
(2013) 07 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1324 of 2004

Jorawar Singh

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Citation : (2014) 2 CDR 1171 : (2013) 4 RLW 3648

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : J.L. Purohit, assisted by N.R. Budania, for the Appellant; Sudheer Sharma for Private Respondents and Sandeep Bhandawat for Revenue Department, for the Respondent

Judgement

Vineet Kothari, J.—The aforesaid 12 writ petitions have been filed by the Jorawar Singh S/o Shri Deep Singh and grand son of Shri Kishore Singh, the land holder, being aggrieved by the order of the learned Single Member of Board of Revenue dated 1.4.2003, whereby, the learned Board of Revenue set aside the order of learned Revenue Appellate Authority dated 31.5.2000 passed under the Rajasthan (Imposition of Ceiling on Agricultural Holdings) Act, 1973, whereby, the learned Revenue Appellate Authority had cancelled the allotment of land of private respondents, like illustratively measuring 10 bighas 13 biswas of khasra No. 175 and 10 bighas land of Khasra No. 362 in favour Jora S/o vakta on 19.6.1976 and the learned Board of Revenue restored that allotment while allowing the appeal of appellant Jora S/o Vakta; by caste Bhambhi, R/o Bichawadi, Tehsil Bhinmal and other 10 allottees. Some background facts leading to the present set of writ petitions by grand son of Kishore Singh, land holder, namely; Jorawar Singh are like this.

2. Ceiling proceedings were initiated against Kishore Singh under the provisions of Rajasthan (Imposition of Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as "the Ceiling Act, 1973") and vide order dated 31.7.1975 passed in ceiling case No. 186/71, the learned Sub-Division Officer,

Bhinmal, also known as "Pargana Adhikari", determined the surplus land of 70.26 standard acres in the hands of non-applicant - land holder, Shri Kishore Singh S/o Umed singh, which excess land was enquired to be surrendered under the ceiling law in favour of the State. On appeal filed by the legal representatives; Bhim Singh and Deep Singh, of late Kishore Singh, the learned Revenue Appellate Authority allowed such appeal No. 350/75 (Bhim Singh & Anr. vs. State) vide order dated 27.3.1976 and reduced the surplus or excess land over the ceiling limit to 15.60 standard acres instead of 70.26 standard acres, as determined by the lower authority i.e. learned SDO, Bhinmal. On 19.6.1976, despite order dated 27.3.1976 having been passed three months prior to that by learned Revenue Appellate Authority, the agricultural land of land holder Kishore Singh of 159 bighas and 5 biswas was allotted under the provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules, 1973 to 11 landless persons, the private respondents herein and the details of which as given in Annex. 3 produced with the writ petition are as under:

3. The ceiling proceedings were sought to be reopened against Kishore Singh under the provisions of Section 15(2) of the Ceiling Act, 1973 by the State Government. However, upon contest raised to the said notice, the concerned Deputy Secretary, Revenue (Ceiling) Department of the State Government dropped the said notice by passing a detailed order in favour of the land holder and he found that actually there was no excess or surplus land over the ceiling limit in the hands of land holder and thus, the proceedings for reopening the ceiling case were liable to be dropped. The relevant extract of the order dated 7.12.1983 passed by the learned Deputy Secretary is quoted below for ready reference:

4. After about 3? years of the said order dated 7.12.1983, the legal representatives of deceased land holder, Kishore Singh, moved an application on 24.3.1987 for restoration of possession of excess land acquired by the State Government, which was actually not excess as determined under the Ceiling proceedings, which terminated in favour of the assessee land holder - Kishore Singh and the learned SDO, Bhinmal vide order dated 23.7.1987 ordered for mutation of revenue entries again in favour of land holder and his legal representatives. The legal representatives of late Kishore Singh again moved the learned SDO to restore the possession of the excess land, which was wrongly entered in the revenue record in the name of State government vide application dated 16.8.1990 and for restoration of said land u/s 144 of CPC vide another application Annex. 5 dated 20.2.1991.

5. The Addl. Collector, Jalore vide his order dated 31.5.2000 in Revenue Misc. Case No. 16/97, (State vs. Jora S/o Vakta) and other connected cases cancelled the allotment made in favour of aforesaid 11 allottees on the aforesaid application of the legal representatives of Kishore Singh. The relevant operative portion of the order dated 31.5.2000 of the learned Addl. Collector is also quoted below for ready reference:

It is against this order of learned Addl. Collector dated 31.5.2000 that the allottees of the land, Jora S/o Vakta and other similarly situated persons approached the learned Board of Revenue by way of appeal u/s 23 of the Ceiling Act, 1973, which have been allowed by the learned Board of Revenue by the impugned order dated 1.4.2003 and being aggrieved with that one of the legal representatives of Kishore Singh, namely; Jorawar Singh has preferred these twelve writ petitions.

