
(2013) 02 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7572 of 2006

Municipal Council

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2014) 1 CDR 380 : (2013) 4 RLW 3341

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : T.S. Champawat, for the Appellant; R.R. Nagori, Alkesh Agarwal, Sajjan Singh, Rakesh Arora, V.D. Dadhich and Sandeep Bhandawat, for the Respondent

Final Decision : Partly Allowed

Judgement

Vineet Kothari, J.—This batch of 31 writ petitions as per Schedule appended is being disposed of by this common order. The facts are illustratively taken from SBCWP No. 7572/2006 Municipal Corporation Pali v. State of Raj. and Ors. (Mr. Sushil Kumar), SBCWP No. 7569/2006- Municipal Council, Pali v. State of Raj. and Ors. (Deen Dayal), SBCWP No. 6495/2006 - Municipal Council, Pali v. State of Raj. (Danmal).

2. The facts giving rise to this batch of writ petitions in brief are as under.

3. The Municipal Council, Pali allotted 64 plots of land to various private parties, which according to the petitioner, Municipal Council, Pali itself was illegal. The said allotments were made way back in the year 1980 and such allotment came to be challenged by the Municipal Karamchari Sangh, Pali by way of revision petition u/s 300 of the Rajasthan Municipalities Act, 1959 before the Director of Local Self Government Department, Jaipur, who disposed of the said revision petitions vide order dtd. 20.11.1985 (Annex. 1) and directed by the said order the Administrator of the Municipal Council may review the orders of regularization of such plots and while doing so, he will also take into account the

litigations pending in the Civil Courts with respect to such plots and status quo orders having been passed by the competent civil courts. Preamble of the said order including the list of 64 persons and operative portion of the said order dtd. 20.11.1985 is reproduced hereunder for ready reference.

4. Instead of the then Administrator of Municipal Council, Pali taking any action or proceedings for reviewing the orders of regularization in pursuance of aforesaid order of the Director, Local Self Government Annex. 1 dtd. 20.11.1985, the Municipal Council, Pali filed an application u/s 80 of the Rajasthan Municipalities Act, 1959 before the learned Dist. Collector, Pali vide Annex. 2, which came to be decided by the learned Dist. Collector, Pali on 20.8.1998 holding therein that the Dist. Collector has no power u/s 80 of the Act to cancel such allotment and registered conveyance deeds in pursuance of such allotment including lease-deed and registered sale-deeds of some of the aforesaid 64 plots in question since Section 80 permits him to deal with the cases only at proposal stage and such proposals taken by the Municipal Council is found to be in contravention with the law. The operative portion of the order dtd. 20.8.1998 (Annex. 2) of the learned Dist. Collector, Pali is reproduced hereunder for ready reference:

In each of the cases presently under decision, the Director, Local Bodies has already given detailed decisions u/s 300 of the Act wherein categorical findings regarding the measures to be taken by Nagar Parshad Pali in all of the cases where lease deeds have been executed through registered documents have been laid down. The redressal to the directions given by the Director, Local Bodies is clearly not within the provisions of Sub-section 2(a) and (b) of Section 80 of the Act of 1959. In my opinion there is no ground for operationalisation of the powers vested in this court u/s. 80 following the detailed orders of the Director, Local Bodies, Rajasthan in 1985.

From the aforesaid narration it is clear that revision applications under sub-section (2) of section 80 of the Act of 1959 are clearly not maintainable in any of the cases presently under decision. In cases No. 10 to 33 even after a lapse of 5 years summons could not be served on the non applicants. It is pointless to carry on litigation in this Court when applications are prima facie not maintainable. An application has been received from Shri Shantilal Jain that he be made a party to each of the aforesaid proceedings and heard in the capacity as a social worker with public interest at large. The applications prima facie are found to be not maintainable, hence the question of determining the necessity of adding new parties under Order 1 rule 10 CPC does not arise.

All revision applications are hereby dismissed. No decision is given as to costs. A copy of this decision be enclosed with each of the files. Pronounced in Open Court in the presence of learned counsels of both the parties.

Sd/-

(V. Srinivas)

District Collector, Pali.

5. Being aggrieved by the said order of the learned Dist. Collector, the Municipal Council, Pali moved the learned Divisional Commissioner, Jodhpur by way of separate revision petitions u/s 300 of the Act again and the learned Divisional Commissioner affirmed the view of the learned Dist. Collector in the following terms:

6. Being aggrieved by the said order of the learned Collector and the learned Divisional Commissioner, the Municipal Council has approached this Court by way of present writ petitions under Article 226 of the Constitution of India challenging the said orders.

