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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR
O R D E R

Rajasthan Housing Board vs. Anna Ram & others.

S.B.CIVIL WRIT PETITION NO. 2291/2012

& 38 other connected matters.(See Schedule)

DATE OF ORDER : 31st January, 2013

P R E S E N T

HON'BLE DR.JUSTICE VINEET KOTHARI

Mr.P.C.Sharma, for the petitioner Housing Board.

Mr. D.S.Rajvi,]

Mr. Rajesh Panwar,]

Mr. Amit Tatia,] for the respective respondents.

REPORTABLE

BY THE COURT:

1. Strangely, two autonomous public bodies of the State Government are pitched against each other in this long drawn legal battle, which seems to be perennial and endless, going on between these two & consuming the precious court time at all levels of hierarchy and both of them exist and have been created to develop lands to set up residential colonies for the citizens and the fight is

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obviously for their own right to develop the land in question of which the dispute essentially arise on the question of identifying the land itself.

2. If this is how the two public bodies - Rajasthan Housing Board & Jodhpur Development Authority, Jodhpur (Earlier UIT, Jodhpur) are to be left completely free to litigate their dispute without intervention of State itself, one wonders whether the litigant petitioner – Rajasthan Housing Board, who ought to have had a second thought, preferably a wiser and considered one, before launching this litigation before this Court of law, in the form of present batch of 39 writ petitions, which after a lengthy hearing at the admission stage, are being disposed of by this common order.

3. The facts leading to these writ petitions unfold as under.

4. The dispute relates to the land of khasra no. 130/2 measuring 8 bighas approximately situated in village Sunthala, Tehsil and District Jodhpur in the khatedari of one Kanhaiya Lal s/o Surajmal Meghwal, who sold the same by a registered sale deed dated 3/2/1990, the land measuring 7 bighas 5 biswas to one Thawarmal

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and 10 other parties by separate registered sale deeds. The said land of khasra no. 130/2 is situated adjacent to khasra no. 131, which was one of the parcels of land acquired by the State Government for petitioner-Rajasthan Housing Board for developing the same into a residential colony. The land holders of khasra no.130/2 applied for conversion of agriculture land into residential purpose under the aforesaid registered sale deed dated 3/2/1990 and for this purpose the land holders approached the respondent Urban Improvement Trust, Jodhpur (now Jodhpur Development Authority, Jodhpur) under Section 90-B of the Rajasthan Land Revenue Act, 1956.

5. Accordingly, the proceedings were undertaken under Section 90-B of the Act and vide order dated 3/12/2007 (Annex.7 on record) the Authorised Officer, UIT, Jodhpur passed the orders under Section 90-B of the Act vesting the said land of khasra no. 130/2 in the UIT, Jodhpur. On 4/3/2008, the said Authorised Officer after inviting objections by publishing notice in the local newspaper on 23/11/2007, in response to which the Rajasthan Housing Board also submitted its objections vide its letter dated 28/11/2007, wherein, it was informed that the State Government had acquired land of khasra

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no. 128, 129/2 and 131 for the petitioner Rajasthan Housing Board in the year 1980, whereas, the land of khasra no. 130/2 and 130 was recorded in the name of UIT, Jodhpur. The petitioner Rajasthan Housing Board informed the said competent authority that one Fateh Singh had filed a Revenue Suit in the Court of Sub Divisional Officer, Jodhpur and had obtained stay against the Housing Board in respect of said land acquired for them. The competent authority after considering the said objections came to the conclusion that there is no dispute about khasra no. 130/2 and after obtaining the report from Tehsildar, Jodhpur that said land of khasra no. 130/2 belonging to private khatedar, namely; Kanhaiya Lal, which was sold to various persons, could be converted for residential purposes and thus, rejecting the objections of Rajasthan Housing Board vide order dated 4/3/2008 (Annex.8) the said competent authority issued orders for issuing 'Patta' in favour of such private persons, who had purchased the plots from khatedar Kanhaiya Lal and accordingly 'Pattas' were issued in favour of these private parties on 4/3/2008 or thereafter.