6. The learned Board of Revenue has given mainly two reasons for allowing the appeals of the allottees, namely that over the long period of allotment of 12 years in their favour, such allotment cannot be cancelled as the allottees acquired khatedari rights over the land in question or in the alternative they also acquired title by adverse possession and, therefore, the allotment in their favour could not be cancelled and order dated 31.5.2000 of learned SDO, Bhinmal deserved to be set aside. The relevant para 12 to 16 of the order of Board of Revenue dated 1.4.2003 are also quoted below for ready reference:-

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.

Mere passing an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession.

The facts that u/s 250(2) of the M.P. Land Revenue Code read with Section 38 thereof, the Tehsildar was bound to restore possession of the suit land would, make no difference and it is difficult to accept the contention that failure of the Tehsildar in handing over possession would have the effect of causing discontinuation of possession of the suit land by the appellant so as to prevent such possession from ripening into adverse possession after the statutory period.

7. The present writ petitions have been filed by the petitioner Jorawar Singh, inter alia, on the ground that once the ceiling proceedings stood terminated and concluded in favour of Kishore Singh and his legal representatives, the allotment made in favour of private respondents was illegal and void ab initio and as per Section 144 of CPC the land in question deserved to be restored back to the assessee Kishore Singh and his legal representatives and the learned SDO had rightly cancelled these allotments on 31.5.2000, whereas, the learned Single Member of the Board of Revenue has erred in upholding the said allotments on the ground of alleged permanent tenancy rights accruing in favour of allottees and on the ground of adverse possession of the allottees vide its order dated 1.4.2003.

8. Learned counsel Mr. J.L. Purohit, Sr. Advocate, appearing for the petitioner Jorawar Singh, relying upon the various case laws, which are discussed below, urged that the alleged excess or surplus land of 70.26 standard acres could not vest in the State Government with the appellate authority vide order dated

27.3.1976 reducing the extent of alleged surplus land of 70.26 standard acres to 15.60 standard acres and since the allotment of entire 159 bighas and 5 biswas made on 19.6.1976, after the appellant order dated 27.3.1976 in favour of assessee Kishore Singh, the said allotments were void and illegal and that the order dated 7.12.1983 passed by the Deputy Secretary holding that actually there was no excess land in the hands of land holder Kishore Singh and that order having become final as no challenge to the same was laid by any of the allottees, the alleged entire excess land was liable to be restored back to the legal representatives of assessee Kishore Singh and the allotments in favour of private respondents, the landless persons, made on 19.6.1976 was rightly cancelled by SDO vide order dated 31.5.2000 on the application of the legal representatives of Kishore Singh and the learned Board of Revenue has fallen into error in allowing their appeals on erroneous grounds as neither any permanent khatedari rights accrued in favour of the allottees nor there was any question of conferring such right on the premise of adverse possession, as neither the hostile and sufficiently long continued possession over the land in question in favour of the allottees was pleaded or established by such allottees nor the question of adverse possession arise in view of continuous litigation fought by the legal representatives of Kishore Singh at various levels and having succeeded in that, the Board of Revenue has wrongly restored the allotment in favour of such allottees and, therefore, the present writ petitions filed by the legal representatives of assessee Kishore Singh deserve to be allowed by this Court.

9. Mr. J.L. Purohit, Sr. Advocate, submitted that if this Court is not inclined to restore back the possession of land to the petitioner and other legal representatives of Kishore Singh, then suitable compensation for the land allotted to such 11 persons could be awarded in favour of the petitioner-Jorawar Singh and such other legal representatives of assessee Kishore Singh, as the petitioner and other legal representatives cannot be deprived of the fruits of such litigation, which under the Ceiling Act, 1973 stood concluded in their favour but he has the instructions to press for the restoration of the land to them u/s 144 CPC. He relied upon the following five cases to support this contention.