7. While issuing notices in the present writ petitions, status quo orders were granted by coordinate bench of this Court and one such order dtd. 9.1.2007 in SBCWP No. 7572/2006- Municipal Council, Pali v. State (Sushil Kumar) is in the following terms:

Meanwhile, status quo as it exists today shall be maintained. The writ petition be connected with the aforesaid writs.

8. The private respondents-plot holders or lessees have filed reply to the writ petitions raising various contentions, inter alia, contending that the learned District Collector has no power under the law to cancel, modify or rescind the registered conveyance deeds in the form of lease-deeds/sale-deeds and that the concerned authority of the Municipal Council, Pali had granted permissions to raise construction on these plots of lands and almost all these private parties have raised constructions in consequence of the same, over the long of period since 1980 and therefore, regularization made in their favour neither required any review nor could be set aside or challenged before the learned District Collector in exercise of powers u/s 80 of the Act or the Revisional power under Sec. 300 of the Municipalities Act, 1959.

9. It is also brought to the notice of the Court that in fact, the then concerned Hon"ble Minister of the Local Self Government Sh. Bhanwar Lal Sharma vide his order dtd. 14.10.1992 disposed of as many as 10 revision petitions against the order of the learned Dist. Collector which were filed by the State Government against the order of the Dist. Collector dtd. 31.3.1990 and held that in view of regularization made and construction already having been raised, such regularization deserves to be upheld by taking the regularization charges at the market rate prevailing in the year 1981, when the original allotments of these plots were made in favour of allottees. The order. of the Hon"ble Minister dtd. 14.10.1992 in the Municipal Application Case No. 21/1990 and 9 other cases is quoted below for ready reference.

10. The learned counsel for the respondents, therefore, urged that the Dist. Collector at this stage cannot cancel, modify or rescind the orders of regularization and it is too late in the day for him to do, so even assuming for

argument sake while denying, that he has power to question the validity of registered conveyance deeds u/s 80 of the Act.

11. Mr. T.S. Champawat, learned counsel appearing for the petition-Municipal Council, Pali at the outset submitted that as far as impugned order Annex. 2 dtd. 20.8.1998 passed by the learned Dist. Collector, Pali and Annex. 4 dtd. 22.5.2005 passed by the Divisional Commissioner, Jodhpur are concerned, wherein they have held that the Dist. Collector has no power to deal with the cases of completed transactions of lease or sale, is wrong and are directly in conflict with the law laid down by this Court in the case of Municipal Board, Sanchore v. Sawa and Ors. SBCWP No. 2689/2001 decided on 25.4.2008 against which Division Bench SAW (Writ) No. 825/2009- Virda Ram v. Municipal Board-Sanchore was also dismissed by the Division Bench of this Court on 26.8.2012 and his Court has held that there is no reason to confine the provisions of Section 80 of the Act to "proposal" stage only and the State Government or the Dist. Collector have power under the aforesaid provisions to deal with the cases of completed lease/sale/transfer also and while so upholding the order of the learned Single Judge, the intra court appeals of the private allottees were dismissed by the Division Bench. Learned counsel for the petitioner therefore, submitted that the controversy in hand, is as a mater of fact, covered by the aforesaid decisions of this Court and the present set of writ petitions of the Municipal Council, Pali deserves to be allowed accordingly.

12. On the other hand, learned counsel for the respondents Mr. R.R. Nagori, Sr. Advocate assisted by Mr. V.D. Dadhich, Mr. Rakesh Arora and Sajjan Singh vehemently urged that even though the provisions of Section 80 of the Act may not be restricted to the proposal stage as held by this Court, the said provisions do not permit cancellation of registered conveyance deeds in the form of lease-deed or sale-deed in favour of the respondents and coupled with the fact that over the long period of about 30 years, under the written permissions, given by the Municipal Council, Pali itself, the allottees or purchasers have raised constructions over these plots of land in question and such private respondents had also filed various civil suits for injunction against the Municipal Council, Pali and had obtained decrees from various civil courts which became final upto appellate Stage. In this background, the learned Dist. Collector cannot be permitted to look into the validity of these registered conveyance documents at this stage and therefore, the remand for this purpose to the Dist. Collector would be an exercise in futility at this stage.

