

**(1977) 09 RAJ CK 0013**

**In the Rajasthan High Court**

**Case No : Civil Writ No"s. 1901 and 1904 of 1975**

Prajapati Garh Nirman Samiti Ltd.

APPELLANT

Vs

The State and Another

RESPONDENT

**Date of Decision : 22-09-1977**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (1977) WLN 426**

**Hon'ble Judges : M.L. Jain, J**

**Bench : Single Bench**

**Final Decision : Allowed**

## **Judgement**

M.L. Jain, J.—The writ petitions NOS. 1901/75, 1904/75 and 1924/75 are being disposed of by this common order.

2. The facts of these petitions are identical. The petitioners purchased lands from Shri Gaj Singh, the Ex-Ruler of Jodhpur, for the construction of houses by registered sale-deeds as follows:

1. Petition No. 1901/75, 35242-00 sq. yds for Rs. 4 Lakhs by a registered sale-deed on 4-11-71.

2. Petition No. 1904/75, 25,200 sq. yards for Rs. 3,65000/- by a; registered sale-deed dated 4-11-71.

3. Petition No. 1924/75 1,81,818.00 sq. yards for Rs. 9,60,000/- by registered sale-deed dated 5-11-1971.

3. The land is comprised in Khasra No. 421 in the revenue record. A Gazette notification was issued on 13-8-64 u/s 7 of the Rajas ban Land Reforms and Acquisition of Land-owners Estates Act, 19,63 according to which the estates of all the land owners in Rajasthan vested in the State Government with effect from 1/9/1964 Notices u/s 9A of the said Act were issued on 19 11-1975 to the petitioners by the Collector, Jodhpur, that the transfers of the aforesaid lands ate

null and void and they shall deliver possession before 29-11-1975, or within 10 days of the receipt of the notice which ever is later, to the Sub-Divisional Officer, Jodhpur. One more notice appears to have been issued on 8-12-1975 by the Sub Divisional Officer, Jodhpur by which he appears to have been taken possession of the aforesaid lands by affixing a notice as required by Rule 8 of the Rajasthan Land Reforms and Acquisition of Landowners Estates Rules, 1964.

4. The petitioners contend that the land is not liable to acquisition under the said Act and they have prayed that an appropriate writ or order or direction directing the respondents to withdraw the aforesaid notices, to prohibit them from proceedings further in pursuance of the said notices and to quash the said notices, and to restore the possession to the petitioners, be issued.

5. The contention of the State Government is that the Ex-Ruler had no right to transfer the land which had by law vested in the State Government because it is covered by the definition of land given in the Act, and also because the land in dispute is agricultural land and is not an "Abadi" land.

6. I have heard arguments of the learned Counsel. The Rajasthan of Landowners" Estates Act, 1963 came into force on April 13, 1964. It was amended with retrospective effect by the Rajasthan Land Reforms and A question of Landowners" Estates (Amendment) Ordinance, 1975, which was replaced by an Act No. 15 of 75 of the same title which was published in Rajasthan Gazette Extra ordinary on March 26, 1975. Section 7 of the Act provides that the State Government may, for the purposes of carrying out agrarian reform, by notification in the official Gazette appoint a date for the acquisition of Landowners" states in the State and for their vesting in the State Government. As already stated the date so appointed is the 1st day of September, 1964. One consequence of such vesting as provided in Section 7-A of the Act, is that no transfer of the land made after the commencement of the Act and before the date of vesting shall be recognised for any purpose of the Act and such transfers made on or after the date of vesting shall be null and void. Further any agreement made by a landowner after the commencement of the Act, relating to the transfer of his estate, shall be null and void. Other consequences have been stated in detail in Section 8 of the Act. The main substance thereof is that the lands vest in the State Government free from all encumbrances and shall be utilised for the purpose of carrying out agrarian reform in accordance with the provisions of the Act. Section 9A of the Act enjoins upon the landowner and any person claiming through him to deliver possession of the estate and if he fails to do so, the Collector is entitled to recover possession in the prescribed manner.

7. Section 10 provides that open enclosures in possession of the landowner used for agricultural or domestic purposes, all private buildings, places of worship wells, trees included in any such enclosures or house sites, all groves, all private wells and buildings" all tanks used solely for irrigating the land shall continue to belong to or be held by such land owner subject in the case of tanks to the terms and conditions if any mentioned in the covenant. If any question arises whether

any property is of the nature referred to any Sub-section (1) it shall be referred to the Compensation Commissioner, who may after holding the prescribed enquiry may pass such orders thereon as he deems fit. Section 11A lays down that land shall be utilised for the promotion of agriculture or for the welfare of agriculture population to be settled on such land or for allotment to the landless persons, agriculturists & agricultural labour.

