HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 413/1991

1. The State of Rajasthan through the Secretary, Urban Development and Housing Department, Government of Rajasthan, Jaipur

2. The Land Acquisition Officer, Nagar Vikas Yojanayen, the Jaipur Development Authority, Jawaharlal Nehru Marg, Jaipur.

3. The Jaipur Development Authority, through its Secretary, Jawaharlal Nehru Marg, Jaipur.

----Appellant

Versus

1. Late Shri Triloki Nath Sahani, son of Shri Charan Das Sahani, resident of 662, Adarsh Nagar, Jaipur.

1.1 Smt. Rajkumari, widow of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur (deleted).

1.2 Mudit, son of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur.

1.3 Sanjay, son of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur.

1.4 Kamlesh, (deceased) daughter of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur through her legal representatives:

1.4.1 Chetanya Sabharwal, S/o Late Smt. Kamlesh Sabharwal, Aged about 42 years, R/o the Legend, Flat No. 604, Tower D3, Sector-57, Gurgaon-122011.

1.4.2 Tanuj Sabharwal, S/o Late Smt. Kamlesh Sabharwal, Aged about 40 years, R/o the Legend, Flat No. 604, Tower D3, Sector-57, Gurgaon-122011, Aged about 58 years, R/o 662, Adarsh

Nagar, Jaipur.

1.5 Neelam, daughter of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur.

1.6 Anu daughter of late Shri Triloki Nath Sahani, resident of 662, Adarsh Nagar, Jaipur.

----Respondents

For Appellant(s)	:	Mr. Vigyan Shah, AAG with Mr. Sankalp Vijay, Mr Yash Joshi & Mr. Naman Mishra Mr. Amit Kuri for JDA
For Respondent(s)	:	Mr. Ranveer Singh Mehta with Ms. Pallavi Mehta Mr. J.P. Goyal, Sr. Advocate with Ms. Sakshi Tiwari & Ms. Meenal Bhargava

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HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Judgment

Reportable

30/05/2025

1. The instant Civil Miscellaneous Appeal is preferred by the appellants aggrieved and dissatisfied from judgment dated 06.04.1990 in Land Acquisition Case No.18/1974 titled as **"T.N. Sahani Vs. The State of Rajasthan and Anr."**, passed by learned Civil Judge, Jaipur City, Jaipur, in a reference under Section 18 of the Land Acquisition Act, 1953.

2. The Land Acquisition Officer (Urban Improvement Schemes), Jaipur has forwarded a reference under Section 18 of Rajasthan Land Acquisition Act, 1953, (or under the Land

Acquisition Act, 1894) to the Court of Civil Judge in a matter arising out of notification dated 21.08.1969, 02.08.1971 and declaration dated 28.02.1973 and published in Rajasthan Gazette of 12.04.1973 regarding acquisition of land belongs to Khasra No.21, 22, total area 75 bigha 15 biswa. The Land Acquisition Officer (LAO) has not awarded any compensation under Section 11 of the Act for the land, structure, walls and trees etc., and rejected claim to award compensation. The order dated 11.03.1974 passed by the Land Acquisition Officer is reproduced as under:-

"11.03.1974 पैरोकार न्यास उपस्थित। दावेदार की ओर से कोई उपस्थित नहीं हुआ। हमने 3.30 पीएम तक प्रतीक्षा की। बहस पैरोकार सुनी। रेवेन्यू रिकॉर्ड देखा। ग्राम झालाना डूँगर के नामान्तरकरण संख्या 64 दिनांक 30.06.79 के अनुसार खसरा नं 21 रकबा 6 बीघा 15 बिस्वा तथा 22 रकबा 69 बीघा टीएन साहनी से खारिज होकर सिवाय चक हो गया है। अतः यह दोनों ही नंबरान सरकारी भूमि हो जाने के कारण इनके अवार्ड की आवश्यकता नहीं है। श्री टीएन साहनी इनमें हितचारी व्यक्ति नहीं माने जा सकते। उनकी दरख्वास्त दिनांक 21.05.73 खारिज की जाती है।

इन खसरों की लेटेस्ट पोजीशन अब निम्न प्रकार है।

खसरा नं 21	सिवाय चक	बीघा	बिस्वा
	उमराव देवी बेवा	4	15
	गुलाबचन्द जैन के नामान्तरकरण संख्या 89 दिनांक 27.10.72 के जरिये दिया गया	2	0
खसरा नं 22			
	मालवीया इंजीनियरिंग कालेज जरिये नामान्तरकरण सं 81 दिनांक 28.02.72	57	12
	सिवाय चक	11	5
		69	0

वास्ते
शिवचरण शर्मा"

3. Thereafter, respondent/Claimant T.N. Sahani (since dead) has filed an application dated 11.04.1974 to enhance/claim compensation of ₹91,76,760/- under Section 18 of the Land Acquisition Act with request to make reference to the Civil Court.

4. After receipt of reference, learned Civil Judge, Jaipur has framed following two issues on basis of dispute referred between the parties:-

> "1. क्या अवाप्त की गई भूमि के बारे में प्रार्थी कोई क्षतिपूर्ति पाने का अधिकारी है?
> 2. अवाप्त की गई भूमि की बाजारू कीमत क्या होनी चाहिए तथा प्रार्थी इस बारे में क्या क्षतिपूर्ति पाने का अधिकारी हैं?"

5. Learned Civil Judge has decided issue No.1 in following manner:-

> "प्रार्थी का कथन है कि भूमि खसरा नं.21 व 22 झालाना डूँगर का वह स्वामी है। यह भूमि उसने दिनांक 06.05.55 को झालाना डूँगर के जागीरदार से प्राप्त की थी। सन 79 में माननीय राजस्थान उच्च न्यायालय ने इस भूमि का स्वामी प्रार्थी को घोषित किया है । इस बारे में प्रार्थी ने राजस्थान उच्च न्यायालय द्वारा रिट याचिका क्रमांक 1085/79 और 1214/9 द्वारकादास अग्रवाल विरूद्ध राजस्थान राज्य, त्रिलोकीनाथ विरूद्ध राजस्थान राज्य– निर्णय दिनांक 18.10.79 की प्रमाणित प्रतिलिपि प्रस्तुत की है। इस निर्णय के अवलोकन से प्रकट होता है कि खसरा नं 21 और 22 के बारे में यह मत व्यक्त किया गया है कि जागीरदार झालाना डूँगर को उक्त भूमि प्रार्थी को अंतरित करने का अधिकार प्राप्त था और सन् 55 के बाद प्रार्थी इस भूमि का खातेदार बन गया। इस प्रकार प्रार्थी उक्त भूमि का स्वामी है। इस निर्णय के खण्डन में अप्रार्थी कोई तर्क प्रस्तुत नहीं कर पाया है। अत : यह विवाद्यक प्रार्थी के पक्ष में तथा अप्रार्थी के विरूद्ध निर्णित किया जाता है। "

6. The issue No.2 was decided by learned Civil Judge in favour of claimant (respondent) and determined the compensation in following manner:-

> "प्रार्थी का कथन हैं कि उसे अपनी अवाप्त भूमि के बारे में क्षतिपूर्ति रूपया 40/– प्रति वर्गगज की दर से मांग की है। उसकी इस प्रकरण में विवादग्रस्त भूमि सन् 69 में अवाप्त की गई थी। 60 बीघा 14 बिस्वा इस भूमि से संलग्न प्रार्थी की भूमि सन् 64 में अवाप्त की गई थी। उसकी भूमि से एक, दो किलोमीटर की दूरी पर स्थित

भूमि से विक्रय पत्र की प्रतिलिपि प्रदर्श 1 है। यह भूमि रामबाग सर्किल के पास है। प्रार्थी की भूमि यूनिर्वसिटी रोड पर बजाज नगर से संलग्न है। उसकी भूमि में से ही जवाहर लाल नेहरू मार्ग निकाला गया है। उसकी भूमि पर अब मालवीया इंजनियरिंग कॉलेज और सरस डेयरी, सिंचाई शोध संस्थान का निर्माण किया गया है। उसकी भूमि के पास ही महावीर उद्यान, खेतान पोलेटेकनिक, होटल क्लार्क आमेर, मालवीया नगर, बजाज नगर स्थित है। उसकी यह भूमि नगरपालिका की सीमा में भी है। उसने यह भी प्रकट किया है कि सन् 64 में अवाप्त उसकी भूमि के बारे में उच्चतम न्यायालय ने अपने निर्णय में बाजारू कीमत रूपया 12/– प्रति वर्गगज आंकी है। वर्तमान में उसकी भूमि की बाजारू कीमत रूपया 1500/– प्रति वर्गगज है।

इस प्रकार प्रार्थी के साक्ष्य के आधार पर उसका तर्क है कि उसकी भूमि की पोटेनशियल वेल्यू अत्यधिक है, उसकी भूमि की बाजारू कीमत आंकते समय इन सब तथ्यों पर विचार किया जाना चाहिए की उसकी भूमि अब कितनी विकसित हो चुकी है, उस पर कितने महत्वपूर्ण भवनों का निर्माण हो चुका है और उसकी इस भूमि का जयपुर नगर के विकास को देखते हुए कितना महत्व है। उसने सन् 64 में उसकी बात की ही भूमि की बाजारू कीमत उच्चतम न्यायालय द्वारा रूपया 12/– प्रति वर्गगज आंकने के आधार पर यह तर्क प्रस्तुत किया है कि उसे रूपया 40/– प्रति वर्गगज की दर से भी यदि सन 69 में उसकी भूमि की क्षतिपूर्ति दिलवाई जाती है, तो वह अधिक नहीं होगी।

प्रार्थी की भूमि खसरा नं.– 21 और 22 ग्राम झालाना डूँगर, धारा–4 भूमि अवाप्ति अधिनियम के अन्तर्गत दिनांक 21.08.69 को अधिसूचना जारी करते हुए अवाप्त की गई है, अतः इस भूमि की क्षतिपूर्ति दिलवाते समय इस भूमि की बाजारू कीमत दिनांक 21.08. 69 को ही आंकी जानी चाहिए। माननीय उच्चतम न्यायालय का जो निर्णय दिनांक 06.09.89 प्रार्थी ने प्रस्तुत किया है। सिविल अपील क्रमांक 3784/89 टीएन साहनी विरूद्ध राजस्थान राज्य, राजस्थान राज्य टीएन साहनी उसके अवलोकन से प्रकट होता है कि यह निर्णय भी प्रार्थी की भूमि खसरा नं. 22 और 68 ग्राम झालाना डूंगर से संबंधित है और इस निर्णय में दिनांक 30.04.64 को प्रार्थी की भूमि की बाजारू कीमत आंकते समय यह मत व्यक्त किया गया है कि यदि इस भूमि की बाजारू कीमत रूपया 12/– प्रति वर्गगज आंकी जावे तो भी वह अधिक नहीं होगी अर्थात कम से कम रूपया 12/– प्रति वर्गगज आंकी जा सकती हैं। अब प्रश्न यही है कि यदि दिनांक 30.04.64 को प्रार्थी की भूमि की बाजारू कीमत रूपया 12/– प्रति वर्गगज मानी जावे तो इसी भूमि की बाजारू कीमत दिनाक 21.08.69 को क्या होनी चाहिए! इस बारे में प्रार्थी ने एक विक्रय पत्र प्रदर्श–1 प्रस्तुत किया हैं जो कि दिनांक 18.07.65 को निष्पादित किया गया है। यह विक्रय पत्र लगभग 1066 वर्गगज की भूमि के बारे में निष्पादित किया गया है जो कि भवानी सिंह रोड, जयपुर पर स्थित है। यह भूमि रूपया 16000/– में विक्रय की गई हैं। अर्थात रूपया 16/– प्रति वर्गगज लगभग की दर से विक्रय की गई है। प्रार्थी ने यह भूमि उसकी भूमि से एक, दो की दर से विक्रय की गई है।

प्रार्थी ने भूमि उसकी भूमि से एक, दो किलोमीटर की दूरी पर स्थित होना बताया है। इस विक्रय के आधार पर प्रार्थी ने यह सिद्ध करने का प्रयत्न किया है कि जयपुर में सन 64 के बाद भूमि की बाजारू कीमत बढ़ी है। लेकिन भवानी सिंह मार्ग पर स्थित भूमि की स्थिति प्रार्थी की भूमि की स्थित के समान नहीं कही जा सकती, क्योंकि रामबाग सर्किल, मालवीया इंजिनियरिंग कालेज से एक, दो किलोमीटर दूर नहीं कहा जा सकता। रामबाग सर्किल से मालवीया इंजनियरिंग कालेज लगभग 4, 5 किलोमीटर दूर है रामबाग सर्किल के पास जयपुर नगर का विकास बहुत पूर्व से हो चुका था क्योंकि, रामबाग सर्किल पर ही रामबाग पैलेस, सन्तोकबा दुलर्भजी अस्पताल, मानसिंह स्टेडियम, विश्वविद्यालय कई वर्ष पूर्व ही बन चुके थे। अतः भवानीसिंह मार्ग पर स्थित भूमि की तुलना प्रार्थी की भूमि से किया जाना कठिन है। प्रार्थी का तर्क है कि सन 64 से 69 अर्थात् 5 वर्ष के बीच भूमि की बाजारू कीमतों में जो वृद्धि हुई है। उसका आंकलन न्यायालय भी कर सकती हैं और न्यायालय इस बारे में ज्यूडिशियल नोटिस भी ले सकती है।

