideration only after allowing parties of leading the evidence on record as they have material significance touching the rights of the parties but the learned courts below have misconstrued these aspects of the controversy at issue in the suit itself and thus erred in confining itself to the notification of 1954 only by holding the plaintiffs as

trespasser or encroachers (which was not the correct & proper approach) and thereby it has resulted in deciding the controversy finally as so raised in the pleadings at the stage of deciding the TI application that too without advertting to material and significant aspect of right of ownership and possessory rights of the plaintiffs over the suit property in view of registered sale deeds. Thus the courts below have committed jurisdictional error apparent on the face of record.

56. However, I would have remanded the matter for consideration of TI application afresh but once the aforesaid questions being serious and disputed ones go to the root of controversy raised in the suit itself, I refrain from doing so, rather I do not want to make any observations on my part or even to dwell upon such questions in these petitions or to express any opinion on the merits of their rights involved in the suit itself, as it may cause prejudice to the case of both the parties. The trial Court would be free to decide these questions in view of their pleadings in the suit itself after due trial of issues involved therein at an appropriate stage, for which the parties are directed to cooperate with the trial Court to get their suits disposed of and decided finally with a view to avoid multiplicity of litigation and determine the rights of the parties as regards the nazool verandahs or suit land/property.

57. However, keeping in view the dictum of law that while deciding temporary injunction application not only the nature of possession should not be decided but also where a person is in settled possession of property regardless of actual condition of the title or right of possession of the suit property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by any one else except by recourse of law, and further that in case serious issues are to be tried in suit and the plaintiffs have probability of success, in my considered view, it will be in the interest of justice that the suit, itself, be decided finally on merits and it would be proper to maintain status quo during the pendency of the suits.

58. In the result, all these ten revision petitions are allowed. The impugned orders of the courts below (except in CRP No. 593/2k) (supra) are quashed & set aside. In CRP No.593/2k, impugned order of appellants court is set aside and that of the trial Court is upheld. Thus, in all the revision petitions, both the parties are directed to maintain status quo and the plaintiffs be not dispossessed except by recourse of law, during pendency of their suits, which shall be decided by the trial Court in accordance with law. No order as to costs. Record to be returned back with certified copy of this order forthwith. Copy of this order be also sent to the Chief Secretary of the State of Rajasthan.