6. The Rajasthan Housing Board filed appeals against the said order dated 4/3/2008 under Section 90-B (7) of the Rajasthan Land Revenue Act before the Divisional Commissioner, Jodhpur and these

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appeals came to be dismissed by the Divisional Commissioner by a detailed order dated 28/7/2010 (Annex.25) in SBCWP No. 2291/2012 (Rajasthan Housing Board vs. Anna Ram & Ors., the facts of which are illustratively taken). The Housing Board contended before the Divisional Commissioner that UIT, Jodhpur is issuing 'Pattas' in favour of private individuals, which land in fact comes within khasra no. 131, which belongs to Housing Board as the same was acquired by the State Government for the Housing Board in 1980 and, thus, the Housing Board was challenging the 'Pattas' issued in favour of private individuals. Learned Divisional Commissioner gave the finding that the land of khasra no. 130/2 was actually 15.5. bighas of land and not merely 8.8 bighas of land and this finding was given by none other than the Hon'ble Revenue Minister upon a revision petition filed by Kanhaiya Lal s/o Surajmal Meghwal and in pursuance of the order of Hon'ble Revenue Minister dated 11/4/2007, the necessary mutation entries were made in favour of khatedar Kanhaiya Lal and such mutation entries were no. 261 dated 16/10/2007 out of which 8 bighas of land was sold by Kanhaiya Lal by registered sale deed dated 3/2/1990 to various persons, who were arrayed as private respondents before the Divisional Commissioner also. The Divisional Commissioner came to

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the conclusion that there was no force in the appeal filed by the Rajasthan Housing Board and 'Pattas' were issued by the UIT, Jodhpur in favour of private individuals under Section 90-B of the Act in khasra no. 130/2 only and not in khasra no. 131, as alleged by the appellant Rajasthan Housing Board and thus all the appeals of the Rajasthan Housing Board came to be dismissed. The Divisional Commissioner also observed that private individuals had also filed various civil suits against Rajasthan Housing Board seeking injunction as the Housing Board sought to dispossess them purportedly on the premise that they were given 'Pattas' by the UIT, Jodhpur of khasra no. 131 and not of khasra no. 130/2 and, therefore, the appellant Housing Board will be free to contest the said suits in competent Civil Court but there was no justification for cancelling the 'Pattas' issued on 4/3/2008.

7. Against this order of Divisional Commissioner, the petitioner Rajasthan Housing Board also approached the Board of Revenue but the learned Board of Revenue dismissed the revision petitions of Rajasthan Housing Board vide order dated 19/9/2011 (Annex.28 on record) and reiterated the findings given by the Divisional Commissioner and also held that the order passed by the Divisional

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Commissioner being final under Section 90-B(9) of the Act, the revision petitions were not even maintainable before the Board of Revenue.

8. Being aggrieved by the same, the petitioner Housing Board has approached this Court by way of present batch of writ petitions.

9. Mr. P.C.Sharma, learned counsel for the petitioner Housing Board, at the outset, fairly submitted that the revision petitions before Board of Revenue against the appellate order of the Divisional Commissioner, were not maintainable, since the appellate order of Divisional Commissioner was final in terms of Section 90-B(9) of the Rajasthan Land Revenue Act and to that extent the Board of Revenue was right in holding that the revision petitions were not maintainable. However, he submitted that the impugned order of the competent authority dated 3/12/2007 (Annex.7) vesting the land in UIT, Jodhpur and subsequently on 4/3/2008 for issuing 'Pattas' (title documents) in favour of private individuals and the order of Divisional Commissioner dated 28/7/2010, however, are illegal and unsustainable and, therefore, the writ petitions of the Rajasthan Housing Board deserve to be allowed and the 'Pattas' issued in

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favour of the private respondents deserve to be quashed, since the very proceedings under Section 90-B of the Act undertaken by the UIT, Jodhpur were illegal because under the garb of said order under Section 90-B & 'Pattas' issued by UIT, the private individuals have encroached upon the land of the Housing Board in khasra no. 131 and have constructed their residential houses, which land was acquired by the State Government for Housing Board in the year 1980 and Housing Board was supposed to develop the same into a residential colony besides other land of adjacent khasras acquired for them.