शहरों में भूमि की बाजारू कीमत दिन प्रतिदिन बढ़ती जा रही है और इस दृष्टि से मेरे विचार में प्रार्थी की भूमि की बाजरू कीमत सन 69 में रूपया 40000/– प्रति बीघा आंकी जाना उचित हैं। यह दर मूलतः इस आधार पर निर्धारित किया जाना मैं उचित समझता हूं कि सन 64 में माननीय उच्चतम न्यायालय ने प्रार्थी की भूमि खसरा नं. 22 की बाजारू कीमत रूपया 36000/– प्रति बीघा लगभग आंकी थी।

यह विवाद्यक अंशतः प्रार्थी के पक्ष में निर्णित किया जाता है।"

7. The issue No.3 relating to relief has been decided in following manner:-

"विवाद्यक क्रमांक 3

उपर लिखित विवाद्यकों के निष्कर्ष के आधार पर प्रार्थी उसकी भूमि खसरा नं.– 21 व 22, कुल 75 बीघा 15 बिस्वा ग्राम झालाना डूंगर, सांगानेर, जयपुर के बारे में क्षतिपूर्ति रूपया 40000/– प्रति बीघा की दर से पाने का अधिकारी है। प्रार्थी इस भूमि की राशि पर दिनांक 21.08.69 से दिनांक 11.03.74 तक की अतिरिक्त राशि रूपया 12 प्रतिशत प्रतिवर्ष की दर से और पायेगा और भूमि की क्षतिपूर्ति की राशि पर रूपया 30/– प्रतिशत की दर से सोलेकेशियम भी पायेगा। इस निर्णय द्वारा प्रार्थी को जो राशि अवार्ड में दिलवाई गई राशि से अधिक प्राप्त होगी उस राशि पर वह दिनांक 11.03.74 से एक वर्ष तक की अवधि का ब्याज रूपया 9/– प्रतिशत प्रतिवर्ष की दर से पायेगाा और इस उपरांत पूर्व वसूली तक का ब्याज रूपया 15/– प्रतिशत प्रतिवर्ष की दर से पायेगा।

इस प्रकार यह निर्देश अंशतः प्रार्थी के पक्ष में निर्णित किया जाता है। प्रार्थी नियमानुसार इस निर्देश का व्यय भी पाने का अधिकारी होगा।"

8. Instant Civil Miscellaneous Appeal was heard, considered and disposed of on merits on 06.04.1999 by a Co-ordinate Bench with application under Order XLI Rule 27 of CPC. On earlier occasion by order dated 30.07.1997, application under Order VI Rule 17 was allowed and appellants were permitted to incorporate and raise additional grounds in appeal. A Co-ordinate Bench by order dated 06.04.1999 has dismissed the instant Misc. Appeal alongwith an Application under Order XLI Rule 27 of CPC, filed by appellants.

9. Present appellants (State of Rajasthan) have filed an SLP (Civil) No.7073/1999, converted into Civil Appeal No.5863/2000 before Hon'ble Supreme Court and disposed of on 12.10.2000. After setting aside the order dated 06.04.1999, Hon'ble Supreme Court has remitted back the Misc. Appeal for decision afresh with the following order:-

> "Leave is granted.
> The State of Rajasthan is in appeal against the order of the High Court of Judicature at Rajasthan passed on an application filed under Order 41 Rule 27 C.P.C. in SBCMA413/91. We are not adverting to the merits of the case because the matter has to be decided by the High Courts. Suffice it is mention that the said application under Order 41 Rule 27 CPC as well as another application under Order 6 Rule 17 praying for amendment of the grounds of appeal were filed by the appellant in the said appeal before the High Court.
>
> The application filed under Order 6 Rule 17 came to be dismissed. Taking that aspect into consideration, the High Court dismissed the application under Order 41 Rule 27 also in its view, were the amendment application of the appellant seeking amendment of the Memorandum of Appeal in respect of the documents sought to be placed on records was disallowed, "how can the said documents be

required for pronouncing the judgment or for any other substantial cause".

It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah Vs. Seetharama Reddy [AIR 1963 SC 1526] pointed out the scope of unamended provision of Order 41 Rule 27 (c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of the record as it was, so, it could not be required additional evidence to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in more satisfactory manner. This is entirely for the Court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the Court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) C.P.C. can be invoked. So that application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.

In view of the fact that the appeal arises out of acquisition proceedings initiated in 1969 we expect the High Court to give priority and dispose of the appeal and the application expeditiously preferably within a period of three months from the date of receipt of a copy of this order. The appeal is accordingly allowed. No costs."

10. In view of directions of Hon'ble Supreme Court dated 12.10.2000, we are considering the instant Misc. Appeal

along with application under Order XLI Rule 27 of CPC on merits.

11. Before considering the arguments and material referred by both the parties, it is appropriate to briefly mention the history line of the dispute, as it involves lots of issues such as succession right, abolition of Jagirdari, resumption of land after the Agrarian Reforms, Tenancy Rights (Khatedari Rights), land acquisition of already acquired land (resumed land by Government by payment of compensation to erstwhile Jagirdar) etc. Thus, on basis of written submissions of both the parties, particularly based on list of dates to show events related to present matter in dispute, we are reproducing list of events as under :-

"Details of land in dispute" Khasra No.21 measuring 4 Bighas 12 Biswas, and Khasra No.22 measuring 57 Bighas 17 Biswas, known as Jhalana Doongari "Jagir land".	
Date	**Subject/Particular Event**
27.05.1886	After death of Ram Kumar Matmi sanctioned in name of Ganesh Narain.
13.06.1912	After death of Sheo Prasad, Matmi was sanctioned in name of Ganesh Narain
	After death of Ganesh Narain his only son Roop Narain applied for Matmi which was objected by Purshottam Das claiming possession and ownership upon 496 bigas out of 662 bighas of total land.
22.09.1942	"Mehekma Kahas" i.e. revenue department of state directed Purshottam to file civil suit and directed revenue commissioner to decide question of "MATMI" concerning right of Roop Narain.
08.02.1943	Revenue Commissioner recommended "Mehekma Khas" to sanction "Matmi" in favour of Roop Narain
29.04.1943	Purshottam filled civil suit in the court of civil judge Amer-Dausa for declaration of their rights on 496 Bighas of land in village Jhalana Doongar

16.11.1943	"Mehekma Khas" ordered Matmi in favour of Roop Narain for villages in state grant including Jhalana Doongri for which it was mentioned that same will be opened after decision in civil suit by Purshottam.
18.01.1944	Revenue Commissioner wrote letter to "Mehekma Khas" recommending "Zapti" till matter is finally decided by Civil Court.
26.05.1944	Mehekma Khas order "Zapti" on 662 bighas and 'ton' of rupees 500 per year till decision of civil suit.
28.07.1947	Civil suit filed by Purshottam was dismissed by learned civil Court.
30.11.1948	Appeal of Purshottam was allowed to the extent of ownership and possession of 269 Bigha, 11 biswa 4 vishwansis and 10 kachwancis.
	Appeals were preferred by both the parties before the Hon'ble High Court
16.02.1952	The Rajasthan Land Reforms and Resumption of Jagirdars Act, 1952 (hereinafter "Jagir Act" or "Jagir Act 1952") came into Force
24.11.1952	Roop Narain son of Ganesh Narain expired.
22.11.1952	Application by Bhagvati Narain son Roop Narain to open Matami in his favour
12.01.1953	Bhagvati Narain died issue less before Matami could be decided in his favour
27.01.1953	Brij Mohan – minor son of Roop Narain through his mother submitted application for opening Matmi in his favour.
25.10.1953	Compromise in civil suit between Purshottam and Brij Mohan through his guardians to the effect that Brij Mohan agreed to give 50 Bigha more land in favour of Purshottam "beside 269 bigha allowed by appellate Court" and mutually agreed that Matami of whole of the land Jhalana Donger (662 bighas) may be opened in favour of Brij Mohan.
10.02.1955	Appeal pending before the Hon'ble High Court came to be dismissed in default as advocates for both the parties pleaded no instruction -Meaning thereby Appellate court order in absence of any modification by Hon'ble High Court attained finality and therefore, Purshottam became owner of Approx. 296 bighas of land
06.05.1955	Brij Mohan through his guardian rented 190 bighas and 1 biswa of land to Dwaraka Das on rent of Rs.4 per bigha. Details of Khasra:

	• Old Khasra No.57- new Khasra No.61, • Old Khasra No.61 new Khasra No.65, • Old Khasra No.78-new Khasra No.95 • Old Khasra No.79-new Khasra No.96) Brij Mohan through his guardian rented 188 bighas and 8 biswa of land to Trilok Nath on rent of Rs.4 per bigha Details of Khasra: • Old Khasra no 20 – new khasra no.22 • Old Khasra no 64 – new khasra no.68 • Old khasra no 90 – new khasra no.21
15.10.1955	Rajasthan Tenancy Act, 1955 came into force
22.05.1958	Collector Jaipur sanctioned Matmi in favour of Brij Mohan of whole land of village Jhalana Doongar.
01.11.1958	Land of Jhalana Doongar was resumed by govt under Jagir act 1952.
04.01.1960	Application moved by Trilok Nath before settlement officer challenging entry of "Shivai Chak" in land records and prayer for deletion.
03.07.1962	Similar application submitted before Tehsildar Sanganer.
05.01.1963	Patwari makes report of encroachment on the land Jhalana Doongar
21.01.1963	Section 91 notice alleging trespass on Govt. land was issued under Rajasthan Land Revenue Act, 1894 by Tehsildar to Trilok Nath and Dwarka Das.
12.02.1964	Tehsildar did not treat Triloknath as trespasser based upon the pattas issued by mafidar (State Grantee) and admitted as Tenant.
	Appeal by state govt to collector which was referred to additional collector.
19.04.1965	Additional Collector reversed the order of Tehsildar.
15.12.1967	Revenue Appellate Authority (RAA) set aside the order of additional collector and restored the order of Tehsildar.
09.07.1968	Single Judge Board of Revenue (BOR) allowed appeal of state govt and set the order of RAA.
07.04.1969	Division Bench rejected the appeal.
D.B.W.P. 1085/1969 and 1214/1969	Dwarka Das preferred writ petition before the Division Bench of Rajasthan High Court challenging the judgment and order dated 07.04.1969 and 09.07.1968.
18.10.1979	The Division Bench considering the aspect that under Section 91 proceedings the tittle could not have been considered, and allowed the writ

	petition and quashed the judgment of Board of Revenue 07.04.1969 and 09.07.1968 and directed the respondent to not interfere "with possession of the petitioner on such portion of the land in which they may have been actual possession of the land and which may not have been resumed as year".

Submissions of the Parties:

12. Learned Additional Advocate General (AAG) while relying upon list of events has submitted that the dispute pertains to land Khasra No.21 measuring 4 Bigha 12 Biswa and Khasra No.22 measuring 57 bigha and 17 biswa known as "jagir land". He further submitted that after death of Ram Kumar, Matmi was sanctioned in the name of Shiv Prasad and after death of Shiv Prasad, Mahtmi was sanctioned in the name of Ganesh and after death of Ganesh Narayan his son Roop Narayan had applied for Matmi which was objected to by Purshotam claiming possession and ownership upon 496 bighas of land out of 662 bighas of total land. He further submitted that on 22.09.1942, the Revenue Department of the State had directed Purshotam to file a civil suit and directed Revenue Commissioner to decide the question of Matmi concerning right of Roop Narayan and later, Revenue Commissioner had recommended sanction of Matmi in favour of Roop Narayan. He further submitted that after that Purshotam filed a suit in the Court of Civil Judge Amer, Dausa for declaration of his right on 496 Bighas of land in Village Jhalana Dungar, and he during pendency of this suit Revenue Commissioner has recommended zapti till decision

of Civil Court and same was executed and land was zapat on order of Mehakma Khas. He further submitted that the civil suit filed by Purshotam was dismissed and in appeal, Purshotam was allowed ownership and possession to the extent of 269 bigha 11 biswa and 4 biswansis and 10 kashwansis.

13. Learned AAG also submitted that the parties have filed appeal before Hon'ble High Court and during pendency of appeal, The Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, (hereinafter referred to as 'the Act of 1952') came into force and afterwards Roop Narayan son of Ganesh Narayan expired and an application was filed by Bhagawati Narayan son of Roop Narayan to open Matmi in his favour but before decision of Mahatmi, Bhagwati Narayan died issue-less and minor son of Roop Narayan through his mother applied for Matmi. He further submitted that a compromise in Civil Suit between Purshotam and Brij Mohan through his guardian was executed and both have mutually agreed for opening of Matmi in favour of Brij Mohan. Later in 1955, an appeal filed before the High Court and same was dismissed in default as the Lawyars pleaded no instruction. As a result of this, Purshotum has become owner of 296 bighas of land. He further submitted that Brij Mohan through his guardian rented 190 bighas and 1 biswa of land to Dwarka Dass on rent of ₹4/- per Bigha and further rented 188 Bigha and 8 biswa to Triloki Nath (T.N. Sahni) on rent of ₹4/- per bigha in year 1955, including Khasra Nos.21 & 22.

He also submitted that thereafter, the Rajasthan Tenancy Act, 1955 came into force on 15.10.1955. He submitted that on 22.05.1958, the Collector, Jaipur sanctioned Matmi in favour of Brij Mohan for whole land of village Jhalana Dungar and this land was resumed by government on 01.11.1958 under the Act of 1952 and land acquired status of Government land.