13. The learned counsel for the respondents also relied upon the decision of this Court in the case of Padma Devi Vs. State of Rajasthan and Others, in which dealing with the power of Collector reopening the question of legality of the sale u/s 285 of the Municipalities Act, 1959, the Division Bench of this court held that once the sale was completed and sale-deed has been registered, then such a completed action cannot be reopened by the Collector and on that basis, the permission granted by the Municipality to raise construction cannot be stayed

under the purported exercise of powers u/s 285 of the Act. While so holding in para 6 of the judgment, the Division Bench further held that the foundation on which the order granting the permission raising construction is sought to be stayed is wholly beyond the jurisdiction of the Collector as the action of the sale cannot be touched by the Collector u/s 285 of the Act. If the Collector is required to challenge the sale to be undone, then the only course open for him was to refer the matter to the Government for cancellation of the sale, if it was permissible under the Act or he could have taken appropriate steps for cancellation of the sale-deed. Then relying on the case of Municipal Council, Ajmer Vs. Narinder Singh, the Division Bench held that in the present case, the Collector has invoked the power on the basis that the sale was -illegal. That was not open for the Collector by reopening the question of the legality of the sale u/s 285. The learned counsel for the petitioner, therefore, submitted that the present writ petitions filed by the petitioner-Municipal Council deserves to be dismissed. The relevant portion of para 6 of the Division Bench judgment can be usefully quoted here:

6. Now, in the present case, since the foundation on which the order granting the permission raising construction is sought to be stayed is wholly beyond the jurisdiction of the Collector as the action of the sale cannot be touched by the Collector u/s 285 of the Act. If the Collector required the sale to be undone then the only course open for him was to refer the matter to the Government for cancellation of the sale if it was permissible under the Act or he could have taken appropriate steps for cancellation of the sale-deed. But, in any case, he could not have stayed the operation of the order granting permission to raise construction by the Municipal Board under the purported exercise of jurisdiction u/s 285 of the Act. It is true that u/s 285 of the Act the Collector has the power to interfere if anything, is required to be done in pursuance of the resolution which is likely to cause injury or annoyance to the public or a breach of the peace. But, in the present case, the Collector has stayed the permission granted by the municipality to raise construction on the basis which was not open for him as the sale in the present case was completed in the year 1980.

14. In rejoinder, Mr. T.S. Champawat, learned counsel for the petitioner Municipal Council also relied upon the decision of the Hon"ble Supreme Court in the case of Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, wherein dealing with the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Hon"ble Supreme Court held that "Sanad" can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside, it would follow and the conclusion is inescapable that the grant cannot survive, because in order that the grant should be valid, it should have been effected by a competent officer under a valid order.

15. The learned counsel for the petitioner, Mr. T.S. Champawat further urged that following the said Supreme Court decision, the coordinate bench of this Court in

the case of Smt. Rampyari v. Additional Dist. Collector, Bhilwara - SBCWP No. 1389/2004 decided on 5.5.2006 held as under:

I do not find any force in the contention of counsel for the petitioner that the sale deed was executed and registered, therefore, the jurisdiction vested with Additional Collector u/s 97 of the Act of 1994 to modified, annulled, reversed or remitted for reconsideration of an order stood seized. In the instant matter the Additional Collector while quashing the resolution of Gram Panchayat and patta issued by it remitted the matter to the Gram Panchayat for its reconsideration. The execution and registration of the sale-deed is a consequential act based upon the sale made by Gram Panchayat. If the sale itself is void then the sale deed, though it, might be registered, is of no consequence.

Hon"ble Supreme Court in the case of Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, while dealing with a similar controversy, held as under:

If an order of allotment which is the basis upon which a grant is made is set aside, it would follow and the conclusion is inescapable that the grant cannot survive, because in order that grant should be valid, it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to it would be impossible to maintain unless there were any express provision in the Act or in the rules that the grant still stands. It was not suggested that there was any provision in the Act or in the rules which deprives the order setting aside an order of allotment of this effect. We do not therefore consider that there is any substance in the second point urged by learned counsel.

In the instance matter too when validity of patta is effectively put to an end, then it would be impossible to maintain the sale deed. Counsel for the petitioner also failed to point out any provision under the Panchayati Raj Act or the Rules framed thereunder that deprives the order setting aside an order of allotment will not effect its subsequent instrument.