(i) Shanker Lal Jakodia Vs. Ram Kishan Baldeo Prasad and Another, (ii) Manikchand Sarupchand Shah and Another Vs. Gangadhar Shankar Shete and Another, (iii) Narayan Laxman Ayarkar and Others Vs. Vishnu Waman Dhawale and Another, (iv) South Eastern Coalfields Ltd. Vs. State of M.P. and Others, and (v) Kamal Chandra Dutta etc. Vs. Ram Chandra Goala and Another,

10. On the other hand, Mr. Sandeep Bhandawat, learned counsel appearing for the Revenue Department urged that essentially it is a fight between the land holder Kishore Singh and his legal representatives on the one hand and allottees of the land in question on the other hand represented by Mr. Sudheer Sharma he urged that the learned Board of Revenue has rightly upheld the allotment in favour of private respondents on the ground of equities in their favour arising out

of long possession of more than 30 years by now since 1976, on which date admittedly, the reduced area of 15.60 standard acres was held to be excess or surplus in the hands of Kishore Singh under the provisions of Ceiling Act, 1973 and which was determined at 70.26 standard acres by the assessing authority, namely, the Sub-Divisional Officer, Bhinmal vide order dated 31.7.1975. On the question of compensation, learned counsel for the State, Mr. Sandeep Bhandawat, however, submitted that the State is not liable to pay any compensation to the petitioner or other legal representatives of assessee Kishore Singh and if any such compensation is awarded, it is the allottees, who are liable to pay the same to perfect their rights flowing from any such allotment and remove the encumbrances from their holdings arising out of such litigation. He relied upon the following extracts of the SDO's order dt. 31.7.1975 and the appellate order of learned Revenue Appellate Authority dt. 27.3.1976, which were produced by the learned counsel for the petitioner, Mr. J.L. Purohit during the course of arguments before this Court only.

Extract of the order dated 31.7.1975 of S.D.O., Bhinmal:

Extract of the appellate order of Revenue Appellate Authority dated: 27.3.1976:-

11. Mr. Sudheer Sharma, learned counsel appearing for the private respondents, the allottees, defended the allotments made in favour of private respondents like Jora S/o Vakta Bhambhi and others and submitted that these private respondents were never dispossessed from the land in question despite cancellation of their allotment on 31.5.2000 and since their initial allotment made on 19.6.1976 itself came to be cancelled after a long period of 24 years vide order dated 31.5.2000, they acquired khatedari rights on completion of 10 years of possession under the allotment orders dated 19.6.1976 and thus such allottees could not be divested from their khatedari rights over agricultural land in question after so many years now and hence the present writ petitions deserve to be dismissed.

12. In the alternative, Mr. Sudheer Sharma, learned counsel for the private respondents also urged that on the basis of adverse possession ground, after cancellation of allotment vide order dated 31.5.2000, the respondents have continued to be in possession of the land in question even upto now and with the Board of Revenue allowing their appeals vide order dated 1.4.2003, they are in valid and peaceful possession of the land in question and, therefore, there is no justification for canceling their allotments and dispossessing them from their agricultural lands from where they have earned their livelihood for last 30 years or so and that being their only source of livelihood, it would be absolutely harsh to dispossess them from the land in question at this stage, as there was no fault on their part at any point of time and no fraud or misrepresentation is even alleged against them and since they were never a party to the ceiling proceedings against the land holder Kishore Singh, their allotment cannot be cancelled on the grounds stated in the writ petitions. Thus, he also supported the ground of adverse possession taken by the learned Single Member of the Board

of Revenue relying upon the decision of Supreme Court in the case of Balkrishan Vs. Satyaprakash and Others,

On the point of compensation, if any payable to the petitioner and other legal representatives of Kishore Singh, M. Sudheer Sharma, however, left it to the discretion of this Court.

13. I have heard the learned counsels for the parties at length, perused the record and judgments cited at the bar.

14. There is no doubt from the documents produced on record and the arguments of learned counsel for the petitioner, Mr. J.L. Purohit, Sr. Advocate that the proceedings initiated under the Ceiling Act, 1973 stood concluded and terminated in favour of the land holder Kishore Singh and his legal representatives and excess surplus land was reduced from 70.26 standard acres to 15.60 standard acres, one of whom namely, Jorawar Singh S/o Deep Singh has approached this Court by way of present writ petitions and, therefore, normally in view of the judgments relied upon by the learned counsel for the petitioner, the entire land in question determined to be excess in the hands of Kishore Singh and vested in the State Government and further allotted to various private respondents deserves to be restored back to the assessee Kishore Singh and his legal representatives.