14. Learned Additional Advocate General has further submitted that in the year 1960, Triloki Nath (original applicant) has challenged the entry of 'Sivai Chak' before the Settlement Officer in the land records and prayed for deletion and in 1962, a similar application was also submitted to Tehsildar, Sanganer. He also submitted that on report of Patwari about encroachment of land, a notice of Section 91 of Rajasthan Land Revenue act, 1894 was issued by Tehsildar to Triloki Nath and Dwarka Dass. He further submitted that Tehsildar in a proceeding under Section 91 had not treated Triloki Nath as trespasser on basis of Patta of Mafidar (State Guarantee) and admitted him as a tenant. But on an appeal, the Additional Collector has reversed the order of Tehsildar. He further submitted that the order of Additional Collector was challenged before the Revenue Appellate Authority and the same was set aside but the State has challenged the order before the Board of Revenue which set aside the order of RAA. He further submitted that aggrieved from order of Single Bench of Board of Revenue, an appeal was preferred before the Division Bench and same was dismissed. He also

submitted that Dwarka Dass and T.N. Sahni have preferred a writ petition before Division Bench to challenge the judgment and order of learned Single Bench and Division Bench of Board of Revenue by filing DB Writ Petition No.1085/1969 and 1214/1969 but considering the scope of Section 91 of Rajasthan Land Revenue Act, Hon'ble Division Bench partially allowed the writ petition and directed respondents not to interfere with possession of the petitioner(s) on such portion of land in which they may have been in actual possession of land which may have not been resumed as yet. He emphasized on order dated 18.10.1979 and submitted that the land in question was resumed by Government under the Act of 1952 and since 01.11.1958 is is Government land. He further submitted that the order of resumption of land on 01.11.1958 was never challenged by applicant (beneficiary) or any other person by filing appropriate proceeding before the Court of law and this order has attained finality. He further submitted that after resumption, adequate compensation was already paid prior to acquisition of land under misconception.

15. He further submitted that for development purposes, a notification under Section 4 of Land Acquisition Act, 1894 was issued for acquisition of land of Khasra Nos.21 and 22 in year 1969 and later, a notification under Section 6 was issued in 1971 and in 1973, claims were invited after publication of notification in Newspaper. He further submitted that applicant Triloki Nath Sahni has submitted

claim under Section 9 before the Land Acquisition Officer (LAO). But on 11.03.1974, LAO has refused to pass any award holding that the land is a Sawai Chak land (Government land). He further submitted that a reference under Section 18 is filed and on 06.04.1990 considering the judgment of Division Bench dated 18.10.1979, the Civil Court has allowed the reference and computed compensation @ ₹40,000/- per bigha along with solacium with 30% and interest @ 15% per annum. He further submitted that this appeal is preferred by State to challenge the award dated 06.04.1990 passed by the Civil Court on multiple grounds including restoration of claim petition without notice to State and passing of an award without opportunity of hearing to the State.

16. Learned AAG has further submitted that an application under Order XLI Rule 27 CPC is also filed for placing additional documents on record. He submitted that annexure-1 is an application filed by jagirdar for compensation under the Act of 1952 at the time of resumption of possession of villages, taken away from him in order to fortify the contention that the land in question was already resumed by the State in year 1958 and thereafter neither tittle nor possession left with anyone and no compensation is payable on Govt. land. He further referred Annexure 2 and submitted that copy of an application filed by jagirdar seeking compensation under the Act of 1952 is also filed to show that the case of this applicant is based on fraud and misrepresentation and

concocted facts which clearly show that by playing fraud the applicant has managed to get order dated 06.04.1990 in his favour. He also referred annexure 3 dated 02.02.1966 and submitted that Jagir Commissioner has passed an award for compensation in favour of Zagirdar Brij Mohan about land in question and an appeal is filed before the Board of Revenue and matter was remanded to the Jagir Commissioner. He further submitted that Annexure 4 is the order dated 08.05.1972 about the compensation passed by Jagir Commissioner after remand by the Board of Revenue. He also referred Annexure 5 and 6 dated 18.09.1972 and 25.05.1973 and submitted that these are final assessment of compensation under the Act of 1952. He also submitted that once land is resumed and the State has taken possession, then no one is entitled for any compensation under the Land Acquisition Act as the Government land cannot be re-acquired and third party is not entitled for compensation.

17. Learned AAG has further submitted Annexure-1 to Annexure-6 along with application under Order XLI Rule 27 CPC and has submitted that these are official and public documents and they are within knowledge of applicant claimant T.N. Sahni but deliberately he concealed material facts from the Civil Court.

18. Learned AAG also submitted that after registration of proceedings by Civil Court, notice was never served to the State rather with connivance of the counsel for U.I.T. service upon State was presumed by the Court. He further

submitted despite his objection about service, no document is filed to show that service was ever effected upon the State of Rajasthan. He also submitted that due to negligence of claimant T.N. Sahni, the reference was dismissed in default and without effecting service upon the State of Rajasthan, the reference was restored and no service was effected thereafter. He further submitted that if a notice of restoration proceedings was served upon State, then the State would have submitted these documents before the Civil Court, and the State is prevented from submitting these documents, not require any formal proof as they are judgments or orders passed by a competent authority (public servant) under the law. He also submitted that a party which concealed the material and obtained an order by playing fraud, is liable to be thrown out of the Court. He also suggested that if this Hon'ble Court thinks it proper then it may direct institution of criminal proceeding against the persons including respondents responsible for playing fraud with the State. He also submitted that a public document is not required to be proved as they are directly admissible in the evidence. He further submitted that these documents are not denied by the respondents-claimant as no rebutal is filed to show that these documents are fake and false.

19. Learned AAG has further referred the proceedings before the Land Acquisition Officer (LAO) and submitted that the claimant voluntarily remained absent and he has not submitted any document or evidence to adjudicate his claim

by Land Acquisition Officer which clearly shows that the process as prescribed under the Land Acquisition Act for determination of compensation is not pressed and pursued by claimant as he failed to substantiate his proof to claim compensation from Collector as prescribed under Section 9 of the Act of 1894. He also referred to the reference under Section 18 and submitted that when the reference was forwarded by the Land Acquisition Officer to the Civil Court then it was mentioned that the claimant is not entitled to any compensation and in such an eventuality, the Civil Court was duty bound to determine the entitlement of claimant but here in this case, the Civil Court has not determined the entitlement of claimant.

20. He submitted that only on basis of order dated 18.10.1979 in D.B. Writ Petition Nos.1085/1969 and 1214/1969, the claim was decided in favour of claimant which is contrary to record as the order itself indicates that after resumption of land by the Government on 16.02.1952, no land remains in possession of claimant and as per order of Hon’ble Division Bench the possession of petitioner is protected only on land, which was found in possession of claimant. He submitted that no evidence is produced on record to show actual possession of the land. He further submitted that the Civil Court has casually and summarily decided the reference as there is no evidence of claimant on record to show possession on the land particularly, when a specific order was passed by the Division Bench on 18.10.1979.

21. Learned AAG has further submitted that the order pertains to effect of resumption under the Act of 1952 and after the resumption no land remains in possession of any Jagirdar or tenant of jagirdar and no tenant or any person claiming through Khatedar have any right to claim any compensation from the Government. He submitted that no khatedari right existed after the Act of 1952 coming into force and after resumption on 01.11.1958, no right remains to seek compensation on land already acquired by the State. He also submitted that the Civil Court has ignored the effect of resumption under the Act of 1952 as it has failed to call for record from the Land Acquisition Officer before deciding the reference. He also submitted that once land is resumed by the State and compensation is paid to the Jagirdar, then there is no occasion to pay compensation for second time from State Exchequer. He submitted that the order dated 18.10.1979 is not helpful for this claimant as same was decided with regard to notice under Section 91 of Rajasthan Land Revenue Act and not with regard to the Act of 1952 or Tenancy Right under the Rajasthan Tenancy Act, 1955. He further submitted that the Civil Court is required to adjudicate on all issues but there is no material on record to adjudicate these issues as on date of filing of reference under Section 18, the claimant has no right whatsoever to claim tenancy or compensation.

22. He further submitted that after Rajasthan Tenancy Act, 1955 coming into force, no tenancy rights were accrued to

claimant under Section 15 as land was already under process of resumption and the claimant has failed to show recognisition of his right by the Land Acquisition Officer. He further submitted that the order of the Division Bench is applicable subject to evidence and material about actual possession of land and not on basis of paper claim but the Civil Court has not only misconstrued the judgment of Division Bench in writ petition No.1085/1969 and 1214/1969 but it has passed an order closing its eyes.

23. He submitted that this claimant has played a serious fraud with the system and it requires a criminal investigation either by State Agency or by CBI which would in fact bring truth and reveal correct situation and same is necessary to protect resources of the State. He further referred judgment in cases of **Jaipur Development Authority vs Mahesh Sharma & Anr : (2010) 9 SCC 782, Sharda Devi vs State Of Bihar & Anr. : 2003(3) SCC 128, Satluj Jal Vidyut Nigam Ltd. Vs Raj Kumar Rajinder Singh(D)Thru LRs and Ors. : (2019) 14 SCC 449**, **Takur Amar Singh Ji Vs. State of Rajasthan and Ors. : AIR 1955 SC 504, Wekta Reddy Vs Peti Reddy : 1962 SCC OnLine SC 320, Commissioner of Income Tax Vs. Sun Engineering Works P. Ltd.: (1992) 4 SCC 363, K.Lubna vs Beevi : (2020) 2 SCC 524** and **Uttaradi Mutt vs Raghavendra Swamy Mutt : (2018) 10 SCC 484** to buttress his contention that documents are required to be taken on record and should be read in support of the

arguments advanced by him and also the legal effect of the proceedings conducted parallelly but prior to reference under Section 18 of Land Acquisition Act, 1894.

24. Learned AAG has further referred judgment in case of **Vijay Kumar and Ors. Vs. The Jaipur Development Authority and Ors. : S.B. Civil Writ Petition No.1963/2002** decided on 05.02.2018 by a Co-ordinate Bench of this Court and submitted that on basis of the forged documents, certain rights were claimed in writ petitions and all were dismissed by a Co-ordinate Bench which clearly reflect that to avoid adjudication in present civil appeal, a parallel proceeding was adopted by respondents or their assignees or other persons.

25. Learned AAG has further submitted that in the instant case reference under Section 18 was made in year 1974, and later the reference was dismissed for non-prosecution but without serving a notice, the reference was restored by learned Civil Judge and proceeded to decide after passing an ex-parte order against present appellant. He submitted that the entire record is before this Hon’ble Court and the record reveals that a manipulated service was effected upon the counsel of the State and latter an affidavit was procured from the counsel by the claimant in the instant proceeding to show that the State was served a notice and proceeding was within knowledge of State. He submitted that earlier there was UIT in Jaipur which was later converted to JDA. He also submitted that Jaipur Development Authority (JDA) and the

State Government are two different functionaries and notice is required to be served upon both. He submitted that in order to adopt reply of UIT or JDA, by State it is necessary that State authorise them by an order to adopt the reply on behalf of the State. He further referred the process and submitted that if a land is acquired by State for development purpose then compensation has to be paid by State not by UIT or JDA. He also submitted that if the acquisition proceedings are initiated by JDA or UIT, then the compensation is paid out of fund allocated to JDA or UIT, but in the instant case State has initiated the process. He further referred the proceedings adopted by the Civil Judge and submitted that no judicial Officer can adopt such a clandestine procedure where the principle of natural justice were ignored while adjudicating the reference in favor of claimant. At last, he submitted that the law over the point is quite settled that a person who has not approached the Court with clean hands, then he is not entitled to any relief, and a party, who failed to stand on his own legs cannot take advantage of weakness of other party and seek relief from the Civil Court. He also submitted that if, material facts are concealed or insufficiently pleaded then same cannot be considered as proved against the State.

26. Learned AAG has placed reliance upon judgments as referred by him and raised following issues for consideration by this Court:-

I. Whether the land which was resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, for which compensation was paid to Jagirdar, can be acquired under the Land Acquisition Act, 1894 even when it already vested with State government or resumption?

II. Whether on resumption of land vide notification in Gazette of Rajasthan dated 01.11.1958 even T.N. Sahani lost all his right, interest and title over the resumed land by effect of section 22(1)(a) & (b) of Jagir Act?

III. Whether Jagirdari rights ceased to exist on death of Ganesh Narain?

IV. Whether T.N. Sahani can avail Khatedari rights through Brijmohan when Brijmohan was not the owner of 269 bigha land for which the decree which was passed in favour of Purshottam by appellate Court on 30.11.1948 attained finality due to dismissal of appeal by the High Court for non-prosecution?

V. Whether the judgment dated 18.09.1979 by Division Bench in Appeal No.1085/69 and 1214/1969 holds the precedential value on the issues for determination in the present case, wherein the challenge has been made to the right of T.N. Sahani to receive compensation under the

Land Acquisition Act when land in question was already resumed under Jagir Act, 1952?

VI Whether substantial question of law can be raised at any stage of the matter?

VII What was the effect of reference under Section 18 of Land Acquisition Act 1894 and can the Court decide the matter of title therein?

VIII. Whether documents can be taken on record at appellate stage under Order 41 Rule 27(b) for proper disposal of the matter?

27. Aforesaid contentions were supported by learned counsel appearing for JDA and he specifically relied upon judgment in case of **Neela Ganga Bai Vs. State of Karnataka : 1990 (2) RRR 31 = 1990 (3) SCC 617** and submitted that in any land acquisition proceedings if no notice has been served then in a reference no enhancement can be made.