In view of it, the contention raised by counsel for the petitioner is having no merit. No other contention is pressed into service by counsel for the petitioner while giving challenge to the order impugned.

For the reasons mentioned above, the writ petition fails and, therefore, stands dismissed.

16. Mr. T.S. Champawat further submitted that the said decision of learned Single Judge of this Court dtd. 5.5.2006 was affirmed by the Division Bench of this Court with the summary dismissal of Division Bench SAW (Writ) No. 226/2008-Smt. Rampyari v. Additional District Collector, Bhilwara and Ors. decided on 2.2.2009. While submitting that the controversy in hand is covered by the prevision decision of this Court in the case of Municipal Board, Sanchore v. Sawa and Ors.- SBCWP No. 2689/200/2001 decided on 25.4.2008, the learned counsel

for the petitioner relied upon the following portion of the said judgment.

5. Section 80(2)(b) of the Act clearly permits such Authority if after examination of the record and after giving to the person interested in such proposal, a reasonable opportunity of being heard, the State Govt. or the officer authorized as aforesaid, is satisfied that the proposal to lease, sell or transfer the Govt. land is not in accordance with or in contravention of the provisions of this Act, it may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made by for lease, sale or transfer of the Government land or any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper.

6. A closer scrutiny of Section 80(2)(a) of the Act also indicates that this power is a short of revisional power vested in the State Government or the Officer authorized in this behalf who may call for the record and may while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance. Apparently, therefore, clause (a) confers power to pass interim order for staying or keeping in abeyance such proceedings; while clause (b) is the power vested in the State or the such authority authorized in this behalf to even modify, cancel or rescind such proposal.

7. That as per the said provisions, the learned Collector could not have refused to exercise the jurisdiction u/s 80(2) of the Act on the ground that the Municipal Council had taken decision in the matter and therefore, Section 80(2) did not apply. This premise of the impugned order is apparently in conflict with complete reading of the aforesaid quoted provisions of Section 80(2) of the Act.

8. Consequently, this writ petition is allowed and the impugned order Annex. 4 dated 30.9.1997 and Annex.5 dated 31.12.1999 are quashed and set aside and the matter is remitted back to the Collector, Jalore for decision afresh after holding such enquiry in the matter as is considered expedient by him in accordance with law. No order as to costs.

17. The said judgment of learned single Judge was affirmed by the Division Bench while dismissing D.B. Civil Appeal SAW No. 825/2009 Virdha Ram v. Municipal Board and Ors. in the following terms:

It is apparent from the provisions of Section of Act of 1959 that it is a specific provision with respect to dealing with lease, sale or transfer of the government land made by or on behalf of a board or by any member, Chairman, Vice-Chairman or Officer of a Board. There is power with the State Government or the officer authorized to call for the relevant record and there is also power to grant stay with respect to proposal of lease, sale or transfer of the government land. However, before passing the final order, the provisions contained in Section 80(2) (b) of the Act of 1959 are to be adhered to wherein it is provided that reasonable opportunity is to be afforded to the interested persons and the State Government or the officer authorized after satisfying itself on the point that such proposal to

lease, sale or transfer the Government land is not in accordance with or in contravention of the provisions of this Act, may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or any action of proceeding taken in pursuance thereof or may give any other direction as may be deemed proper. Even if any action or proceedings for a proposal to lease, sale or transfer of the Government land has been completed, Section 80(2)(b) confers power on the State Government or officer authorized by it to deal with the same.

Sub-section (3) of Section 80 of the Act of 1959 also provides that in case any lease, sale or transfer or any other contract has been made by a board or by the chairman, vice-chairman or any member or officer of a board in contravention of the provisions of this section and any person has entered into municipal land or government land in pursuance thereof, such person shall be deemed to be in unauthorized occupation and he can be evicted by way of modes given in Section 80(3) of the Act. Sub-section (3) also provides that where any such lease, sale, transfer or contract is not confirmed, the consideration, if any, received for such lease, sale or transfer shall, as far as possible, be refunded to the person evicted from such land. Section 300 of Rajasthan Municipalities Act also provides the power to call for records and deals with correctness, legality or propriety of any order passed or purporting to have been passed under this Act on behalf of the Board, but this section gives general power to deal with the orders, however, specific powers with respect to lease, sale or transfer of the government land have been dealt with by Section 80 of the Act of 1959. Provisions of Section 80 of the Act of 1959 has to be given full effect to. There is no reason to confine this provision to "proposal" stage only. Thus, in our opinion, the State Government or Collector have the power under the aforesaid provision to deal with the case of completed lease, sale or transfer also. Thus, we find that the order passed by Single Bench is appropriate. No case for interference in the intra court appeals is made out.