15. But the question which arises against this normal consequence of aforesaid proceedings under the ceiling law having been decided in favour of Kishore Singh is as to whether the 11 allottees, who were landless persons and they having been allotted small parcels of land and having earned their livelihood from that land for about 35 years by now and having spent money for the development of the said agricultural land in question and being oblivious of the litigation under the Ceiling Law contested by the legal representatives of Kishore Singh, at least upto 1987 when the SCHO, Bhinmal passed the order dated 23.7.1987 that too in the absence of private respondent allottees and the said allottees came to know of such cancellation proceedings only when they were served with the notices of the proceedings of Revenue Misc. Case No. 16/97 (State vs. Jora S/o Vakta) and other connected cases initiated against them for cancellation of allotment that they came to know of such a situation that the allotment made in their favour way back on 19.6.1976 was out of the surplus land of assessee Kishore Singh, which actually was not the surplus land from 70.26 standard acres to 15.60 standard acres and whether the agricultural land allotted to each of the private respondents was actually out of the surplus land of 15.60 standard acres of the assessee or not was never determined, therefore, whether all such allotments can be said to be per se illegal or void or not?

16. The notice of reopening the ceiling proceedings issued u/s 15(2) of the Act of 1973, which was ultimately dropped by the Deputy Secretary vide order Annex. 2 dated 7.12.1983 observing therein that actually there was no excess land with the assessee Kishore Singh as per the ceiling law as determined by the Revenue

Appellate Authority vide order dated 27.3.1976, a copy of which as produced by the learned counsel for the petitioner during the course of arguments, it cannot be said that the dropping of the proceedings u/s 15(2) of the Act by the Deputy Secretary vide order dated 7.12.1983 while observing that there was no excess land is the final finding of fact that there was no such excess land. The actually finding of fact arrived at by the learned Revenue Appellate Authority in the order dated 27.3.1976 that excess land of 15.60 standard acres was available in the hands of Kishore Singh became final and, therefore, all such allotments in their entirety made in favour of 11 persons, the details of which are given above, cannot be said to be clearly void ab initio and illegal in their entirety.

17. At the same time, one cannot lose sight of the fact that the allotment of entire 159 bighas and 5 biswas made in favour of 11 persons on 19.6.1976 was made approximately after three months of the appellate order dated 27.3.1976, apparently in ignorance of the appellate order of Revenue Appellate Authority dated 27.3.1976 and, therefore, if the consequence of the appellate order has to be taken to its logical end, the allotment of land in favour of private respondents in excess of 15.60 standard acres deserves to be cancelled and the land in question deserves to be restored back to the assessee Kishore Singh and his legal representatives as per Sec. 144 of CPC. However, from the record, it does not appear to have been determined as to which allotment falls in the said 15.60 standard acres held to be surplus or excess in the hands of Kishore Singh and which allotment does not fall in such limits, therefore, actual restoring back of the title and possession to the original land holder Kishore Singh or his legal representatives does not seem to be practical and possible now at this stage, specially where such 11 allottees have earned their livelihood from the such agricultural land for last more than 35 years from 1976 till now and it will be extremely hard and prejudicial to those poor and backward landless allottees, if they are to be deprived of their source of livelihood now at this stage.

18. While this Court agrees with the contention raised on behalf of the petitioner that learned Board of Revenue has erred in holding that the allottees got permanent tenancy/khatedari rights as well as on the ground of adverse possession, as such grounds were not really available in the present case as there is neither any documentary evidence in favour of private respondents conferring any khatedari rights or permanent tenancy rights upon them and on the other hand, their allotment came to be cancelled after providing an opportunity of hearing to them on 31.5.2000 and, therefore, no such permanent tenancy or khatedari rights can be said to have accrued to them or conferred upon them as held by the learned Single Member of the Board of Revenue, nor this Court endorses the view taken by the learned Single Member of the Board of Revenue that such title or khatedari rights stood conferred upon the allottees on the basis of their so called adverse possession. The said view of learned Single Member of the Board of Revenue, with respects, is erroneous as there was no factual foundation laid with any material to establish any such adverse possession hostile, adequately long and continuous and to the knowledge of the

true owner, who was litigating through out for the rights of assessee Kishore Singh and such allottees, who were actually put in permissive possession under the allotments made in their favour on 19.6.1976, which came to be cancelled vide Annex. 6 order dated 31.5.2000 and after that day not even the period of 12 years had passed before the learned Single Member of Board of Revenue restored such allotments within 3 years by the impugned order dated 1.4.2003. Therefore, the ground of adverse possession for more than 12 years was neither factually established nor that was available to the private respondents in the present case, hence both the grounds forming the foundation of the order of learned Board of Revenue are not available in law and, therefore, to that extent the impugned order dated 1.4.2003 of learned Board of Revenue cannot be sustained and deserves to be set aside.