8. Now, according to the aforesaid provisions of this Act, what vests in the State Government and of which the landowner is directed to deliver possession is an estate. Section 2(b) & (g) define estate and landowner as follows:

(b) "Estate" means land or the right title or interest in land held by a landowner.

(g) "Landowner" means the ruler of a covenanting State in Rajasthan holding an estate under and in accordance with the settlement of his personal or private properties made in pursuance of the Central Government.

Section 2 (F) defines land as follows:

(f) "Land" means any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans and includes-

(a) tanks, lakes, ponds, rivers and water channels held for purposes of irrigation,

(b) surface of hills,

(c) landing grounds or strips, and

(d) Shikargah,

but, does not include forts, palaces, buildings plots, specified in the inventory.

Clause (d) defines "Inventory" as follows:

"(d)" Inventory "means the inventory of the private properties of the Ruler prepared in pursuance of Article XII of the covenant and finally approved by the Government of India.

9. Now, Shri Gaj Singh is an Ex. Ruler and therefore a landowner. The Schedule 1 of the Inventory of his private properties also specified, the properties which are his absolute property with rights of disposal. Item No. 1 (a) relating to Jodhpur is as follows:

(a) Umaid Bhawan Palace as per plan attached including the Chittar Tank.

A plan was attached to the inventory which contains the heading site plan of Umaid Bhawan Palace. Private Property of His Highness the Maharaj Sahib Bahadur, Jodhpur, is shown in the red. It is admitted that the land in dispute to which these writ petitions relate falls within the area bounded by the red line in the said site plan. It is, therefore, futile on the part of the State Government to

contend that the land though coveted by the site plan, is not part of the Palace as specified in the inventory. The State maintains that the Umaid Bhawan Palace has its own walled enclosure and further a long line of hills separates the land in dispute from the main Palace. The learned Dy. Government Advocate urged that what the Jaw excludes is the Palace and not all the lands which are shown in the site plan. The word "Palace " should be construed only to include the area of the Palace which is bounded by walls I do not see an force in this argument because the definition of land excludes the Palace as specified in the inventory and the inventory specifies the area of the Umaid Bhawan Palace as per plan attached & the attached plan includes the land in dispute. I am, therefore, unable to give the word "Palace" a restricted meaning as canvassed by the learned Dy. Government Advocate That being so, the disputed land falls outside the estate and has consequently not vested in the State Government.

10. The learned Dy. Government Advocate next contended that the land his been recorded as an agricultural land They have produced no record except the Khasra Girdwari and Jamabandi of Samvat 2030 to 2032 relating to Khasra No. 421 described as iM+r Since this is an agricultural lend, which also includes waste land, it vests under the law in the State Govt. What the definition of law excludes are only buildings and building plots. On the other hand, the learned Counsel for the petitioners submitted that the land in dispute is net an agricultural land, neither held nor let for purposes of agriculture or for purposes ancillary thereto because the record or the State Government shows it as iM+r and further because it is not occupied by cultivators of land, agricultural labourers and village artisans in order to be covered by the definition of land. He drew my attention to four document. One is a notification published in the Jodhpur Government Gazette dated February 10, 1934, at page 384. The notification is dated January 26, 1934. It says that the Development Department shall have control over the disposal of land for building sites and shall operate building regulations inter alia over the area within a radius of 3 miles from the Sojati Gate. The second document is a letter of the Assistant Secretary to the Government of Rajasthan, General Administration Department, dated 5-1-1972 addressed to the Secretary, Town Improvement Trust, Jodhpur, in which the question regarding the boundaries of the Jodhpur Palace is raised. The Assistant Secretary wrote to say that the desired information may be obtained from the Settlement Department. Ordinarily speaking, the land was not an agricultural land, subject to verification by the Settlement Department. The third is an order of the Tehsildar, Jodhpur, which he passed on 25-11-74 while dealing with the case of one Bahadur Singh s/ o Shri Jaganna h Singh, Rajput of Ratanada. Jodhpur, who has a house in a compound in 4? Bights in the same Khasra No. 421. The Tehsildar held that Shri Bahadur Singh was not in an illegal occupation of the land and could not be evicted u/s 91 of the Tenancy Act. In this order, the Tehsildar has also held that not only the area fell in the "Abadi Area" as envisaged in the notification of January 26, 1934, but it was a grant made by the then Ruler of Jodhpur in favour of Shri Bahadur Singh The four this a letter of which no date is given, but it