10. Mr. P.C.Sharma, learned counsel for the petitioner also submitted that in the first instance, the competent authority of UIT, Jodhpur has wrongly stated in the order dated 3/12/2007 (Annex.7) that in pursuance of the notice issued by the Tehsildar, UIT, Jodhpur in proceedings under Section 90-B of the Act, no objections have been received, whereas, the petitioner Housing Board had raised it objections vide its letter dated 28/11/2007 itself. It may be pointed out here that the objections of Housing Board dated 28/11/2007 have not been dealt with in the order dated 3/12/2007 but in the later order dated 4/3/2008 (Annex.8) passed by the competent authority as

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aforesaid and it has been clearly stated therein that the said objections did not pertain to khasra no. 130/2 for which 'Pattas' were issued by the UIT, Jodhpur, but relate to khasra no. 128, 129/2 and 131, which land was acquired by the State Government in the year 1980 for the Rajasthan Housing Board. Mr.P.C.Sharma also urged that the authority below including the competent authority of the UIT, Jodhpur and the Divisional Commissioner have fallen into error in not appreciating another survey report dated 26/7/2006 (Annex.22) made by the Land Record Officer, Jodhpur along with which a map was prepared on 20/7/2006 (page 150 of the paperbook) on which the canal ('Nahar') shown in red line was passing through khasra no. 128 and 131 and the UIT has also issued 'Pattas' on the left hand side of the canal of khasra no. 131 also, whereas, no private khatedar had any right over the said land of khasra no. 131. On a specific court question, learned counsel for the petitioner Housing Board failed to point out that the said survey report dated 26/7/2006 was ever placed before any of the authorities below either before the competent authority of UIT, Jodhpur or before the Divisional Commissioner and there is neither a mention in the memo of appeal filed before the Divisional Commissioner nor in the arguments recorded by Divisional Commissioner it does not appear that it has

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been so placed & relied upon before the Divisional Commissioner. Thus, this Court draws the inference that said document viz. Survey Report dated 26/7/2006, which is sought to be now relied upon by the learned counsel for the petitioner, cannot be so relied upon for the first time in the present writ petitions. Besides this, the learned counsel for the respondents also seriously disputed the veracity of the map dated 20/7/2006 and survey report dated 26/7/2006.

11. On the other hand, Mr. Rajesh Panwar, learned counsel appearing for the private respondents and Mr. D.S.Rajvi, learned counsel for the respondent Jodhpur Development Authority (earlier UIT, Jodhpur) urged that the present writ petitions filed by the Rajasthan Housing Board are misconceived and deserve to be dismissed with costs. They submitted that the 'Pattas' were issued only in respect of land situated in khasra no. 130/2 and not in respect of khasra no. 131, as claimed by the petitioner Housing Board and, therefore, the proceedings under Section 90-B of the Act were validly undertaken and land of khasra no. 130/2 only was vested in UIT, Jodhpur and later on 'Pattas' were issued to private respondents on their applications after taking due charges from them and such 'Pattas' being valid, cannot be assailed by the Rajasthan Housing

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Board. They also seriously disputed the veracity of survey report relied upon by the learned counsel for the petitioner Housing Board and drew the attention of the Court towards the said map and submitted that the Canal (Nahar) shown in the said map with red lines is not actually the canal passing through khasra no. 128 or 131 but canal is in the black line shown on the left hand side of those red lines giving the khasra number 129/1 & 130/1 of the Canal itself, as is required to be given in the revenue map and said canal passes through khasra no. 129/1, 130/1 and 131/1 and, therefore, red lines indicating the canal has been wrongly drawn by the Housing Board or officials concerned who prepared the said map arbitrarily and wrongly. There is no khasra number shown in the double red lines purported to be canal in the said map. On this objection and even otherwise in the absence of this document having being placed before the authorities below & proved the same deserves to be ignored while deciding the present writ petitions & the petitioner Housing Board cannot be permitted to rely upon an altogether new document in the present writ petitions.