19. The question is, therefore, now as to how the petitioner or other legal representatives of the assessee Kishore Singh can be compensated for the agricultural holdings lost by them on account of aforesaid fact situation. The sheer long lapse of time and the fact that allottees have been in continuous and peaceful possession of the land in question ever since 19.6.1976 and from the said agricultural land they have been earning their livelihood, it does not seem appropriate now to divest and dispossess them from their holdings. At the same time, for the encumbrances on their holdings on account of aforesaid litigation by the assessee Kishore Singh or his legal representatives, they (allottees) have to pay the price for removal of that encumbrance, which can be given as compensation to the legal representatives of the assessee Kishore Singh including the present petitioner - Jorawar Singh. Further, the State also cannot be absolved from its liability to pay such compensation for the wrongful allotments made by it of entire 159 bighas and 5 biswas of land, which was much in excess of 15.60 standard acres determined as surplus land in the hands of assessee Kishore Singh and at least a part of such compensation because it is the State which had made rather irregular and wrong allotments in favour of private respondents in ignorance of the appellate order in favour of assessee Kishore Singh and had passed the order dated 27.3.1976 reducing the excess or surplus land to 15.60 standard acres from 70.26 standard acres, originally determined by the authority concerned i.e. SDO, Bhinmal vide order dated 31.7.1975.

20. Case Laws.

(i) The concept of adverse possession came to be discussed and heavily criticized by the Hon"ble Supreme Court in a recent decision in the case of State of Haryana Vs. Mukesh Kumar and Others, where the State through the Superintendent of Police, the plaintiff, claimed title of certain land by way of adverse possession for 55 years. The State could not produce documentary evidence to prove its possession and the trial court dismissed the suit. The land was found in the name of the defendants in revenue record in the appeal, the court relying on the High Court's decisions observed that it is not open to the

State to take plea of adverse possession and claim ownership by way of adverse possession. The High Court in the second appeal also termed the action of the State to grab the property under garb of adverse possession as deplorable and disgraceful. Still aggrieved, the State filed the present appeal before the Supreme Court.

The Hon''ble Supreme Court made initial comments very sarcastically and finding that the State Government itself claimed title over the land of private land owners on the basis of adverse possession, calling upon the Parliament to amend the law relating to adverse possession and either extend the period of 12 years as presently prescribed to 30-50 years for claiming such title over the land merely on the realm of equity without there being any documented title with the persons claiming the title on the basis of adverse possession and also to provide for such persons to compensate the real title owner according to the prevalent market rates of the land in question, the Hon''ble Supreme Court in the said landmark judgment held as under:-

People are often astonished to learn that a trespasser may take the title of a building or land from the true owner in certain conditions and such theft is even authorized by law. The theory of adverse possession is also perceived by the general public as a dishonest way to obtain title to property. Property right advocates argue that mistakes by landowners of negligence on their part should never transfer their property rights to a wrongdoer, who never paid valuable consideration for such an interest. The Government itself may acquire land by adverse possession. Fairness dictates and commands that if the Government can acquire title to private land through adverse possession, it should be able to lose title under the same circumstances.

The doctrine of adverse possession arose in an era where lands were vast particularly in the United States of America and documentation sparse in order to give quietus to the title of the possessor and prevent fanciful claims from erupting. The concept of adverse possession exists to cure potential or actual defects in real estate titles by putting a statute of limitation on possible litigation over ownership and possession. A landowner could be secure in title to his land; otherwise, long-lost heirs of any former owner, possessor or lien holder of centuries past could come forward with a legal claim on the property. Since independence of our country we have witnessed registered documents of title and more proper, if not perfect, entries of title in the government records. The situation having changed, the statute calls for a change.

A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days the English courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right

adopted by the European Commission.

The right to property is now considered to be not only a constitutional or statutory right but also a human right. Human rights have already been considered in the realm of individual rights such as the right to health, right to livelihood, right to shelter and employment, etc. But now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even the claim of adverse possession has to be read in that context. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. With the expanding jurisprudence of the European Courts of Human Rights, the Court has taken an unkind view to the concept of adverse possession.

Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in the law in the larger public interest. The government instrumentalities--including the police--in the instant case have attempted to possess land adversely. This is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy. The Government should protect the property of a citizen--not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of Parliament, then at least the law must require those who adversely possess land to compensate the title owners according to the prevalent market rate of the land or property in question. This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessor--some of whom may be poor - to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case.