appears to have been issued by the Settlement Officer, Jodhpur to the Executive Engineer, Urban Improvement Trust, Jodhpur in reply to his letter dated 28-1-1975. The Settlement Officer stated that the plan was carefully perused, checked and tallied with corresponding old settlement record of Samvat 1979 together with the site plan of Unsaid Bhawan Palace which indicates the private property of His Highness the Maharaja Sahib Bahadur, Jodhpur duly verified on 12-11-1958 by the then Dy. Secretary, GAD and the Commissioner, Jodhpur Division, Jodhpur, wherein the said land is included in the premises of the Umaid Bhawan Palace. The Settlement Officer continues to add that the fact that this land had never been assessed to rent; that it never has been cultivated and that it is included by the Covenant within the Umaid Bhawan Palace is sufficient to show that it is "Abadi Land" and not agricultural land within the meaning and definition u/s 158 of the Rajasthan Land Revenue Act, 1956. The view expressed by the Government that this land does not appear to be agricultural land is fully established.

11. These documents clearly demonstrate that the land in dispute is not an agricultural land rather it forms part of the Abadi land. In the Revenue records, Khasra Nos. are allotted not only to agricultural plots but they are also allotted to Banjar land and to Abadi land as well. The copies of the Jama bandi & Girdawari filed by the State shows that the land is iM+r & does not carry any land revenue. It is, therefore, clear that the land in question being an Abadi land is not covered by the provisions of the Act. It appears as has been contended that the land in order that it vest in the State Government, should be an agricultural land. The amended long title of the Act states that it is an Act to provide for the acquisition of the estates of landowners and for other measures of agrarian reforms, removal of intermediaries, allotment of land to land less persons, and development of agriculture. If the acquired land is meant for allotment to agriculturists, then the land must be an agricultural land as indicated above. The land in question was not an agricultural land and if at all it was so at any time in the past, it long ago ceased to be so at least as early as in 1958, when according to the private property settlement, it was included in the Umaid Bhawan Palace premises.

12. The learned Dy. Government Advocate; then laid great stress on the provisions of Section 10 of the said Act. His contention is that what was excluded from vesting has been specified in Section 10 All private buildings, belonging to or held by the landowner and land appertaining to such building are exempted from the operation of the Act. All open enclosures in possession of the landowner used for agricultural or domestic purposes are also exempted. But since the land in question is not enclosed it is not immune from vested in the State Government. Moreover, the argument continues, if any question regarding the exempted property arises, then it is required to be decided by the Compensation Commissioner and this Court has no jurisdiction to deal with the matter. It is true that Section 10 mentions that inspite of the vesting certain properties shall continue to belong and be held by the landowner but then, this argument misses

the point that the petitioners are challenging the so called statutory vesting. Their contention is that no part of the Palace enclosed or otherwise shown in the inventory vests in the State Government. The learned Dy. Government Advocate then drew my attention to an order of the Collector, Jodhpur dated 10th December, 1975. It appears that the ex-Ruler of Jodhpur had filed a writ petition No. S.B. Civil Writ No. 1872/73 in this Court, claiming that Khasra Nos. 421, 424 & 426 do not fall within the definition of land given in the Act. The High Court directed that the matter should first to be decided by the Compensation Commissioner. The Collector, Jodhdur, refused to make a reference to the Compensation Commissioner, because the situation and constructor s coupled with the physical features of the land left no scope for any dispute about its nature. I do not know with what purpose the order of the Collector has been filed. If the Govt., relies upon this document, then it is obvious that they cannot make an argument that the matter does not fall within the jurisdiction of this Court but within the jurisdiction the Compensation Commissioner as the Collector himself did not consider it worth referring to the Compensation Commissioner and that being so, the only redress available to the petitioner is by way of a petition under Article 226 of the Constitution.

13. The result of the aforesaid discussion is that the land in dispute was not an agricultural land, on 1-9-64 & further, it is covered in the Palace as specified in the inventory which in turn has shown it by led boundary in the site plan attached with the inventory of private property of the ex-Ruler of Jodhpur. It is not liable to acquisition. The transfers are not invalid. It does not vest in the State Government. The Government of Rajasthan, therefore, is not entitled to take possession of the aforesaid land.

14. Consequently, I accept these writ petitions and direct that the impugned notices shall be and stand quashed and the possession purported to have been taken over by the Sub-Divisional Officer shall stand vacated.

15. There shall be no order as to costs.