Similar view has also been taken by this Court in D.B. Civil Special Appeal (W) D.B. Civil Special Appeal (W) No. 784/2004 (Legal Representative of late Gopi Ram & Gopi Chand v. Bhagwan Dass and ors.) and another appeal decided on 19.4.2012.

Consequently, intra-court appeals are hereby dismissed. Stay applications No. 15106/2009, 7341/2008, 7534/2008 and 981/2009 are also dismissed.

18. I have heard the learned counsels for the parties at length, perused the record of the case, relevant statutes and the judgments cited at the Bar.

19. It is considered appropriate to reproduce Section 80 of the Rajasthan Municipalities Act, 1959 in full, which reads as under:

80. Provisions relating to transfer of property and contracts

(1) Every board shall be competent, subject to the prescribed restrictions and

conditions to lease regularize sell or otherwise transfer any movable or immovable property belonging to it, including municipal land as also any Govt. land and so far as is not inconsistent with the provisions and purposes of this Act and the rules made there under, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes. Provided that

(i) no such lease, sale, transfer and contract shall be binding on a board unless it is in conformity with the provisions of this Act and rules, made thereunder; and

(ii) no lease, sale, transfer of or any other contract respecting any Govt. land shall be valid unless it is confirmed by the prescribed authority in the prescribed manner and on the prescribed conditions. Explanation: For the purpose of this section, the expression "Government land" means any land

(a) which has become vested in a board under clause (e) Sub-sec. (2) of Section 92; or

(b) which is a Nazul land as defined in Sec. 3 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) (Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956)); or

(c) which may be placed at the disposal of the municipality by the State Government and the land which are deemed to have been placed at the disposal of a municipality u/s 90B of the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956).

2(a) The State Government or any officer authorized by it in this behalf may, for the purpose of satisfying as to the correctness, legality, or propriety of any proposal to lease, sale or transfer of any Government land made by or on behalf of board or by any member Chairman, Vice-Chairman or officer of a board or by any member Chairman, Vice Chairman or Officer of a board call for the relevant record and may while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the aforesaid officer under Sub-sec. (2)(b).

(b) If after examination of the record and after giving to the person interested in such proposal, a reasonable opportunity of being heard, the State Government or the officer authorized as aforesaid, is satisfied that the proposal to lease, sell or transfer the Government land is not in accordance with or in contravention of the provisions of this Act, it may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Govt. land or any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper.

(3) Where in pursuance of any lease, sale, transfer or any other contract made by a board or by the Chairman, Vice Chairman or any member or Officer of a board, in contravention of the provisions of this Section, any person has entered

into the possession of any municipal land or Government land, such person shall be deemed to be in unauthorized occupation within the meaning of the Rajasthan Public Premises (Eviction of Unauthorised Occupations) Act, 1965 (Rajasthan Act 2 of 1965) and shall be liable to eviction from such land to all the liabilities as to the payment of rent or damages for use and occupation under that Act unless notwithstanding anything contained in that Act, such lease, sale or transfer or contract is confirmed by the State Government or the prescribed authority in the prescribed manner and on the prescribed conditions; provided that where any such lease, sale, transfer or contract is not confirmed as aforesaid, the consideration, if any, received by the board, Chairman, Vice-Chairman, member or officer of the board for such lease, sale transfer or contract shall, as far as possible, be refunded to the person evicted from such land.

