
(2021) 01 RAJ CK 0245
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12951 Of 2020

Mangilal Kumhar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 22-01-2021

Acts Referred:

Rajasthan Tenancy Act 1955 — Section 16

Citation : (2021) 01 RAJ CK 0245

Hon'ble Judges : Sangeet Lodha, J;Rameshwar Vyas, J

Bench : Division Bench

Advocate : Rajat Dave

Final Decision : Disposed Of

Judgement

1. This public interest litigation petition has been filed by the petitioners contending that on catchment area of Sabela Lake and Gep Sagar Lake comprising Khasra Nos.630 and 633 in village Rajpur, Teshil and District Dungarpur, encroachments have been made by the encroachers and despite submitting of representations, the encroachments have not been removed by the respondents.

2. This Court in the matter of 'Gulab Kothari vs. State of Rajasthan & Ors.' [D.B.Civil Writ (PIL) No.1554/04], vide order dated 12.1.17, has already issued directions to the State Authorities to take effective steps for conservation and preservation of natural resources i.e. rivers, other water bodies and catchment area. Further, the State Authorities have been directed to undertake a drive to remove all encroachments made over the natural resources operating thereon and restore such natural resources by taking appropriate action.

3. Indisputably, Section 16 of the Rajasthan Tenancy Act 1955 (for short "the

Act of 1955"), puts restriction on khatedari right being accrued in respect of the land covered by the water or the land acquired or held for a public purpose or a work of public utility. In "Abdul Rahman v. State" 2005

RRT 59, a Bench of this court has issued direction to the State Government to remove encroachment in the catchment area of the water bodies.

4. In D.B.C. Writ Petition (PIL) No.10819/18 "Jagdish Prasad Meena & Ors. vs. State of Rajasthan & Ors.", a Bench of this Court at Jaipur with a

view to provide a pan-Rajasthan solution for persisting problem of encroachment on the land of public way, johar paitan, river bed etc., issued

directions as under:

In order therefore to provide a pan-Rajasthan solution to this ever persisting problem, we deem it appropriate to direct the Chief Secretary of the

State to devise a permanent mechanism, which should be operational in every District of the State where the concerned District Collector should be

required to periodically notify for the information of the general public to lodge the complaints/representations with regard to such encroachments with

a specially designated Public Land Protection Cell (for short 'PLPC') for rural areas. The PLPC should be head by District Collector and function

under his direction and supervision. The PLPC shall get such complaints/representations enquired into by deputing concerned Sub Divisional

Officer/Tehsildar/Naib Tehsildar so as to verify whether or not such encroachments have actually taken place on such land. If the allegations are

found to be substantiated, appropriate steps in accordance with law be immediately taken for removal of the encroachments and appropriate penal

action be also taken against the trespassers. The complaints/representations received in the PLPC should be decided by passing speaking order,

informing the respective complainant/ representationist about the action taken. This would obviate the necessity of such

complainants/representationists approaching this Court directly by way of public interest litigation. If this practice is put in place, this Court would not

be inclined to directly entertain such public interest litigation or would do so only in the event of inaction on the part of the concerned PLPC .

The PLPC aforementioned shall also keep in view the guidelines issued by the Supreme Court in Jagpal Singh & Others vs. State of Punjab & Others,

(2011) 11 SCC 396 wherein all the State Governments of the country were

directed that they should prepare schemes for eviction of

illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and the same must be restored to the Gram

Sabha/Gram Panchayat for the common use of villagers of the village. The said scheme should provide for the speedy eviction of illegal occupants,

after giving them a show cause notice and a brief hearing. It was further held therein that long duration of the illegal encroachment/occupation of land

or huge expenditure in making construction thereon or political connections of trespassers are no justification for regularising such illegal occupation.

Regularisation should be permitted only in exceptional cases where lease has been granted under some government notification .e.g. to landless

labourers or members of Scheduled Castes/Scheduled Tribes or where there is already a school, hospital, dispensary, 'shamshan', 'kabristan' or other

public utility of the like nature on the land.

Observations of the Supreme Court in Jagpal Singh (supra) thus leave no manner of doubt that removal of encroachment on all such land is a rule and

regularisation an exception and that too in extremely limited number of cases, which only the Government can do by appropriate notification of the

government and no other authority.

5. In view of the directions already issued by this Court as aforesaid, no further directions are required to be issued in the instant case. The petitioners

may approach the Public Land Protection Cell (PLPC) of District Dungarpur constituted pursuant to the directions of this Court in Jagdish Prasad

Meena's case (supra). Needless to say that the representation to be made by the petitioners shall be considered by the PLPC in accordance with law.

6. The petition stands disposed of with the observation as above.