Parliament must seriously consider at least to abolish bad faith adverse possession i.e. adverse possession achieved through intentional trespassing, actually believing trespassed land to be their own, could receive title through adverse possession, sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief. In case, Parliament decides to retain the law of adverse possession, Parliament might simply require the adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12. Such an extension would help to ensure that the successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also decrease the frequency of adverse possession suits and ensure that only those claimants mot

intimately connected with the land acquire it, while only the most passive and unprotected owners lose title. A serious relook is absolutely imperative in the larger interest of the people.

Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. The Supreme Court opines that time has come for change.

If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest.

No government department, public undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case. In the instant case, revenue records of the State revealed that the disputed property stood in the name of the defendants. It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before different forums claiming right of ownership by way of adverse possession. The citizens may lose faith in the entire police administration of the country that those responsible for the safety and security of their life and property are on a spree of grabbing the properties from the true owners in a clandestine manner.

(ii) The Hon"ble Supreme Court in the case of Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, upholding that the land once acquired under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 vested in the State, free from all encumbrances and land owner becomes persona non grata after such vesting and has only a right to compensation. The Hon"ble Supreme Court further held that such person interested cannot claim right of restoration on any ground whatsoever. The relevant extract from para 22 and 37 to 39 of the said judgment are quoted below for ready reference:

22. In view of the above, the law can be summarized that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non grata once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of

land on any ground, whatsoever.

37. From the above, the following factual situation emerges:

(I) The land was declared surplus under the Act, 1976, and acquired in 1979.

(II) Possession of the land was taken in 1979 by the State of Maharashtra and it was handed over to PMT for construction of the residential quarters for the staff.

(III) Appellant has not stated anywhere in the pleadings as to whether any amount/compensation as provided under the Act, 1976, had been received/accepted by her.

(IV) Appellant, for the reason best known to her, did not file appeal before the Land Tribunal, though Act, 1976 provides for two appeals.

(V) Appellant woke up from deep slumber only after five years of the judgment of this Court in Atia Mohammadi Begum and filed revision " u/s 34 of the Act, 1976, in 1998.

(VI) The State Government allowed the revision without taking into consideration the point of delay; rather it relied upon its own circulars.

(VII) The State Government did not consider the consequences and particularly the issue of dis-possession of the appellant from the land in dispute in 1978 itself.

(VIII) The judgment in Atia Mohammadi Begum has been overruled by this Court in N. Audikesava Reddy.

38. Therefore, the law, as exists today, is that the land in dispute could be subjected to the provisions of the Act, 1976, with effect from 17.5.1976, i.e. the date on which the suit land came within the limits of the Municipal Corporation. The Act stood repealed in 1999, but the proceedings pending in any Court would stand abated provided the tenure-holder was in possession of the land on the date of the commencement of the Act 1999. The High Court has taken note of the fact that the appellant's revision had been entertained only on the basis of the judgment of this Court in Atia Mohammadi Begum, which stood over-ruled by the subsequent judgment in N. Audikesava Reddy.

39. The aforesaid factual position makes it clear that the appellant is not entitled for any relief whatsoever as per the law, as it exists today. The land once vested in the State cannot be divested. Once the land is vested in the State it has a right to change the user. The appellant cannot be heard raising grievance on either of these issues.

This judgment is akin to the controversy of the case in hand before this Court and thus on the basis of aforesaid decision of Supreme Court, it is considered more appropriate to award compensation to the land owner Kishore Singh and his legal representatives instead of restoring back the possession of land to them.

(iii) In M/s. Praga Tools Corporation Ltd. Vs. Smt. Mahboobunnissa Begum and

Others etc. etc., also the Hon"ble Supreme Court held that the State Government is liable to pay compensation for the land wrongly taken over by the Government, where such land is allotted to other persons. The relevant extract from the judgment for factual background in para 2 to 5 and directions of the Hon"ble Supreme Court contained in para 20 and 21 are reproduced hereunder for ready reference:

2. Briefly stated the facts are as follows:

In the State of Andhra Pradesh there are two adjoining Villages viz., Moosapet and Kukatpalli Kukatpalli was a khaisa (dewani) village where the lands were held by patadars, Mossapet was sarge-khas village. Sometime in 1936 the Government of Andhra Pradesh (Respondent No. 10) allotted lands in Mossapet village in favour of various parties. Whilst so doing the Respondent 10 Appellants (M/s. Praga Tools Corporation Ltd.) an area of 195 acres 33 guntas in Survey No. 210/1 in Mossapet village Possession was then given to Appellants.