20. It is true that this Court dealing with Section 80(2)(b) of the Act read with Section 80(3) of the Act has held in the case of Municipal Board, Sanchore (supra) that it is wrong for the learned Dist. Collector to believe and hold that his powers are limited and restricted to "proposal" stage only with regard to transfer to movable or immovable property by the Municipal Council and Clause (b) of Section 80(2) of the Act permits him to deal with the cases even after "proposal" stage and if he comes to the conclusion that proposal to lease, sale or transfer of Government land is not in accordance with or in contravention of the provisions of the Act, he may modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or municipal land or any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper. Sub-section (3) of Section 80 further permits that where in pursuance of any lease, sale, transfer or any other contract made by a Board or by the Chairman, Vice-Chairman or any member or officer of a Board in contravention of the provisions of this section, any person has entered into the possession of any municipal land or Government land, such person shall be deemed to be in unauthorized occupation within the meaning of the Rajasthan Public Premises (Eviction of Unauthorized occupants) Act, 1965 and shall be liable to eviction from such land u/s 80(3) of the Act. Therefore, the contention of the learned counsel for the petitioner, Municipal Council, Pali Mr. T.S. Champawat to the extent he submitted that the impugned order passed by the Dist. Collector, Pali and the Divisional Commissioner, Jodhpur in the present case falls foul with the aforesaid judgments of this Court and the provisions of Act, deserves acceptance and is found to be correct.

21. Therefore, learned Dist. Collector and the learned Divisional Commissioner have erred in holding that the Dist. Collector does not have power to deal with the cases beyond proposal stage with respect to transfer or lease or sale of the immovable property by the Municipal Council, because the provisions of the Act, especially Section 80(2)(b) read with Section 80(3) of the Act and the judgments of this Court cited supra.

22. However, there is caveat to this. The learned counsel for the petitioner

Municipal Council, Pali, Mr. T.S. Champawat, has emphasized on the words in the Division Bench judgment "Thus, in our opinion, the State Government or Collector have the power under the aforesaid provision to deal with the case of completed lease, sale or transfer also" and he submitted that the Division Bench while saying so in the case of Municipal Board, Santhore (supra) permits the Distt. Collector to deal with and set aside even the completed sales or conveyance deeds in the form of registered sale-deed or lease-deed, while exercising the powers u/s 80 of the Act. This contention of the learned counsel for the petitioner, with great respects, is not acceptable and said contention is beyond the clear and specific terms of Section 80(2)(b) and 80(3) of the Act. Clause (b) of Section 80(2) of course deals with the stage "proposal" to lease, sale or transfer any Government land made by or on behalf of a Board and in that case, the State Government or any officer authorized by it, namely, the District Collector may call for the relevant record and may while doing so, may direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or may give any other directions as may be deemed proper.

23. On a plain and clear reading of the said provisions, the power to set aside or quash registered conveyance deeds in the form of sale-deeds or lease-deeds is not envisaged in these provisions. Such powers obviously and in general law lies with only the competent civil courts, because under the registered conveyance deeds, the rights in property stand transferred to third party or person whose vested rights can be disturbed only by a decree of competent civil court. One cannot lose sight of the fact that Section 80 providing for "provisions relating to transfer of property and contracts" contained in Chapter III of the "Conduct of Business" in the Rajasthan Municipalities Act, 1959 does not vest any power of the civil court with the State Government or authority authorized by the State, namely, the District Collector. That is why, while giving such powers to modify, cancel or rescind whole or in part the proposal made for lease, sale or transfer the Government land, further power is given to the learned Dist. Collectors are only to modify, cancel or rescind "any action or proceedings taken in pursuance thereof or may give any other directions as may be deemed proper" which may include action or direction to initiate steps by filing suits for cancellation of registration sale-deeds or lease deeds. Had Legislation wanted to give specific power to the learned District Collector or the State Government to cancel, modify or rescind even the registered conveyance deeds in pursuance of such proposal, it would have specifically provided for the same, but it has not been done.

24. Even Sub-Section (3) of Section 80 only envisages a situation where a person has entered into possession of the land in question for which the proposal and subsequent action is found to be illegal and in contravention of law and therefore giving him the status of a deemed unauthorized occupants under the provisions of Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1965, the provisions of Sub-section 3 of Section 89 empowers the

authorities concerned to evict the person concerned from land and not from the constructed house only if such lease, sale or transfer even though based on a proposal in contravention of law, has not yet been confirmed by the State Government or prescribed authority in the prescribed manner and on the prescribed conditions. It is only if such transfer or contract is not confirmed as aforesaid, the consideration, if any, received by the Board, Chairman, Vice-Chairman, member or officer of the Board for such lease, sale, transfer or contract, shall as far as possible be refunded to the person evicted from such land and the words "house" or "construction" are conspicuous by their absence in Section 80(2) or 80(3) of the Act.