28. Learned counsel appearing on behalf of lead respondent (legal heirs of deceased T.N. Sahani) has vehemently opposed the contentions of learned AAG and learned counsel appearing for JDA. He submitted that the effect and consequence of resumption were already considered by Hon'ble Supreme Court in case of **Amar Singh Vs. State of Rajasthan : 1955 RLW (SC) 273** and Division Bench of this Hon'ble Court in order dated 18.10.1979 (supra). He submitted that the purpose of the Act of 1952 is well explained by object and reasons as mentioned in the Act itself and interpreted by Hon'ble Supreme Court. He further

submitted that the claimant T.N. Sahani has nothing to do with rights of jagirdar as he was granted patta by jagirdar and was cultivating land in question as tenant, defined in Section 2(q) of the Act of 1952. He further referred judgment in cases of **Deepa Vs. State of Rajasthan : (1996) 1 SCC 612**, **Dattatraya @ Prakash Vs. Krishna Rao @ Lal Sahab Baxi through LRs : (1993) 1 SCC (suppl.) 32** and **Tara Vs. State of Rajasthan (DB Civil Writ Petition No.185/2001) (Raj.)** and submitted that the respondent has paid rent to the Jagirdar and on date of coming into force of land reforms law, the respondent was a tenant on jagir land and his rights are protected by the law. He submitted that unless the rights of tenant are foreclosed by operation of any law the rights of claimant are not extinguished. He further submitted that after making payment of settled rent to jagirdar, claimant T.N. Sahni has acquired full rights as tenant on land in question and he is person interested on date of notification under Sections 4 and 6 of the Land Acquisition Act and entitled to get compensation from the State upon acquisition of land. He further submitted that all these grounds and rights were considered by Hon'ble Division Bench of this Court in Writ Petition No.1214/1969 and after the judgment dated 18.10.1979, the appellant State has no right to object the claim and entitlement of T.N. Sahni.

29. He further submitted that as a person interested, the claimant has filed his claim before Land Acquisition officer

and Land Acquisition Officer knowing fully well and without opportunity of hearing has dismissed the claim but made a reference under Section 18 to the Civil Court. He also submitted that the State Machinery acting in haste after coming into force of the Rajasthan Tenancy Act 1955 and the Rajasthan Land Revenue Act, 1956, has recorded the land as 'Siwai Chak' and unnecessary issued a notice under Section 91 of Land Revenue Act, which was challenged by the claimant and after losing before the Revenue Board and same was challenged before this Hon'ble Court and the Division Bench of this Hon'ble Court has settled the dust by deciding the claim of this claimant. He relied upon judgment dated 18.10.1979 of the Division Bench of this Hon'ble Court (supra) and submitted that after the judgment, the land in question has to be mutated (recorded) in the name of T.N. Sahni as he is the khatedar tenant after the judgment of the Division Bench. He submitted that neither the UIT nor the State has any right to deny the rightful entitlement and claim of this claimant respondent.

30. He further referred the record and submitted that even LAO has passed an order in favour of other similar placed persons and they all were given compensation by LAO and also by Civil Court. He also submitted that in a similarly placed and identical case, the claimant has travelled up to Hon'ble Supreme Court and Hon'ble Supreme Court has enhanced the compensation in favour of the present petitioner. He further submitted that as the tiller of the soil the claimant is

entitled to compensation on basis of Patta issued by Jagirdar as same is a rightful claim of the claimant to seek possession of land acquired by the State under the Land Acquisition Act. He further submitted that after decision by the Division Bench of this Hon'ble Court, the Civil Court is only required to adjudicate upon issues and on basis of evidence of claimant, the reference was decided in favour of respondent, and there is no ground of interference in the impugned order.

31. Learned counsel has further referred list of dates and events till disposal of reference by Civil Court and submitted that all doubts with regard to title, possession and rights of T.N. Sahni were decided by judgment dated 18.10.1979 and based on this judgment, the Reference Court has passed an award in favour of the respondent and same is a legal award, which cannot be challenged on the grounds raised by learned AAG. He submitted that once judgment dated 18.10.1979, passed by the Division Bench has attained finality, then the State has no authority to raise grounds that the land has been resumed under the Act of 1952 and further a compensation has been paid by the State. He submitted that if State has paid any wrong compensation then it has nothing to do with the rights of respondent which has to be decided under the Land Acquisition Act, 1894. He also submitted that the land acquisition in the instant case was initiated in year 1969 and on date of initiation of acquisition proceedings respondent T.N. Sahani was tiller of

soil/tenant and he was person interested and same is established from the material on record before the Land Acquisition Officer and also before the Civil Court. He submitted that in similarly placed and identical cases awards were passed and compensation was paid but the case of present respondent is contested by the State as if respondent has filed the case without any basis.

32. He also submitted that issue No.1 was framed with regard to right, title and interest of respondent and same was decided by the referral Court in favour of respondent and there is no perversity in the order. He also referred order dated 05.11.1985 as upheld by Hon'ble Supreme Court and submitted that in a subsequent land acquisition proceedings it is not necessary to deal with the issue in detail as the issue has already been decided and same has attained finality. He further submitted that after judgment dated 18.10.1979, the respondent is entitled to receive compensation and the referral Court has rightly decided issue No.1 in faovur of respondent as after coming into force Rajasthan Tenancy Act 1955 as a tiller of soil the respondent T.N. Sahani has become statutory tenant under the Tenancy Act. He also submitted that the issue of Jagirdar, Japti and Matmi were already decided in separate proceedings and same cannot be reopened by State by arguing the matter in relation of Jagirdar, zapti and Matmi. He also submitted that by virtue of Section 15 of Rajasthan Tenancy Act, the respondent has become tenant and is entitled to get

khatedari right and this was considered by Hon'ble Supreme Court in case of **Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors : (2019) 8 SCC 416**. He submitted that as a Khatedar Tenant, the respondent is entitled for compensation and the Court below has rightly awarded compensation in favour of respondent, therefore, the State has no authority or right to pursue the instant appeal.

33. Learned counsel has further placed reliance upon judgment in case of **Mahadev Bajirao Patil Vs. State of Maharashtra & Ors. : (2005) 7 SCC 440** and submitted that even if no compensation is granted to respondent-tenant T.N. Sahani by Land Acquisition Officer then same has to be considered as 'zero award' and such reference is maintainable before the Civil Court. He further submitted that in the instant case it was duty of the Land Acquisition Officer to decide the claim and entitlement of respondent but instead of deciding interest and entitlement of land acquired, the LAO has dismissed the claim which has to be considered as zero award and a reference is maintainable under Section 18 of the Act of 1894 from the zero award. He submitted that in such a situation, a reference can be made and same is maintainable.

34. Learned counsel has further referred judgment in cases of **Union of India and Anr. Vs. K.C. Sharma & Co. & Ors. : (2020) 15 SCC 209** and **H.S. Goutham Vs. Rama Murthy and Anr. : (2021) 5 SCC 241** and submitted that learned

AAG has vehemently argued the matter on fraud but neither fraud is pleaded in any of the pleading of appellant nor it has been proved by the State that respondent has committed any fraud. He submitted that mere arguing a matter on basis of fraud is not sufficient rather it is necessary that the State must plead and prove allegation of fraud with specific averment. He further submitted that learned AAG has advanced arguments without any substance and same has to be considered as an obstruction against the respondent-tenant.

35. Learned counsel has further placed reliance upon judgments in cases of **Ishwar Dutt Vs. Land Acquistion Collector & Anr. : (2005) 7 SCC 190, Jethmull Bhojraj Vs. State of Bihar : 1995 Supp (4) SCC 255, Kaushik Cooperative Building Society Vs. N. Paravathamma & Ors. :(2017) 13 SCC 138, Ramchandra Daggur Sonavane (Dead) by LRs and Ors. Vs. Vithu Hira Mahar (Dead) by LRs and Ors. : (2009) 10 SCC 273** and submitted that the issues relating to matmi, zapti and resumption of Jagir including right of tenant were raised before the Division Bench of this Hon’ble Court in a writ petition filed by respondent-claimant T.N. Sahani and by judgment dated 18.10.1979 all these issues were decided in favour of respondent T.N. Sahani. Thus, the findings have become res judicata against the appellants. He also submitted that first acquisition proceeding against same respondent for different parcel of land was initiated in 1964, wherein no such plea was raised

by appellants and the matter traveled up to Hon'ble Supreme Court where the compensation was enhanced in favour of respondent-claimant. He submitted that raising such an issue in the instant civil misc. appeal is contrary to principle of res judicata and not permissible under the law. He also submitted that learned AAG has unnecessarily argued a matter at length, having no concern with present case. He further submitted that once a issue has been decided by the Division Bench then same cannot be reopened by a Single Judge.

36. Learned counsel has further referred judgment dated 18.10.1979 in S.B. Civil Writ Petition No.1214/1969 and relying upon certain paragraphs has submitted that the judgments dated 09.07.1968 and 07.04.1969 passed by the Board of Revenue were set aside and finally it was held that respondent T.N. Sahani has acquired Khatadari right as a tenant and he is entitled for possession and mutation of land claimed by him. He further submitted that it is not open for the State to challenge all such issues before this Court as the binding effect of DB Judgment was considered by Hon'ble Supreme Court in cases of **Suderjas Kanyalal Bhathija Vs. Collector, Thane : AIR 1991 SC 1893** and **Lily Thomus Vs. Union of India : (2000) 6 SCC 244** and **Krishna Kumar Narula Etc. Vs. The State of Jammu and Kashmir & Ors. : AIR 1967 SC 1368**. He further submitted that a D.B. Civil Writ Petition No.8789/2018 is also filed in respect of Khasra No.21 measuring 4 Bigha 3 Biswa

and Khara No.22, 8 Bigha 8 Biswa land as by virtue of Section 24(2) of the Act of 2013, the proceedings have lapsed with regard to land not acquired by the State or UIT. He further submitted that all doubts were cleared before deciding the reference by learned Civil Judge on impugned order before deciding reference dated 06.04.1990. He referred multiple proceedings instituted prior to decision of reference and submitted that all these proceedings clearly reflect that the issues raised by learned AAG were already decided between the parties and they have attained finality.

37. Learned counsel has further referred the proceedings adopted before the Civil Court and submitted that the State and UIT were jointly represented by a single counsel initially by Mr. Madan Mohan Sharma and later by Mr. R.D. Purohit. He submitted that Mr. N.K. Sethi, the then Secretary, UIT was Officer in Charge on behalf of appellant-State and also UIT. He submitted that Mr. R.D. Purohit has filed an affidavit in respect of conduct of appellants to show that State was well aware about the reference proceedings which was instituted and restored after dismissal in default. He submitted that service of notice was effected upon the State and also upon UIT and same is evident from the affidavit of Mr. R.D. Purohit and also admission on behalf of UIT in the instant appeal. He further referred the order passed by a Co-ordinate Bench on an application under Order VI Rule 17 of CPC and also submitted that on multiple occasions, this issue was raised whether the State is served a notice or not and

this issue was clarified from the record that notice was served upon State and State was well aware about proceeding before the Civil Court.

38. Learned counsel has further placed reliance upon his written submissions and submitted that the Civil Court has passed the judgment after considering the legality and procedural aspect of the matter and there is no perversity or illegality, sufficient to set aside the award merely on technical ground. At last, he submitted that the respondent is running from pillar to post to get compensation from the State but the State is avoiding and delaying the compensation by instituting unnecessary litigation against the respondent.

39. Learned counsel Mr. R.S. Mehta has relied upon the judgments in the case of **Amar Singh Vs. State of Rajasthan : 1955 RLW Pg.273 Para 36; Deepa Vs. State of Rajasthan _ 1996 Vol.1 SCC Pg.612; Dattataraya Vs. Krishna Rao- 1993 Suppl. Vol.1 SCC Pg.32; Tara Vs. State of Rajasthan – DBCWP No.185/2001 decided on 15.07.2015 Para 9, 13, 16, 21 and 25 and 26; Bir Singh Vs. State of Rajasthan – 2000 Vol.3 SCC Pg.652; Pioneer Urban Land & Infrastructure Limited & Another Vs. Union of India & Others – (2019) 8 SCC Pg. 416; JDA Vs. Mahesh Sharma-2010 Vol. 9 SCC Pg. 782; Vijay Kumar Sharma Vs. JDA & Ors. SBCWP No.1963/2002 decided on 05.02.2018; Vijay Kumar Sharma & Ors. Vs. JDA & Ors. -DB Special Appeal (Writ) No.279/2018 decided on**

02.07.2018; State of Rajasthan Vs. T.N. Sawhney & Ors. SBC Misc. Appeal No.413/1991 – decided on 17.10.2013 (Order was passed on the impleadment application; Mahadev Bajirao Patil Vs. State of Maharashtra & Ors. (2005) 7 SCC 440; G.H. Grant Dr. (in all the Appeals) Vs. State of Bihar (in all the Appeals) – (1965) 3 SCR 576: AIR 1966 SC 237; Union of India & Another Vs. K.C. Sharma & Co. & Ors. -2020 Vol.15 SCC Pg.209; H.S. Goutham Vs. Rama Murthy & Another – 2021 Vol.5 SCC Pg.241; Ishwar Dutt Vs. Land Acquisition Collector & Another -(2005) 7 SCC 190; Jethmull Bhojraj Vs. State of Bihar – 1995 Supp (4) SCC 255; Kaushik Cooperative Building Society Vs. N. Parvathamma & Ors. - (2017) 13 SCC Pg. 138-Para 12, 13, 26; Ramchandra Daggu Sonavane (Dead) by LRS and Others Vs. Vithu Hira Mahar (Dead) by LRs and Ors. -(2009) 10 SCC 273 Para 46 to 48, 51, 53 to 56; State of Madras Vs. A.N. Shanmugha Mudallar & Ors. decided on 04.03.1976; Makhan Lal Vs. Secretary of State – AIR 1934 Allahabad Pg.260 (Full Bench); Matthali & Ors. Vs. Sushila & Ors. D.B. Spl. Appeal (Writ) No.292/2018 decided on 18.08.2018; Sunderjas Kanyalal Bhathija Vs. Collector, Thane, AIR 1991 SC, Pg. 1893 Para 17; Lily Thomus Vs. Union of India -(2000) Vol. 6 SCC Pg.244; and Krishan Kumar Narula and another Vs. State of Jammu & Kashmir and others – AIR 1967 SC Pg. 1368, and submitted that all

defence and arguments advanced by learned AAG are already considered by the Division Bench of this Hon'ble Court while deciding writ petitions on 18.10.1979 and appellants are stopped from raising same grounds in the instant appeal.

