
(2021) 01 RAJ CK 0242
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1018 Of 2021

Tara Ram Choudhary

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 0242

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

Bench : Division Bench

Advocate : V.R. Choudhary

Final Decision : Disposed Of

Judgement

1. This writ petition has been preferred by the petitioner seeking directions to the respondents to remove encroachment made over the ""Gochar land

comprising Khasra(s) No.1084 & 1036, ""Gair Mumkin Nadi (River)"" comprising Khasra No.933, and ""Gair Mumkin Rasta (Way) comprising 767,

alleged to be recorded in the revenue record of village Khaud, Panchayat Samiti Rani, Tehsil Rani, District Pali as Gochar Land, Gair Mumkin Nadi

and Gair Mumkin Rasta, respectively.

2. In Gulab Kothari vs. State of Rajasthan & Ors.(D.B.C.Writ Petition No.1554/04), this Court vide order dated 12.1.2017 issued directions to the

State Authorities to remove all the encroachments over the pasture land in the following terms:

197. We are of the considered opinion that keeping in view the mandate of the provisions of the Act of 1955 and the Rules made thereunder, the

preservation and development of the pasture land by the State Authorities is the rule and diversion of user thereof is an exception and therefore, the

power conferred upon the Collector under Rule 7 of the Rules of 1955, to change the classification of the pasture land should be exercised sparingly

only in the larger public interest and not so as to subserve the interest of any individual.

198. At this stage, it is to be noticed that in the Writ Petition No.5907/08, the petitioner has given the details of some of the orders passed by the JDA

converting the land set apart as pasture land in the rural areas of Jaipur Region but there is no details available in respect of the rural areas falling

within the Jodhpur Region, Ajmer Region and various districts of the State and therefore, before further dilation of the issue, it would be appropriate

that the directions are issued to the State to furnish the complete details regarding the availability of the pasture land in various districts of the State of

Rajasthan as on the date of commencement of the Act of 1955, the diversion of the user of the pasture land permitted after the commencement of the

Act of 1955, and the land set apart as pasture land after the commencement of the Act of 1955. The State should also furnish the district-wise details

of unauthorised occupation over the pasture land.

199. But in any case, pending consideration of the issue, as mandated by the Hon'ble Supreme Court in Jagpal Singh's case (supra), the indiscriminate

diversion of the pasture land for other purposes needs to be checked and any unauthorised occupation over the pasture land by unscrupulous persons

needs to be dealt with strictly." (emphasis added)

3. That apart, pending consideration of the said matter, the directions have been issued to the State Authorities in the following terms:

(xxviii) The State is directed to furnish complete details regarding availability of the pasture land in various districts of the State of Rajasthan as on the

date of commencement of the Act of 1955; the diversion of the user of the pasture land permitted after commencement of the Act of 1955 and the

land set apart as pasture land after commencement of the Act of 1955. The State shall also furnish the district wise details of unauthorised occupation

over the pasture land.

(xxix) Pending consideration of the issue with regard to the diversion of the pasture land for other uses by this court, the State Government is directed

to take appropriate steps to check and remove unauthorised occupation over the pasture land by unscrupulous persons in various villages of the State

forthwith."" (emphasis added).

4. In the matter of Gulab Kothari (supra), the Court has also directed the State Authorities to take effective steps for conservation and preservation of

natural resources i.e. rivers, and other water bodies. 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.

5. 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.

6. 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.

7. 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 petitioner

may approach the Public Land Protection Cell (PLPC) of District Pali 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 petitioner shall be considered by the PLPC in accordance with law.

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