25. The parameters and limits of Section 80; therefore, in the opinion of this Court, are limited to the extent of modifying, cancelling or rescinding the proposal for lease, sale etc., if found to be in contravention of law till the party concerned has not raised any construction thereon and it is still open land from which the person so concerned can be evicted u/s 80(3) of the Act deeming him to be an unauthorized occupant under the provisions of 1965 Act. The last two words in Section 80(3) "such land" are not without significance. These provisions also do not permit cancellation of registered conveyance deeds like lease deeds or sale deeds by the District, Collector and he can only direct the authorities to take appropriate measures before the competent civil courts for cancellation of such registered conveyance deeds. Therefore, with great respects, the contention of the learned counsel for the petitioner-Municipal Council, Mr. T.S. Champawat, that if the original proposal is found to be illegal, the registered conveyance deed should automatically fall to the ground, which he submitted relying upon the observations of the Hon'ble Supreme Court in the case of Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, is misconceived and cannot be accepted. The case of Mithoo Shahani (supra) is distinguishable. It was a case of "sanad" issued in pursuance of allotment order issued by incompetent authority. "Sanad" cannot be equated with the registered conveyance deeds transferring property rights to which provisions of Transfer of Property Act apply. The Hon'ble Supreme Court was dealing with a case arising under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954. The Sanad" (right to occupy) could only entitle such person, if displaced, to a particular compensation and rehabilitation as envisaged under that Act. The same cannot be equated with the person who has got his rights in the property under the registered conveyance deeds governed by the Transfer of Property Act As aforesaid, since Section 80 does not confer any power of civil courts upon the District Collector or the State Government and the provisions of Section 80(2)(b) read with Section 80(3) also do not stipulate any such power, therefore, no such power can be impliedly read into these provisions as vested with the learned District Collector. Therefore, this contention of the learned counsel for the petitioner, Mr. T.S. Champawat, is liable to be rejected and is accordingly rejected. For the same reason, the decision of coordinate bench of this Court in the case of Smt. Rampyari (supra) decided on 5.5.2006 also cannot be applied in the facts and

circumstances of the present case.

26. Turning back to the facts of the present case, since the respondents in their reply filed to the writ petition along with the documents have contended that the registered conveyance deeds were executed in their favour and they had also paid the price for the same, therefore, the learned Dist. Collector cannot be empowered to set aside the same, even though this Court comes to the conclusion that the learned Dist. Collector has power to deal with such matters beyond the "proposal" stage as held by this Court in the case of Municipal Board, Sanchore (supra) by the learned Single Judge as well as Division Bench but such powers of Collector stops short and just before the actual cancellation of registered conveyance deeds, sale deeds or lease deeds. However, the contention of the respondents that no fruitful purpose will be served by remanding the case back to the learned District Collector, also can not be accepted at its face value. Since in view of law laid down as aforesaid by this Court upto Division Bench in the case of Municipal Board, Sanchore (supra), the learned District Collector has power to deal with such cases even beyond "proposal" stage and the questions of facts raised by the respondents in present set of writ petitions before this Court that equities have arisen in their favour by raising of construction under the permissions granted by the Municipal Council itself and that there are registered sale-deed or lease-deeds in their favour or that they are holding the decrees in their favour from the competent civil courts, these are all questions of facts, which are required to be proved before the learned District Collector in accordance with law by producing the relevant documents before him in individual cases.

27. The process of determination of these questions of facts on case to case basis cannot be curtailed or mere averments or even such documents, which are not yet proved, but are produced along with the reply to the writ petition of the Municipal Council, Pali before this Court in some of the cases. Therefore, the remand of the case to the learned Dist. Collector in the present case is required to be made notwithstanding this contention of the learned counsels for the private respondents and the legal position delineated above and the learned Dist. Collector is obviously expected to decide the cases again upon such remand in the light of the aforesaid facts and circumstances including the orders passed by the Hon'ble Minister on 14.10.1992 quoted above and also the powers conferred u/s 80(2)(b) read with Section 80(3) as delineated above in this judgment. Therefore, with the aforesaid observations and directions and the delineation of powers of learned Dist. Collector u/s 80 of the Rajasthan Municipalities Act, 1959, these writ petitions of the Municipal Council, Pali are partly allowed and setting aside the earlier impugned order Annex. 2 dtd. 20.8.1998 of the Dist. Collector and Order dtd. 22.2.2005 (Annex. 4) of the Divisional Commissioner, Jodhpur, the matters are restored back to the learned Dist. Collector, Pali for decision afresh in accordance with law. No order as to costs.