3. Immediately on the transfer of land Smt. Mahboobunnissa Begum and Ors. (Respondents 1 to 9) filed a Writ Petition before the High Court of Andhra Pradesh claiming that the Government had purported to allot to appellants lands belonging to them without having acquired the said land. It was claimed that the lands, which were allotted and of which possession was given, bore Survey Nos. 362 to 373 and part of survey No. 374 of Kukatpally village. In this Writ petition the Government filed a counter affidavit stating that there was a dispute as to the question of title. On the basis of this counter affidavit the Writ Petition was dismissed with directions to approach the Civil Court.

4. In December 1974 Respondents 1 to 9 filed Suit No. 102 of 1975 seeking possession over the land in dispute of in the alternative compensation for illegal dispossession. One Amina Begum (Respondent 11) had also filed Suit No. 12 of 1974 claiming to be the owner of the same land. It must be mentioned that Respondents 1 to 9 claimed as heirs of previous owner Ghulam Khader. Respondent 11 made a claim to these lands on basis of an alleged Sale Deed in her favour from the said Ghulam Khader.

5. On 20th April, 1982 the trial Court decreed Suit No. 102 of 1975 and dismissed Suit No. 12 of 1974. Appellants and the Respondent 10 (Government) were held to be jointly and severally liable to pay compensation for the lands wrongly taken over.

.....

20. It is thus clear that the State of Andhra Pradesh has purported to allot Appellants (M/s. Praga Tools Corporation Ltd.) lands belonging to the Respondents 1 to 9 without acquiring the same and without plying any compensation for the same. The trial Court, was therefore, right in decreeing the suit an directing the State as well as M/s. Praga Tools Corporation Ltd. to jointly and severally pay compensation. The High Court was right in confirming this

Decree. The High Court was also right in holding that what the State had taken over and handed to Praga Tools Corporation Ltd. was only 195 acres and 33 guntas. Compensation could thus be paid only in respect of this area. The High Court has amply protected Respondents 1 to 9 by observing that they remain the owners of the remaining land.

21. As stated above respondents 1 to 9 have also filed Appeal No. 2762 of 1989. It is against that portion of the judgment restricting the compensation to 195 acres and 33 guntas and reducing the rate of interest to 6% p.a. We see no infirmity in the Order of the High Court. Appellants and Government are only liable to pay for the land wrong taken over. As only 195 acres and 33 guntas were taken over they only have to pay for that the interest has been rightly fixed at 6% as at the time the land was taken over, this was prevailing rate of interest. Civil Appeal No. 2762 of 1989 also stands dismissed.

With great respects, in terms of the said judgment also, this Court is inclined to award compensation in favour of land holder Kishore Singh and his legal representatives on the basis of DLC rates prevailing on the date i.e. 1.4.2003, when the learned Board of Revenue set aside the order of cancellation of allotment in favour of private respondents and restored such allotment in favour of private respondents.

(iv) This Court also in the case of RIICO Ltd. Vs. Devi Lal and Another, upheld the award of compensation to be paid by RIICO for which the land in question was acquired for developing industrial area at the DLC Rates and also upheld the enhancement of compensation by the District Collector u/s 18 of the Land Acquisition Act by observing as under:

16..... This Court is of the opinion that the Reference Court of learned District Judge, Bhilwara has been conservative and circumspect in determining the rate of compensation at about half of the rate claimed by the land holders in the reference applications. Determination of the market value u/s 23 of the Act as on the date of Notification u/s 4 of the Act necessarily involves some guess work and estimation and as already stated above no comparison with mathematical precision can be made with the sale price disclosed in the sale deeds which are registered in the contemporary period because the nature of land, size of land and capacity of buyer and seller cannot be expected to be exactly the same in such transactions and, therefore, the Reference Court has to exercise a fair discretion in determining the market value relying upon the evidences produced with reasonable amount of discretion also. Such discretion should not be arbitrarily or whimsically used & the amount of compensation for the land holders should be assessed with compassion and sympathy in the mind of the Court for them because by such compulsory acquisition they are deprived of their source of livelihood for ever.

17. Viewed from any angle, this Court does not find that the reference orders determining the compensation u/s 18 of the Act suffers from any vice or

illegality. The market value determined by the Reference Court is not only reasonable and based on evidence adduced by the claimants but is also conservative use of discretion and a fair via media between the rates claimed by the land holders and rates supplied and evidenced by the DLC and sale deeds produced before the Reference Court. Such orders, therefore, do not require any interference by this Court in the present appeals filed by the appellant RIICO and the same, in the opinion of this Court, do not deserve to be accepted.