12. Learned counsel for the respondents also drew the attention of the Court towards the provisions of Section 111 and 128 of the Land

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Revenue Act, 1956, which lay down the provisions relating to dispute as to boundary of the agriculture land. The learned counsel for the respondents submitted that the Housing Board never raised the dispute about actual demarcation of the khasra number 130/2 and 131 in question before the competent & proper authority under the Rajasthan Land Revenue Act and have wrongly been harping upon that the UIT, Jodhpur had wrongly issued 'Pattas' in khasra no. 130/2, whereas, actual land in question for which 'Pattas' were issued by the UIT was of the land of khasra no.131 belonging to Housing Board. Learned counsel for the respondents urged that if the Housing Board wanted to raise the said dispute in accordance with law, they ought to have approached the Land Record Officer under the provisions of Section 111 and 128 of the Land Revenue Act, 1956 and get such dispute settled as to exact demarcation and locations of land belonging to private respondents and Housing Board, but no such dispute was ever raised before the competent authority under Sections 111 and 128 of the Act, 1956 and secondly the Housing Board was not justified in challenging the 'Pattas' issued on 4/3/2008 by filing appeals before the Divisional Commissioner, wherein, they rightly and miserably lost.

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13. Mr. Amit Tatia, learned counsel for appearing for the applicants seeking impleadment in the present lis and representing the subsequent purchasers was allowed to intervene in the matter and since the applicants would step into the shoes of 'Patta' holders - the private respondents before the Divisional Commissioner, his stand was the same taken by the learned counsel for the respondents, Mr. D.S.Rajvi and Mr. Rajesh Panwar, but his request for taking additional documents on record cannot be entertained at this stage, at the instance of interveners. The application for impleadment was also opposed by Mr. P.C.Sharma, learned counsel for the Rajasthan Housing Board.

14. I have heard the learned counsels for the parties at length and perused the documents and impugned orders on record.

15. In the considered opinion of this Court, the present writ petitions filed by the Rajasthan Housing Board are misconceived and deserve to be dismissed. Firstly, the entire basis of the Housing Board's case is that the 'Pattas' have wrongly been issued by the UIT, Jodhpur for khasra no. 131 of village Sunthla, whereas, the fact is that 'Pattas' have been issued for the land of khasra no. 130/2 and

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not for khasra no. 131 at all and that too such 'Pattas' have been issued after taking due proceedings under Section 90-B of the Rajasthan Land Revenue Act. If there was any question of fact regarding boundary dispute which was required to be raised and decided, the same could only be done under the provisions of Sections 111 and 128 of the Rajasthan Land Revenue Act, which are quoted below for ready reference:-

“Section 111. Decision of disputes as to boundaries.-**(1) In case of any dispute concerning any boundaries, the Land Records Officer shall decide such dispute, so far as possible, on the basis of the existing survey maps and, where this is not possible or such maps are not available, on the basis of actual possession.**

(2) If in the course of an inquiry into a dispute under this section, the Land Records Officer is unable to satisfy himself as to which party is in the possession or it is shown that possession has been obtained by wrongful dispossession of the lawful occupants within a period of three months previous to the commencement of the inquiry, the Land Records Officer shall ascertain by summary inquiry who is the party best entitled to possession and shall then fix the boundary accordingly.