40. Mr. J.P. Goyal, learned Senior Advocate appearing on behalf of one of the legal heirs has adopted arguments of Mr. R.S. Mehta and submitted that the land in question was purchased from jagirdar and a patta was issued by Jagirdar and then it is a valid title, which was passed upon T.N. Sahani. He also submitted that after coming into force of Rajasthan Tenancy Act, T.N. Sahani has become Khatedar and after order dated 18.10.1979 by the Division Bench of this Hon'ble Court, T.N. Sahani has become person interested to claim compensation under the Land Acquisition Act, 1894. He further referred judgment in case of **Khazan Singh (dead) By LRs. Vs. Union of India : (2002) 2 SCC 242** and submitted that a reference under Section 18 of the Land Acquisition Act cannot be dismissed in default by a Civil Court and the same is required to be adjudicated on merits under the law and dismissal of reference in default by Civil Court is contrary to provisions of law and the restoration is inevitable. He also submitted that the State is itself remained negligent in attaining the case as it has not appointed any lawyer to represent the State other than representing UIT. He submitted that if a reference is dismissed due to erroneous interpretation by the Court then

same may be restored without any notice and trial Court has committed no error if it has restored the reference and passed an award. He mainly placed reliance upon the judgment of Division Bench dated 18.10.1979 and submitted that all doubts were cleared and the respondent was rightly awarded compensation by the Referal Court under Section 18 of the Act.

41. One of the counsel appearing on behalf of respondent No.1/4/1 has submitted the written submission and we have taken note of written submissions submitted by him but no oral arguments were advanced by him.

42. Heard learned AAG, learned counsel for main contesting respondents and learned Senior Advocate appearing on behalf of one of the respondent. Also considered the written submissions filed by both the parties and also the judgments of Hon'ble Supreme Court, this Court and other High Courts as referred during course of arguments.

43. The brief facts giving rise to the instant Civil Miscellaneous Appeal are described in following list of dates:-

Date	**Particular**
21.08.1969	The notification under Section 4 of Land Acquisition Act issued for acquisition of 6 Bigha 156 Biswa land of Khasra No.21 and 69 Bigha Land of Khasra No.22
02.08.1971	Notification under Section 6 was issued
04.05.1973	A notification issued in daily newspaper inviting claims from interested persons
21.05.1973	Triloki Nath Sahni (T.N. Sahni) (present claimant-respondent) (since dead) has submitted claim under Section 9 before the Land Acquisition Officer (LAO)
11.03.1974	LAO has dismissed the claim of T.N. Sahni holding

	that (i) the application for seeking claim dismissed as no one present to pursue with proof (It means T.N. Sahni has not submitted any proof to claim compensation from LAO). (ii) The application was dismissed holding that the land is a Swai Chak (Government Land)
11.04.1974	T.N. Sahni has filed application under Section 18 of Land Acquisition Act.
16.08.1974	LAO has referred matter under Section 18 to the Civil Judge
18.10.1979	A Division Bench of Rajasthan High Court has passed order in a D.B. Civil Writ Petition No.1085/1969 and 1214/1969 in following manner:- "We, therefore, allow both these writ petitions and quash the judgments of the Board of Revenue dated 9th July, 1968 and 7th April, 1969. The respondents are further directed not to interfere with the possession of the petitioners on such portions of the land on which they may be in actual possession at present and which may not have been resumed as yet. The petitioners shall get their costs from the respondents."
16.02.1990	Oral statement of PW-1 T.N. Sahni was recorded by learned Civil Judge. One document Sale-deed Ex.-1 was exhibited (No other document exhibited in his evidence).
06.04.1990	Learned Civil Judge, Jaipur has passed an award in favour of claimant T.N. Sahni holding that T.N. Sahni is owner and title holder of land in question relating to Khasra No.21 and 22.
	Hence, this appeal.

44. We have gone through the entire record including all judgments and the documents referred and relied by both the parties and also perused the written submission from word to word. For the sake of brevity, we are not referring

entire set of judgments as referred by both the parties, otherwise, it would unnecessarily burden this judgment.

45. In case of **Uttaradi Mutt vs Raghavendra Swamy Mutt** (2018) 10 SCC 484, a three Judge Bench judgment of Hon'ble Supreme Court while considering the judgment on Order 41 Rule 27 CPC has allowed the application by which the additional documents were filed by the appellant. The law over the point is well settled that production of additional documents at the appellate stage is permissible when such documents have material bearing on the issue involved in the suit and in determining the rights of the parties.

46. <u>Firstly, we are dealing with issue relating to fraud:</u>

47. Hon'ble Supreme Court in large number of cases has held that fraud vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and if a party makes representations, which he knows to be false or incomplete, then it is also an act of fraud. A collusion or conspiracy with a view to deprive or gain deceitfully is also viewed as a fraud.

48. Hon'ble Supreme Court in case of **S.P Chengalvaraya Naidu Vs. Jagannath : (1994) 1 SCC 1**, **Indian Bank vs M/S Satyam Fibres (India} Pvt.Ltd : (1996) 5 SCC 550, Ram Chandra Singh vs Savitri Devi And Ors : 2003(8) SCC 319** has clearly laid down that fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. The fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. The fraud is also defined as an intentional perversion of truth. The principle of law is considered even by Hon'ble Supreme Court in case of **Commissioner Of Customs(Preventive) vs M/S. Aafloat Textiles (I) Pvt. Ltd. & Ors : 2009 INSC 194**.

49. In case of **Union of India & Another Vs. K.C. Sharma & Co. & Ors.** (supra) and **H.S. Goutham Vs. Rama Murthy & Another** (supra)**,** Hon'ble Supreme Court has considered judgment in case of **S.P Chengalvaraya Naidu Vs. Jagannath** (supra) and held that any specific pleading of relevant particulars is not necessary to show how fraud is committed upon Court. But in case to set aside a consent decree on ground of fraud, a prayer is made then pleadings specific and particulars are necessary to establish the fraud and misrepresentation in obtaining consent decree in question. The judgments in case of **Union of India Vs. K.C.**

Sharma & Co. and Ors. (supra) makes it clear that it is not necessary for the party to plead and prove fraud by way of pleading and evidence when it is established from record and conduct of the party. But in case of **H.S. Goutham Vs. Rama Murthy & Another** (surpa), Hon'ble Supreme Court has considered fraud in obtaining a consent decree but herein there is no consent decree rather an ex-parte order passed by learned Civil Judge.

50. Learned AAG has specifically referred the fraud committed by T.N. Sahni while pursuing his reference under Section 18 before the Civil Judge, particularly, when he has not pursued his claim under Section 9 of the Act before the LAO. Moreover, the counsel appearing for respondent has vehemently opposed the ground only on one contention that fraud is required to be pleaded and proved. After considering the judgments as referred by both the parties on this issue we can certainly say that any judgment can be challenged even in appeal, if same is obtained by playing fraud or misrepresentation. The legality of any order is tested by the Appellate Court and this is first appellate stage from impugned order therefore, we disagree with the arguments of learned counsel for the respondent. If it is found that the impugned order is obtained by playing fraud or misrepresentation or concealment of facts then certainly the impugned order is non est in eyes of law.

Ownership/title of land acquired by State:

51. In case of **G.H. Grant Vs. State of Bihar** (supra) also relied and referred by learned counsel for the respondent Hon'ble Supreme Court has clearly laid down that if there is any statutory transfer by law then there is no ground to award any compensation, secondly by land acquisition of resumed land. The statutory transfer includes resumption under the Act of 1952 and award of compensation of land acquired by notification as mentioned hereinabove. The principle of law is cleared on the point that if a land has already been resumed and vested in the State then same cannot be re-acquired for any purpose and no compensation, whatsoever can be awarded either under Section 9 or 18 of the Act of 1894.

52. In case of **Vijay Kumar Vs. JDA and Ors.** (supra), a Co-ordinate Bench of this Court while considering a bunch of writ petitions filed in relation to land in question has recorded the factual position as under:-

> "(1) the land in dispute remained initially subject matter of the proceedings under Section 91 of the Act of 1956. The first order on it was passed in the year 1963. Therein, final order was passed by the Division Bench of this Court in DB Civil Writ Petition Nos.1214/1969 and 1085/1969. Therein, the order was made subject to resumption of the land, if any.
>
> (2) the land in question remained subject matter of resumption under the Act of 1952 and an order of resumption of land was passed by Jagir Commissioner. The Jagirdar claimed compensation and rehabilitation grant, for which also, an order was passed. The compensation was thereupon paid to Jagirdar. The land in dispute thus resumed under the Act of 1952.

(3) the proceedings for acquisition of land, so resumed in the State Government, was taken up. No award was, however, passed finding it to be a government land but the Patta holder – Shri TN Sahani sought a reference and the civil court awarded compensation taking it to be a case of acquisition of land. A Civil Miscellaneous Appeal against the said order is pending before the High Court at the instant of JDA, though, at one point of time, it was decided, but thereupon, on a review petition by the co-operative society, the appeal was revived and is pending consideration.

(4) the petitioners are Patta holders from National Housing Cooperative Society, who entered into an agreement to sale with Shri TN Sahani for the land in question. No sale deed was executed. A suit for specific performance is pending in the civil court where an injunction application has been dismissed by a detailed order. The petitioners cannot have better rights than the society.

(5) the facts given above show that the land was resumed pursuant to the Act of 1952 and, otherwise, the order of civil court shows its acquisition thus becomes a government land.

(6) this Court in the case of Maha Laxmi Grah Nirman Sahakari Samiti Ltd. (supra) gave directions for use of 200 ft. wide strip of land along with JLN Marg for institutional purposes.

(7) the petitioners have made application for regularisation of land pursuant to the Circulars issued by the Government from time to time and have relied on the Circular dated 06th January, 2016. The Regularisation under the said circular cannot be claimed as a matter of right and, otherwise, looking to the restriction imposed therein, the prayer cannot be granted otherwise it would go against the circular itself. It is for the reason that a litigation pertaining to acquisition of land is pending before this Court and has not been withdrawn to seek regularisation. It is moreso when, now the litigation is pending due to review petition by the society and its acceptance.

(8) for the land in dispute, compensation has been paid twice. Firstly, on resumption of land under the Act of 1952. The compensation was paid to the Jagirdar. It was thereupon pursuant to the order of civil court determining compensation treating acquisition of land and has been received by the then

> land holder Shri T.N. Sahani. Even after payment of compensation, now regularisation is sougth and, if it is allowed, would be at meager amount, as against the auction to fetch huge amount thus prayer of the petitioners to regularise the land is even at the cost of public exchequer for a land, for which, compensation has been paid twice."

53. A Co-ordinate Bench has observed that for land in dispute compensation has been paid twice firstly on resumption of land under the Act of 1952 wherein the Jagirdar has received the compensation, secondly by land acquisition of resumed land (instant appeal is filed from award by the Civil Judge).

54. This issue is neither placed before the Civil Court nor Civil Court has considered the real facts of the case. Thereafter, when the land was acquired and acquisition notices were published then T.N. Sahni (respondent-claimant) (since dead) has filed a reference for compensation and we are dealing with the second attempt for seeking compensation as the Civil Court has already passed an order in favour of respondent-claimant. But the facts observed by a Co-ordinate Bench clearly indicates that this land was resumed by Act of 1952 and compensation was paid to the Jagirdar. The finding recorded by a Co-ordinate Bench on 05.02.2018 is not set aside by the Division Bench. In such an eventuality, the judgment of Hon'ble Supreme Court in case of **G.H. Grant Vs. State of Bihar** (supra) is applicable and by virtue of resumption or statutory transfer under the law the land has already resumed by State, way before commencement of acquisition proceeding and it no longer

remained private land after resumption and award of compensation to erstwhile Jagirdar. Aforementioned judgment was further considered by Hon'ble Supreme Court in case of **May George vs Special Tahsildar & Ors : (2010) 13 SCC 98** wherein Hon'ble Supreme Court has held that once an award was made and possession has been taken, land stood vested with State free from all encumbrances.

The provision relating to land acquisition.

55. The proceeding under the land acquisition is initiated by the State after primary notification under Section 4 and a subsequent notification under Section 6. A general notice or specific notice is sent or published to person interested as defined under Section 2(d) of the Act. Section 11 to 14 prescribed for enquiry and award by the Collector (LAO). Section 23 provides for matters to be considered whereas Section 24 prescribes the subjects required to be neglected. Similarly Section 44A imposes a restriction on transfer of land acquired.

56. The scheme of the Land Acquisition Act clearly indicates that primarily it is duty of Collector to hold inquiry and pass an award, whether it is a zero award or award in terms of compensation. In the instant case, the claimant-respondent has filed an application without any material proof before the land acquisition officer and same was dismissed in default. It indicate that the respondent claimant has not pursued his application before the Collector or LAO which means for the

first time on oath evidence was given before the Civil Court. Section 18 provides for reference and a reference can only be decided in accordance with the provision of law. A Civil Court is not under obligation to decide the issue from the beginning and just decide a title of claimant as an owner of land. The duty casted upon the Civil Court has to be exercised in accordance with law. The Section 18 of the Act is reproduced as under:-

> **"18. Reference to Court**. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.
>
> (2) The application shall state the grounds on which objection to the award is taken:
>
> Provided that every such application shall be made-
>
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

57. Herein, it is apparent on record that the respondent-applicant has not made any efforts before the LAO/Collector to decide his application of compensation on merits. It is also evident that the respondent claimant remained absent from the proceeding before LAO and noticing absence of claimant, LAO considering that the land has been resumed under the

Act of 1952 and it is a Government land, has rejected the application on merits and also on default, but for all purposes, LAO has forwarded the reference under Section 18 of the Act. The Civil Court is bound by provisions under Section 18 and it cannot travel beyond the scope of the proceedings referred before it.