(v) The judgment in the case of Balkrishan Vs. Satyaprakash and Others, relied upon by the learned counsel for the private respondents, Mr. Sudheer Sharma is not at all applicable to the facts of the present case to support the contention of Mr. Sudheer Sharma about the title of private respondents on the basis of adverse possession. In that case the Hon''ble Supreme Court held that in spite of the order of the Tehsildar against the appellant which was not acted upon, nor executed, the appellant continued in possession of the suit land and, therefore, the continuity of his possession of the suit land was neither interrupted nor lost. Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession. Such are neither the facts in the present case nor any break in continuity of adverse possession has been alleged or argued in the present case. The said judgment is of title help to the private respondents.

(vi) The decision of larger bench of Board of Revenue in the case of Yashwant Singh Yadav Vs. State of Rajasthan and Others, relied upon by the learned counsel for the petitioner, Mr. J.L. Purohit for restoring back the possession of the land in question in terms of Section 144 of CPC is also of title help to the learned counsel for the petitioner in view of the later Supreme Court decision in the case of Smt. Sulochana Chandrakant Galande discussed above. Similarly, the other case laws of High Court of Allahabad, Bombay and Gauhati on Section 144 CPC are also of little help to the petitioners in view of aforesaid Supreme Court decisions which are later in the point of time and are of binding precedent value. Therefore, the restoration of land in such cases cannot be considered to be a straightjacket and only relief possible and, therefore, the compensation in lieu of such restoration of possession of land is considered more appropriate relief to the petitioner and other legal representatives of Kishore Singh. The aforesaid decision of Board of Revenue in Yashwant Singh (supra) has no binding or persuasive value since the fate of that decision at the hands of higher courts was not even placed before this court and thus it cannot be taken as a precedent to be followed by this Court in the present case. The Supreme Court decision in the case of South Eastern Coal Fields (supra) relied upon by Mr. J.L. Purohit for payment of interest on relief in terms of money in case of restitution u/s 144 CPC, is also taken care while directing compensation at DLC rates.

21. Thus, on the basis of various judgments discussed above, this Court is of the opinion that the present writ petitions deserve to be disposed of with the

following directions:

(i) The impugned order of the learned Board of Revenue dated 1.4.2003 is set aside.

(ii) The allotment of land in favour of private respondents shall not be treated as cancelled provided the private respondents respectively deposit ? of the compensation awarded in favour of the legal representatives of the assessee Kishore Singh to the extent of their holdings as per original allotment dated 19.6.1976 in their favour and deposit the same with the learned SHO, Bhinmal to be paid to the legal representatives of the assessee Kishore Singh within a period of six months from today;

(iii) The State Government shall also deposit the remaining half of the compensation with the said authority, namely Sub Divisional Officer, Bhinmal;

(iv) The compensation shall be determined by learned SDO as per the DLC rates of the agricultural land in question prevailing on 1.4.2003, the date of order of Board of Revenue, when such allotment was restored in favour of private respondents, setting aside the cancellation order dated 31.5.2000 of Revenue Appellate Authority for entire 159 bighas and 5 biswas of agricultural land in question;

(v) The entire compensation so deposited by both private allottees, private respondents herein respectively and the State may be paid to the legal representatives of the assessee Kishore Singh after determining their respective shares and may be distributed equally amongst them and the learned SDO, Bhinmal shall undertake these proceeding for deposit of such compensation within a period of six months and conclude the same within next six months thereafter and distribute the said compensation amongst the legal representatives of land holder Kishore Singh, within one year from today;

(vi) The share of compensation payable by the private respondents to the extent of their holdings as per allotment in their favour shall be recoverable as land revenue from them under the applicable land laws.

(vii) The State as well as private respondents, namely allottees of the land in question shall pay in equal proportion the compensation at the prevalent DLC rate of the land in question, half to be borne by the State and half by the allottees concerned or by the person/persons, in case the land is further sold to such other person and the entire compensation shall be deposited by the concerned parties within six months from today with the learned SDO, Bhinmal and, thereafter the learned SDO, Bhinmal shall determine the existence and share of legal representatives of assessee Kishore Singh and distribute the said compensation to them as per their respective shares within one year from today. All concerned parties are directed to cooperate with the proceedings in this regard in compliance with the aforesaid directions of this Court.

The writ petitions are accordingly disposed of. No costs. Copy of this order may

be sent to both the sides parties and Revenue Courts below forthwith for information and needful execution and implementation of these directions punctually and meticulously.