Discussions on issues raised before the Court

58. Both the parties have submitted list of dates and after compiling them, dates/events of main are reproduced as under:-

Date	Act
21.08.1969	Notification under Section 4 of Land Accusation Act issued for accusation of 6 bigha 15 biswa in Khasra No.21 and 69 bigha land in Khasra No.22
02.08.1971	Notification under Section 6 of Land Accusation Act issued
04.05.1973	Notification issued in daily newspaper rajdodh inviting claims under accusation
21.05.1973	Triloknath submitted claim under sec 9 before the land accusation officer
11.3.1974	LAO rejected application of T.N. Sahni and didn’t passed award holding the land to be “Savai Chak” (Government Land).
1974	A reference proceedings forwarded under Section 18 of Land Acquisition Act.
18.10.1979	The Division Bench allowed the writ petitions and quashed the judgment of board of revenue 9 July 1968 and 7 April 1969 and directed the respondent to not interfere with possession of the petitioner on such portion of the land in which they may have been actual possession of the land and which may not been resumed as yet.
06.04.1990	Considering the judgment of Hon’ble division bench, the reference proceedings were allowed by computing compensation at ₹40,000/- per bigha along with soliciam with 30 per cent and interest at 15% per annum.

59. Admittedly, Land Acquisition proceedings were initiated by notification of 21.08.1969 and on date of notification the land was already resumed by State by virtue of Act of 1952. On 21.08.1969, the land in question was not in the name of T.N. Sahni (claimant) or any of predecessor from whom he acquired interest. The facts clearly suggest that there was a title dispute and no record is produced to show ownership on 21.08.1969. The list of dates suggest that except challenge in D.B. Writ Petition No.1214/1969, no other proceedings whatsoever is filed by T.N. Sahni to declare title of land. At no point of time, the resumption of land by operation of Act of 1952 was challenged by claimant T.N. Sahni. It means that the order dated 18.10.1979 is only order on basis of which T.N. Sahni is claiming his right, title and interest. Not a single document is produced to show that after coming in force of the Rajasthan Tenancy Act, 1955. The claimant T.N. Sahni ever acquired tenancy (khatedari) right and after non-recognizition of his right, he ever filed a revenue suit for declaration of tenancy (khatedari) by virtue of operation of Section 15 of the Act of 1955.

60. The order dated 18.10.1979 in Writ Petition No.1214/1969 clearly indicate that respondents (appellant-herein) have vehemently opposed the writ petition not only on strength of resumption of land but also on ground that the land in question is Sivai Chak (Government Land) and same has been allotted with delivery of possession. The relevant

paragraph indicating stand of the Government of Rajasthan (present appellants) is reproduced as under:-

> "The respondents have filed a reply and have taken the plea that out of Khasra No.21 land measuring 2 Bighas have already been allotted to Smt. Umrao Devi wife of Gulabchand vide government order dated 18th October, 1972 and the said allottee has already taken over possession of the said land. Possession of land measuring 1 Bigha 5 Biswas has been delivered to the Urban Improvement Trust Vide Government order dated 17th September, 1975 in connection with its allotment to 'Rajasthan Patrika'. Out of the remaining land of Khasra No.21 a road has been constructed on a portion measuring 3 Bighas 2 Biswas and thus only 8 Biswas of land is lying vacant. Out of Khasra No.22, 15 Bighas 1 Biswa of land was allotted to the Malviya Regional Engineering College, Jaipur vide Government order dated 27th July, 1966 and 42 Bighas 11 Biswas vide Government order dated 27th July, 1967. The remaining 11 Bighas 8 Biswas of land is shown in the revenue record in the name of Dairy Development Corporation of Rajasthan. The possession of the land allotted to the Malviya Regional Engineering College has been handed over to them. Out of Khasra No.67, land measuring 126 Bighas 4 Biswas was allotted to the Malviya Regional Engineering College vide Government order dated 6th November, 1969, and possession has also been handed over to them. The land of Khasra No.68 is also in possession of the Malviya Regional Engineering College having been allotted to it vide Government order dated 27th July, 1966. Similarly out of Khasra No.61 land measuring 40 Bighas 10 Biswas and 43 Bighas 15 Biswas has already been allotted to the Malviya Regional Engineering College vide Government orders dated 12th August, 1964 and 27th July, 1966 respectively. Only 5 Biswas of land, recorded as 'Sivai Chak', is at present lying vacant. Land of Khasra No.65 measuring 64 Bighas has been allotted to the Malviya Regional Engineering College, vide Government order dated 27th July,

> 1966 and is in their possession. Land of Khasra No.95 measuring 14 Bighas 16 Biswas and land of Khasra No.96 measuring 24 Bighas 15 Biswas have also been allotted to Malviya Regional Engineering College, vide Government order dated 29th August, 1968 and 27th July, 1967 respectively. The possession has been taken by the Malviya Regional Engineering College, on the entire land of Khasra No.95 but the possession of the land Khasra No.96 has not been taken by Malviya Regional Engineering College, due to certain encroachments by some persons other than the petitioner. It is, therefore, prayed that as the petitioners do not hold possession over any portions of the land in dispute, these petitions for writ, order, or direction not to interfere with the possession of the petitioners and also for quashing the orders of the Board of Revenue directing the taking of eviction proceedings under Section 91 of the Land Revenue Act has become futile and infructuous."

61. Aforementioned facts clearly indicate that not a single inch of land was left with T.N. Sahni after said allotment by State of Rajasthan when the writ petition was decided on 18.10.1979. Since land acquisition proceedings were already concluded in year 1973-74 and 5 years after the conclusion of the proceedings, the order dated 18.10.1979 was passed by the Division Bench of this Court and that too in purely guarded language. The operative portion of order is reproduced as under:-

> ***"We, therefore, allow both these writ petitions and quash the judgments of the Board of Revenue dated 9th July, 1968 and 7th April, 1969. The respondents are further directed not to interfere with the possession of the petitioners on such portions of the land on which they may be in actual possession at present and which may not have been resumed***

as yet. The petitioners shall get their costs from the respondents."

62. The order clearly indicated that the Division Bench has neither declared any Khatedari right in favour of T.N. Sahni nor specified area of possession, at the time of order. Not a single document is placed on record to show that after resumption of land under the Act of 1952, how much land is left in possession of T.N. Sahni. The Civil Court has not decided area in actual possession of T.N. Sahni. Moreover, there is no evidence or statement about possession by T.N. Sahni in his deposition. It also indicate that T.N. Sahni, has claimed his right and interest only on basis of order of the Division Bench dated 18.10.1979 (supra).

63. Learned Civil Judge while deciding issue No.1 has only considered order dated 18.10.1979 (supra) and read and understood the order, as if a title has been declared in favour of T.N. Sahni. Learned Civil Judge has declared T.N. Sahni as owner of land without any document on record. We are reproducing findings on issue No.1 as under:-

> "प्रार्थी का कथन है कि भूमि खसरा नं.21 व 22 झालाना डूँगर का वह स्वामी है। यह भूमि उसने दिनांक 06.05.55 को झालाना डूँगर के जागीरदार से प्राप्त की थी। सन 79 में माननीय राजस्थान उच्च न्यायालय ने इस भूमि का स्वामी प्रार्थी को घोषित किया है । इस बारे में प्रार्थी ने राजस्थान उच्च न्यायालय द्वारा रिट याचिका क्रमांक 1085/79 और 1214/79–
>
> द्वारकादास अग्रवाल विरूद्ध राजस्थान राज्य, त्रिलोकीनाथ विरूद्ध राजस्थान राज्य– निर्णय दिनांक 18.10.79 की प्रमाणित प्रतिलिपि प्रस्तुत की है। इस निर्णय के अवलोकन से प्रकट होता है कि खसरा नं 21 और 22 के बारे में यह मत व्यक्त किया गया है कि जागीरदार झालाना डूँगर को उक्त भूमि प्रार्थी को अंतरित करने का अधिकार प्राप्त था और सन् 55 के बाद प्रार्थी इस भूमि का खातेदार बन गया। इस प्रकार प्रार्थी उक्त भूमि का स्वामी है। इस निर्णय के खण्डन में अप्रार्थी कोई तर्क प्रस्तुत नहीं कर पाया है। अतः यह विवाद्यक प्रार्थी के पक्ष में तथा अप्रार्थी के विरूद्ध निर्णित किया जाता है।"

64. In case of **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs. and others : (2015) 13 SCC 132**, Hon'ble Supreme Court has laid down that rules of procedure are intended to be a handmaid to the administration of justice and a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. In case of **Pandit Ishwardas vs State Of Madhya Pradesh And Ors : (1979) 4 SCC 163**, Hon'ble Supreme Court has permitted amendment to the pleadings at the stage of appeal on the ground that there is no prohibition at appellate stage.

65. It is settled position of law that when there is any dispute with regard to title or inheritance of any right, then to establish ownership or title over the property or to clarify or to settle dispute, it is necessary for the parties whose title is under cloud, to file a suit for declaratory relief before proper forum. Here in this case, no declaratory suit was filed by the respondent-claimant T.N. Sahni during his lifetime to declare title over the land. The order dated 18.10.1979 clearly indicate that the Division Bench of this Court has only protected the possession of land which was in the possession of T.N. Sahni on date of order. It is also evident that the Division Bench has not declared Khatedari right of T.N. Sahni. Moreover, the presumption of Khatedari rights under the Rajasthan Tenancy Act has to be in accordance with Rajasthan Tenancy Act and not on basis of assumption as

concluded by the Civil Court while deciding issue No.1. It clearly indicate that learned Civil Judge has failed to understand the basics of civil law or revenue law while deciding the issue No.1, which is not only painful but quite surprising that in the most cryptic and cursory manner, without any document, the title was declared in favour of T.N. Sahni.

66. In case of **Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors : (2008) 4 SCC 594,** which referred and relied in case of **Kayalulla Parambath Moidu Haji vs Namboodiyil Vinodan** and **T.V. Ramakrishna Reddy vs M. Mallappa & Anr. : 2021 SCC OnLine SC 675**, Hon'ble Supreme Court has held that:

> *(a) Where a doubt is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a doubt, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*
>
> *(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and*

substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

67. Aforementioned judgment was relied and referred in large number of cases and it is settled position of law that when there is a simple and straight forwarded matter then the Court may decide any issue without any declaratory relief but where matter involves complicated question of facts and legality relating to title, the Court will relegate parties to remedy by way of comprehensive suit for declaration of title and without declaration of title, the Court will refrain from giving a relief to any of the party.

68. Here in this case, the material on record clearly indicates that the claim application filed before Collector (LAO) by T.N. Sahni was dismissed on ground of non-prosecution but while deciding the claim the Collector (LAO) held that the land in question is Savai Chak (Government Land). The reference by LAO also annexed with the order dated 11.03.1974, which is sufficient to communicate to the Civil Court that the land in question was resumed under the Act of 1952 and same is recorded as Government Land. Therefore, the duty of learned Civil Judge was to inquire into the question of title in very specific manner but not in cursory or cryptic manner. When a land is acquired by State and any payment is made as compensation then certainly it is duty of the Court to consider that it is tax payer’s money and we are custodian of the public, having a great responsibility to decide justly.

69. Here in this case, the important aspect which we have noticed from the record is that just before coming into force

of the Rajasthan Tenancy Act, 1955. T.N. Sahni has procured a patta from Jagirdar (erstwhile land owner) whose Jagir was already in process of resumption under the Act of 1952 and admittedly, this patta was executed after coming into force of the Act of 1952. The events clearly suggest that the Act of 1952 came into force on 24.11.1952 and on 06.05.1955, the land in question was allegedly rented by guardian of Brij Mohan (minor land holder). The Rajasthan Tenancy Act 1955 came into force on 15.10.1955. The Matmi in favour of Brij Mohan was sanctioned on 22.05.1958. The Government has resumed the land on 01.11.1958 under the Act of 1952 which came into force on 24.11.1952. The Court is required to be intelligent enough to judge intentions of the parties to the litigation.

70. In cases of **Vinayak Kashinath Shilkar vs Dy. Collector & Competent Authority & Ors : (2012) 4 SCC 718, Gajanand Kamaliya Patil Vs. Additional Collector & Competent Authority (UMC) and Ors. : AIR 2014 SC 1843**, Hon'ble Supreme Court has held that possession means actual physical possession or de facto possession and not mere paper or de jury possession. In case of **Sita Ram Bhandar Society, New Delhi vs Lt.Governor,Govt.Of NCT Delhi & Ors : (2009) 10 SCC 501**, it was held that handing over the possession to the beneficiary department in itself constitutes evidence of fact that possession is with the beneficiary department and land had vested absolutely in the Government.

71. Normally, the disputed question of fact are not investigated or adjudicated by a writ Court while exercising powers under Article 226 of the Constitution of India. In case of **State Of U.P. & Anr. V. Ehsan & Anr. : 2023 INSC 906**, Hon'ble Supreme Court has observed that there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and material(s)/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

72. In case of **Orissa Agro Industries Corporation Ltd. and Ors. Vs. Bharati Industries and Ors. : (2005) 12 SCC 725,** Hon'ble Supreme Court has also observed that :-

> "8. In a catena of cases this Court has held that where the dispute revolves round questions of fact, the matter ought not to be entertained under Article 226 of the Constitution. [See State Bank of India v. State Bank of India Canteen Employees' Union [(1998) 5 SCC 74 : 1998 SCC (L&S) 1270] and Chairman, Grid Corpn. of Orissa Ltd. (GRIDCO) v. Sukamani Das [(1999) 7 SCC 298].
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> 9. In the instant case, the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See G.M., Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad [(2003) 8 SCC 639] and Rourkela Shramik Sangh v. Steel Authority of India Ltd. [(2003) 4 SCC 317 : 2003 SCC (L&S) 456])"

73. Again in case of **Popatrao Vyankatrao Patil vs The State Of Maharashtra and Ors. : (2020) 19 SCC 241**, Hon'ble Supreme Court has held that:-

> "9. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self-restraint and not a hard-and-fast rule. In any case, this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] has observed thus : (SCC pp. 568-69, para 19).
>
> > "19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact."
>
> 11. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India."

74. In case of **Shubhas Jain vs. Rajeshwari Shivam : 2021 SCC Online SC 562**, Hon'ble Supreme Court has held that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India does not adjudicate hotly disputed questions of facts. It is not for the High Court to decide a disputed question of fact.

75. In case of **Ishwar Dutt Vs. Land Acquisition Collector & Another** (supra), **Jethmull Bhojraj Vs. State of Bihar** (supra), **Kaushik Cooperative Building Society Vs. N. Parvathamma & Ors.** (supra) and **Ramchandra Daggu Sonavane (Dead) by LRs and Others Vs. Vithu Hira Mahar (Dead) by LRs and Ors. : (2009) 10 SCC 273,** the principle of res judicata was discussed. The principle of res judicata refers to the principle by which one judgment has a binding effect on subsequent proceedings. Firstly, it prevents the re-litigation of claim that were or could have been raised and decided in prior proceedings and the judgment has attained finality. Secondly, it also prevents raising any specific issue which has already been conclusively determined in previous judgment between the parties but the judgment must attain finality.

76. It is an admitted fact between the parties that D.B. Civil Writ Petition Nos.1085/1969 and 1214/1969 were filed under Article 226 of the Constitution of India after a litigation arising out of a notice under Section 91 of Rajasthan Land Revenue Act. The proceeding was subject matter of the

dispute which was challenged upto the Board of Revenue. One of the contention of writ petitioner was that they were in possession from May, 1955 and after coming into force of Rajasthan Tenancy Act, 1955 on 15.10.1955, they have acquired Khatedari rights under Section 15 of the Rajasthan Tenancy Act and they cannot be treated as trespassers. The facts of the case clearly state that the parallel proceedings were instituted by the writ petitioners by challenging different orders at different forums but after decision on 18.10.1979 by the Division Bench, the details of other proceedings were not filed on record, though list of dates indicated filing of different proceedings. The Division Bench while considering the issue in detail has held that the land in question was admittedly resumed on 01.11.1958 and nothing was done by Jagirdar after the resumption of Jagir, under the Act of 1952.

77. In the judgment dated 18.10.1979 clearly held that Brij Mohan, as a successor of State grant is entitled to deal with land in question on 06.05.1955 as owner thereof. Observing this, the Division Bench has only protected the possession of the writ petitioners and no other relief is granted by the Division Bench. It is evident from the entire judgment that no Khatedari right whatsoever even under Section 15 of the Rajasthan Tenancy Act is declared in favour of writ petitioner T.N. Sahni. Once the Khatedari right accrued under any of the provision of law including Section 15 of Rajasthan Tenancy Act then if a Khatedari right not recognized by the

State then a declaratory suit is required to be filed under the provision of law including Rajasthan Tenancy Act, 1955 and Rajasthan Land Revenue Act, 1956, which were in force on date of dispute. Here in this case, the Civil Judge has read this judgment dated 18.10.1979 as a title document in favour of claimant T.N. Sahni but there is no such title declaration in a writ petition under Article 226 of the Constitution of India. In view of scope of writ under Article 226 of the Constitution of India, where there is a serious dispute about title and possession of land, then there as to be a declaratory suit and same has to be adjudicated in favour of person claiming title but here in this case, no such declaration was granted by the Division Bench in a writ petition No.1214/1969 in favour of T.N. Sahni.

78. In case of incidental observation or reference about any particular provision or event, certainly we can say that these are just observations and not declaration. A right has to be declared and on basis of declaration there should be some action. A declaratory right can be enjoyed only when followed by compliance but here in this case no such action is placed on record by T.N. Sahni before learned Civil Judge to show that in compliance of order dated 18.10.1979, the khatedari rights were declared in his favour. During pendency of reference under Section 18 of Land Acquisition Act this judgment was pronounced and on basis of this judgment, not tendered in evidence but still same was considered by learned Civil Judge and presuming to be a title

document issue No.1 was decided in favour of respondent-claimant. Thus, findings on issue No.1 is contrary to judgment dated 18.10.1979.

79. In the said writ petition, the issue with regard to Section 91 of the Rajasthan Land Revenue Act was also considered and the Division Bench is order dated 18.10.1979 (supra) has observed as under:-

> "The Board of Revenue has held the petitioners to be trespassers and as such have determined that proceedings under Section 91 of the Rajasthan Land Revenue act have been rightly taken against the petitioners. In our view, when the Revenue Appellate Authority and even the Board of Revenue had arrived at the conclusion that the petitioners were in possession of the lands in dispute from 1955 by virtue of pattas issued in their favour by the erstwhile Jagirdar and they were paying rent thereafter till the resumption of the Jagir and the petitioners had themselves moved an application on 4th January, 1960 to the assistant Settlement Officer that the entry of "Siwai Chak' made in the settlement record may be removed and they may be eithered as Khatedar tenants, as they were in possession of the disputed land since 1955, it was not proper or justified for the authorities concerned to treat them as trespassers in a summary manner under Section 91 of the Rajasthan Land Revenue Act. Serious questions of right, title and interest in the land in dispute were involved and the petitioners were claiming Khatedari rights, the proper way for the State was to take appropriate proceedings for declaration of their rights in a competent court if it desired to contest the right of the petitioners and not to take proceedings for eviction of the petitioners, treating them as trespassers in a summary Manner. The Board itself has taken the view that the Tehsildar had no right to decide the question of Khatedari rights in proceedings under Section 91 of the Land Revenue Act but at the same time committed an error in holding the petitioners to the trespassers. The proper course in this regard to be adopted by Board of Revenue would have been to direct that the proceedings under Section 9, of the Land Revenue Act be dropped and to direct the State to get the rights of the parties determined by regular suit in a

competent court, if it was desirous of challenging the alleged rights of the petitioners."

80. The Division Bench vide order dated 18.10.1979 (supra) has observed about Khatedari rights of both the writ petitioners and the observation is made in following words:-

> "Section 22 of the Rajasthan Land Reforms and Resumption of Jagirs Act lays down the consequences from the date of resumption of any jagir lands. In the present case the Jagir in question was admittedly resumed on it 18 November, 1958, and no act was done by the Jagirdar after the resumption of his Jagir. Admittedly the pattas were issued on 6th May, 1955, and possession was also handed over on the same day and therefore, no help can be taken by the learned Deputy Government Advocate from the provisions of Section 22 of this Act. Section 9 deals with the conferment of Khatedar rights in Jagir lands for a tenant who might be entered in the revenue records as a tenant of the description mentioned in this Section at the commencement of this Act namely 18th February, 1952. The petitioners are not claiming any Khatedari rights under Section 9 and as such it has no relevance in case of the determination of the rights of the petitioners."

81. Learned counsel for the respondent-claimant has referred and relied upon judgment in cases of **Amar Singh Vs. State of Rajasthan** (supra), **Deepa Vs. State of Rajasthan** (supra), **Dattataraya Vs. Krishna Rao** (supra), **Tara Vs. State of Rajasthan** (supra) and **Bir Singh Vs. State of Rajasthan** (supra) about the effect of Sections 22(1)(a) and 22 (1)(b) of the Act of 1952. The legality of the Act of 1952 is upheld by Hon'ble Supreme Court and on date of coming into force of Rajashtan Tenancy Act, the tenant of jagirdar has become tenant and Jagirdar has no right to resist their tenancy right. Herein the facts are different, as land is

resumbed by the State under the Act of 1952 after payment of compensation and State has not recognized T.N. Sahni as Khatedar (Tenant).

82. In case of **Pioneer Urban Land & Infrastructure Limited & Another Vs. Union of India & Others** (supra), **JDA Vs. Mahesh Sharma** (supra), **Vijay Kumar Sharma Vs. JDA & Ors.** (supra), were also relied by learned counsel for respondent with reference to Section 15 of the Rajasthan Tenancy Act. In case of **JDA Vs. Mahesh Sharma** (supra), Hon'ble Supreme Court after considering the Act of 1952 and Land Acquisition Act has held that if Government has already resumed land of Jagirdar under the Act and acquired title and possession and given compensation under the Act of 1952 then the subsequent land acquisition proceeding cannot lie and Government cannot acquire its own interest. This judgment is also relied by learned AAG in support of his contention.

83. In case of **Mahadev Bajirao Patil Vs. State of Maharashtra & Ors.** (supra), Hon'ble Supreme Court has considered a dispute where a NIL award was passed and after considering that the claimant being a lessee not found entitled by the Collector as the compensation is payable only to land owner then same is an award and reference under Section 18 of Land Acquisition Act is maintainable. It is settled law that the Land Acquisition Act provides for compensation to owner or person interested in lieu of

interest acquired by the State, thus the case in hand is different.

84. Here in this case, learned counsel for the respondent has specifically referred and relied judgments dated 18.10.1979 (supra) passed in DB Writ Petition by the Division Bench of this Court and only on basis of this judgment, learned Civil Judge has passed the claim and compensation in favour of respondent-claimant. There is no independent, right, title or document in favour of claimant T.N. Sahni. It is a settled proposition of law that no complicated issue of facts can be decided in writ petition as the writ petition is not meant to decide any complicated issue of fact particularly relating to title between the parties. The scope of Article 226 of the Constitution does not require any interpretation as same is very well interpreted by Hon'ble Supreme Court in multiple occasions. Thus, the judgment dated 18.10.1979 (supra) is not operated as res judicata. The observation by the Division Bench are referred hereinabove and hereinafter and it makes clear that except for protection of possession on the land already in possession of claimant no other relief was granted to T.N. Sahani or Dwarika Prasad. If a Subordinate Court has closed its eyes while passing an award without reading the judgment dated 18.10.1979 (supra), then we have nothing to say except that the impugned order is illegal and perverse.

85. Learned counsel has referred and relied judgment in case of **Sunderjas Kanyalal Bhathija Vs. Collector, Thane**

(supra), **Lily Thomus Vs. Union of India** (surpa) and **Krishna Kumar Narula Etc. Vs. The State of Jammu and Kashmir & Ors. : AIR 1961 SC 1368** on judicial discipline particularly on binding effect of the judgment of Division Bench in land acquisition proceedings. It appears that the judgments were referred without going through the material on record. The Division Bench of this Court while deciding two writ petitions have protected possession and not declared any right of tenancy in favour of T.N. Sahani. Mere observation is not sufficient to claim any right as law requires a specific declaration and pronouncement in clear words against the Government. If no relief is granted to declare respondent-claimant T.N. Sahani as Khatedar (Tenant) of Khasra No.21-22 by the Division Bench then it is duty of the claimant T.N. Sahani to file a suit either under the Rajasthan Tenancy Act or the Rajasthan Land Revenue Act before the proper and competent revenue authority to declare his Khatedari right post promulgation of Rajasthan Tenancy Act, 1955 in view of protection under the Section 15. Herein except the judgment dated 18.10.1979, there is not a single document with respondent-claimant T.N. Sahani to seek claim.

86. Though, we do not want to refer a specific principle known as doctrine of per-incuriam which means a judgment passed without taking note of relevant statutory provision or precedent. In advance law lexicon by P. Ramanatha Aiyer (5th edition) per-incuriam has been defined as a judicial decision

wrongly decided, usually, because the Judge or the Judges were ill informed about the applicable law. Though, this principle is not applicable for the judgment of the Division Bench dated 18.10.1979 but before raising issue of judicial discipline, learned counsel for the respondent must take note of other principles of law applicable in such a situation, particularly, when all these principles are within knowledge of every Court.

87. In case of **State of Madras Vs. A.N. Shanmugha Mudallar & Ors.** (supra), **Makhan Lal Vs. Secretary of State** (supra), **Matthali & Ors. Vs. Sushila & Ors.** (supra), jurisdiction of reference Court is provided under law itself as there is no issue which requires interpretation by this Court. In case of **G.H. Grant Vs. State of Bihar** (supra), Hon'ble Supreme Court has clearly laid down that if there is any statutory resumption under the law then there is no scope of compensation.

88. In case of **Ashwin Kumar K. Patel vs Upendra J. Patel & Others** : **(1999) 3 SCC 161** relied by Senior Advocate Mr. J.P. Goyal held that a Court should avoid to remand any matter, in case this Court finds that there is illegality in the award. We have considered the judgment and if the facts are not correctly decided or other party has not been afforded an opportunity of hearing or there is illegality in following procedure, then, the Court has no option except to remand as provided under Orders 43 or 41 of CPC. The applicability

of this judgment will depend upon the ultimate outcome of the matter.

89. In case of **Khazan Singh (dead) By LRs. Vs. Union of India** (supra), Hon'ble Supreme Court has laid down that a reference Court cannot dismiss the reference in default. Though this is not applicable in the instant case but it is only for the purpose that when the reference was made in 1974 but same was dismissed in default by the trial Court and on restoration application, the reference was later restored and though this issue is vehemently argued by both the parties but for sake of brevity we are not going into the details of dismissal of reference in default and subsequent restoration, but it is apparent on record that the appellant (State of Rajasthan) has not participated in the proceedings before the Civil Judge after restoration. Even UIT (Now JDA) has also not participated in post restoration proceedings and an ex-parte award was passed.

90. Learned AAG has contended that there was no notice served upon the State of Rajasthan and the notice which was served was to UIT or the counsel appearing on behalf of UIT. If we consider that the matter requires re-inquiry by the Civil Judge certainly we will consider this issue but it is an admitted case that the State of Rajasthan has not participated when the award was passed. The record clearly indicate that not a single document to prove tenancy or tittle is exhibited by T.N. Sahani in his evidence and without any document, the award is passed by the Civil Judge. No one is

present to object to the evidence of T.N. Sahani but still it is duty of the Court to follow the procedural requirement. In any case before the Civil Court, the duty lies upon the Court to consider quality of evidence deposed before it, at the time of decision of issues. In order to prove existence of a fact, it is necessary to give evidence direct and relevant to the fact in issue. The party claiming or asserting a particular fact is duty bound to produce best evidence both documentary and oral but herein no evidence is produced to show that tittle vest in T.N. Sahni and he is in actual possession of the land in question.

91. Learned AAG has placed reliance upon judgment in case of **JDA Vs. Mahesh Sharma** (supra) where after relying upon judgment in case of **State of Orissa and others vs. Brundaban Sharma and another (1995**) **Supp**.(**3**) **SCC 249**, **Meher Rusi Dalal vs U.O.I. & Ors : (2004) 7 SCC 362**, **Kiran Singh And Others vs Chaman Paswan And Others : 1954 AIR (SC) 340** and **State of Jammu & Kashmir vs Sanaullah Mir : (1980) 3 SCC 272**, it was held that Land Acquisition Officer is right in declining compensation and no order can be sustained, which was passed without jurisdiction.

92. In case of **Sharda Devi vs State Of Bihar & Anr**. (supra), Hon’ble Supreme Court has considered a situation where State has proceeded to acquire a land on an assumption that it belongs to a particular person but the land has already been vested in State consequent upon abolition of

propitiatory rights much before the acquisition. The facts narrated in the instant case clearly show that after coming into force of the Act of 1952, the land was resumed on 01.11.1958, whereas the notification of land acquisition was issued on 21.08.1969. On basis of this judgment, the claim of respondent is not maintainable and reference is required to be rejected.

93. In case of **Satluj Jal Vidyut Nigam Ltd. Vs Raj Kumar Rajinder Singh(D)Thru LRs and Ors.** (supra), Hon'ble Supreme Court has considered almost identical case where the Jamindar has received the compensation and land has already vested in State on 01.11.1958. The land acquisition notification was issued 11 years after vesting in the State. The facts also indicate that the compensation after resumption of land is already finalized. The Division Bench order dated 18.10.1979 (supra) is based in a cause of action arose only when a proceeding under Section 91 of Rajasthan Land Revenue Act was instituted against the encroacher.

94. Here in this case, it is apparent on record from judgment dated 18.10.1979 that after promulgation of the Abolition of Jagirs and Land Reforms Act, 1952, the Jagirdari land was resumed by State after paying compensation to Jagirdar. The facts also suggest that after coming into force of Jagirdari Abolition Act, 1952 and just before coming into force of Rajasthan Tenancy Act, 1955, a patta (tenancy right) was granted in favour of T.N. Sahani by Jagirdar. The Jagirdar was well aware after coming into force of the Act of 1952

that his Jagir is subject matter of few days and ultimately it is going to be resumed by the State. We can presume that when agrarian reforms were introduced in the country after coming into force of the Constitution of India on 26.01.1950, then the land owners have executed several documents in clandestine manner to save their property from resumption by the State. This is one of the example where the abolition of Jagir Act came into force in year 1952 and Rajasthan Tenancy Act in the month of November, 1955 and the land in question was given on tenancy in May, 1955, that too by a Jagirdar, who was minor and Matmi was under cloud, which was later opened in favour of Minor Jagirdar. The transactions entered by the Guardian of Minor Jagirdar clearly indicate that he executed tenancy right of nearly 380 bighas of land. The law in this country protects rights of minor as a minor can acquire property through inheritence, gift or purchase on his/her behalf but they cannot be a transferor. The sequence of events discussed herein above clearly shows that Brij Mohan (Minor) on 06.05.1955 was not legally competent to transfer any property. There is no record or evidence to justify transfer of land in the interest of minor Jagirdar. There is no order of competent Court, to grant any permission for transfer property of minor. There is no revenue record to show that T.N. Sahani was ever recognized as tenant before coming into force the Act of 1955. The purpose and claim of tenancy clearly reflected

mala fide intention of the party particularly to grab a Government land.

95. It is not necessary that a person become patriot when country is in trouble or an enemy has attacked but corrupt practice is another means whereby the individuals sabotage the soul of the country. This case is an identical example of same kind of methodology whereby the claimant taking advantage of dormant system of State has managed to get a judgment (award) from learned Civil Judge on 06.04.1990, that too without filing any document in his support.

96. The entire material on record clearly indicate that T.N. Sahani has not pursued his claim before the LAO as he is not having any right, title or interest on date of dismissal of claim by LAO. When a reference is made under Section 18 then even before the Civil Court when both parties were appearing no efforts were made to expedite the proceedings and same is evident from the note-sheets of the trial Court but once the claim has been dismissed in default by mistake of the Court then same has been restored without notice to appellant/State of Rajasthan. The respondent claimant has only one defence that the State of Rajasthan and UIT were represented by a single counsel and they have served the notice upon UIT. Herein, I do not want to comment upon working of UIT or JDA who are supposed to be a good authority to maintain proper land record but everyone is taking advantage of corrupt practices adopted by these bodies.

97. After restoration of reference before the Civil Judge only ex-parte oral evidence is produced, but no documentary evidence to show that the patta granted by minor Jagirdar in 1955 was ever recognized by State after coming into force of the Act of 1955. The respondent claimant has claimed tenancy on basis of presumption under Section 15 of Rajasthan Tenancy Act but he has not initiated any action to declare himself as Khatedar tenant. Before coming into force of Section 15 of the Act of 1955, the Act of 1952 was already came into force and during this intervening period, a document allegedly executed by guardian of a minor Jagirdar but after few years Matami was opened in favour of Brij Mohan (minor Jagirdar). The relevant law on that particular time requires consideration by learned Civil Judge but instead of considering all these facts on issue No.1, the trial Court has decided issue No.1 only on basis of judgment dated 18.10.1979 by the Division Bench (supra). The trial Court has failed to notice that the Division Bench has not declared any tenancy in favour of T.N. Sahani.

98. Section 2 (b) defines the person interested under the Land Acquisition Act and Section 9 provides for notice to such person interested. Herein on record, not a single document is filed to show that after notice what amount of compensation has been claimed by T.N. Sahani from Land Acquisition Officer. Herein, not a single document is filed to show actual possession of land in pursuance of order dated 18.10.1979 on date of passing of judgment. The duty lies

upon respondent-claimant to prove relevant facts as the action is brought by him and not by the State, therefore, if a party is negligent, careless or clever enough then it has to suffer thus there is no ground to remand the case rather impugned judgment from Civil Court is procured by taking advantage of ineffective and corrupt State machinery.

99. Having considered the discussions made hereinabove, I am of considered view that the respondent T.N. Sahani is well aware about the Act of 1952 and resumption of land by State in 1952 and process of compensation was completed in 1964. The State has filed these documents under Order 41 Rule 27 CPC which was required to be considered by the Civil Judge when there is complex facts in the instant case, therefore, Order 41 Rule 27 CPC provides enough power to this Court to allow these documents on record. Since these documents are part of revenue proceedings and they are documents accessible to everyone, therefore, no formal proof is required. Moreover, these documents relates to land in question and should be and must be within knowledge of T.N. Sahani. Therefore, these documents after taking on record can be considered and read in support of arguments of appellants.

100. The discussion made hereinabove make it clear that a notice has been issued by the State after land acquisition notification under Section 6 and T.N. Sahani has approached Land Acquisition Officer but He has not pursued his claim for compensation which is evident from the order passed by the

LAO which we have already discussed hereinabove. After reference the negligence adopted by claimant is also evident from the record and for sake of brevity we are not discussing any detail but the duty lies upon the party which brought the action to prove each and every fact required to be proved in accordance with law.

101. In civil cases like compensation cases, how can a claim/award be passed only on oral evidence. The evidence on record clearly indicate that only one sale deed Ex.1 was exhibited by claimant. There is no other document exhibited or produced by the claimant. Herein, there is no application under Order 41 Rule 27 CPC for taking on record any document relating to title or right of claimant. The right under Section 2(b) as person interested is required to be proved by T.N. Sahani but he has failed to prove from any documentary evidence and the oral evidence is not sufficient to decide the reference under Section 18 of the Land Acquisition Act, particularly, when the title of land is disputed and the Writ Court has not decided the tenancy right, as the notice of eviction under Section 91 of the Rajasthan Land Revenue Act was under challenge. The relief granted by the Division Bench of this Court is not sufficient to presume that T.N. Sahani as the person interested except for the land in his actual possession. The duty lies upon T.N. Sahani to show, that which part of land is in his actual possession, particularly, after allotment of land to the institutions post resumption in 1958. Thus, much water has flown between

1958 and 1979 but without bringing all facts on record, a Civil Court is not competent to pass an award in reference under Section 18 of the Land Acquisition Act.

102. If we consider the case from the very beginning, then it is apparent that T.N. Sahani is not entitled to receive any claim or compensation as he played a systamatic fraud with the Government and just to avoid rigour of Act of 1952, a patta was procured/issued to transfer land of minor Jagirdar, soon before the promulgation of Rajasthan Tenancy Act. The Patta issued by guardian of minor Jagirdar is also suffers from serious legal flaws as property of minor cannot be transferred in clandestine manner. Till date there is no record to show that T.N. Sahni has ever cultivated the land to claim himself as "Tiller of the Soil". In revenue there is system of recording cultivation or framing activities but not a single record is placed on record to show that the land in question was cultivated between May 1955 to November 1955 or thereafter.

103. The record referred during course of arguments clearly indicates that the claim of claimant-applicant T.N. Sahani was dismissed in default and no efforts or application has been filed before LAO for restoration. The material also indicated that no document whatsoever has been filed by applicant T.N. Sahani before the LAO to justify his title and ownership over the land in question. The claimant-applicant T.N. Sahani has not contested any ground before LAO/Collector to get compensation under the Land

Acquisition Act. When the reference was made under Section 18 of the Land Acquisition Act then the statement of Collector was enclosed which indicates that the land has been vested in the Government after resumption under the Act of 1952. Further, detailed statement from Office of LAO is not called by the Civil Court which means the Civil Court has not maneuvered to make inquiry about the real facts of the case.

104. The scope of relevant law are discussed hereinabove and it indicates that there was a serious cloud on right, title and interest of T.N. Sahani but the trial Court has decided issue No.1 without any documentary proof and same is contrary to established cannons of law, thus, perverse and illegal. Not a single record is filed to show declaration of Khatedari by the Government in favour of T.N. Sahani. Similarly, no document is filed to show actual possession over the land in question after judgment dated 18.10.1979. Once land is resumed and allotted to other institutions or individual(s) then the duty lies upon the claimant-applicant to prove actual possession of the land to claim compensation as person interested, as defined under Section 2(b) of the Land Acquisition Act.

105. The material on record indicates that there is a serious dispute of service of notice upon the State of Rajasthan, particularly, after dismissal of reference in default. The affidavit by Mr. R.D. Purohit (Advocate) only indicates admission about UIT (now JDA) but on behalf of State of Rajasthan, there is no privity of contract between State of

Rajasthan and Mr. R.D. Purohit who was appearing as counsel on behalf of UIT before dismissal of reference in default. No authority's letter is produced to show that Mr. Purohit was ever engaged as a counsel by the State of Rajasthan in reference proceedings before the Civil Judge.

106. A serious doubt is raised about time of disclosure of *patta* in favour of T.N. Sahani. Learned AAG has contended that this *patta* allegedly issued in 1955 was disclosed for the first time in 1979 and same is not produced before any Government authority before 1979 to claim any right or interest on the land in question. Both the parties have referred the provision of the Act of 1952 but same is not subject matter for discussion before this Court and for sake of brevity, we are not discussing effect of any of the provision under the Act of 1952 except that the land is resumed by the State under the law. The legal possession as discussed hereinabove clearly indicates that claimant-applicant has made an attempt to procure claim for the land already acquired by the State under the Act of 1952. After resumption of Jagir under the Act of 1952 nothing survives in favour of applicant-claimant to seek compensation for the land which was neither vested in applicant nor in possession of applicant (claimant) T.N. Sahani (since dead).

107. In view of discussion made hereinabove, I am of considered view that the application under Order 41 Rule 27 is liable to be allowed and the documents as submitted by learned AAG are required to be taken on record and to be read in support

of appeal. The civil misc. appeal preferred aggrieved from the impugned order is also liable to be allowed and there is no scope of remand or re-assess the issues between the parties, rather the impugned order is required to be set aside and the reference under Section 18 is liable to be rejected.

108. In view of discussion made hereinabove, the application under Order 41 Rule 27 CPC is allowed and the documents submitted by State are taken on record. The instant civil misc. appeal is allowed and award dated 06.04.1990 in reference under Section 18 of the Land Acquisition Act is hereby set aside and reference at behest of respondent-claimant T.N. Sahni (since dead) through LRs is hereby rejected.

109. The State is at liberty to initiate any criminal action against erring persons as suggested by learned AAG.

110. Misc. Application, if any, also stands disposed of.

111. No order as to Costs.

(ASHOK KUMAR JAIN),J

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