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Section 128.- Boundary disputes.- *All disputes concerning boundaries shall be decided by the Land Records Officer in the manner laid down in Section 111.*

Provided that applications in relation to boundaries of fields may be made to and disposed of by the Tehsildar in cases where there exists no dispute as to such boundaries but on account of the absence of proper boundary marks there is the likelihood of such a dispute arising.”

16. Admittedly, the petitioner Housing Board never undertook any such proceedings under Sections 111 and 128 of the Land Revenue Act in accordance with law. Without taking such due proceedings, the petitioner Housing Board is wrongly insisting upon the cancellation of 'Pattas' issued by UIT, Jodhpur in favour of private respondents in accordance with the provision of Section 90-B of the Act under which the State Government is empowered to take surrender of agriculture land and reallot the same to the applicants under Section 90-B of the Act subject to certain conditions. The provisions of Section 90-B are also reproduced hereunder for ready reference:-

“90-B- Termination of rights and resumption

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of land in certain cases: (1) *Notwithstanding anything to the contrary contained in this Act and the Rajasthan Tenancy Act, 1955 (Act No.3 of 1955) where before the commencement of the Rajasthan Laws (Amendment) Ordinance, 1999 (Rajasthan Ordinance No.3 of 1999) any person, holding any land for agricultural purposes in such urbanisable limits, of an urban area, as may be notified from time to time by the State Government by notification in the Official Gazette, has used or has allowed to be used such land or part thereof, as the case may be, for non-agricultural purposes or, has parted with possession of such land or part thereof, as the case may be, for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or will or in any other manner, for purported non-agricultural use, the rights and interest of such a person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and such land shall be liable to be resumed.*

(2) *Where any land has become liable to be resumed under the provisions of sub-section (1), the Collector or the officer authorised by the State Government in this behalf, shall serve a notice, calling upon such person to show cause why the said land may not be resumed summarily, and among other things, such notice may contained the particulars of the land, cause of proposed action, the place, time and date, where and when the matter shall be heard.*

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(3) When the tenant or the holder of such land or any person duly authorised by him, as the case may be, makes an application to the Collector or the officer authorised by the State Government in this behalf, expressing his willingness to surrender his rights in such land, with the intention of developing such land for housing or commercial purposes, the Collector or officer authorized by the State Government in this behalf, shall upon being satisfied about the willingness of such person, order for termination of rights and interest of such person in the said land and order for resumption of such land.

(4) The proceedings in the matter shall be conducted summarily and shall ordinarily be concluded within a period of sixty days from the first date of hearing specified in the notice served under sub-section (2).

(5) Where, after hearing the parties, the Collector or the officer authorised by the State Government in this behalf, is of the opinion that the land is liable to be resumed, under sub-section (1), he shall after recording reasons in writing, order for termination of rights and interest of such person in the said land and order for resumption of the said land.

*(6) The land so resumed under sub-section (3) and (5) **shall vest in the State free from all encumbrances and shall be deemed to have been placed at the disposal of the concerned local***

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authority under Section 102-A of this Act with effect from the date of passing such order:

Provided that the land surrendered under sub-section (3) above, shall be made available to the person, who surrenders the land, for its planned development in accordance with the rules, regulation and by-laws applicable to the local body concerned, for housing or commercial purposes.

(7) the person, aggrieved by the order made under sub-section (5), may appeal to the Divisional Commissioner or the officer authorized by the State Government in this behalf within thirty days of passing of order under sub-section (5).

(8) The Divisional Commissioner or the officer authorised by the State Government in this behalf shall, after hearing the parties, pass appropriate orders in such appeal within a period of sixty days from the date of presentation of appeal before him.

(9) The order passed by the Divisional Commissioner or the officer authorised by the State Government in this behalf in appeal under this Section shall be final.

(10) No civil court shall have jurisdiction to entertain or decide any suit or proceeding questioning the order made under sub-section (5) by the Collector or the officer authorised by the State Government or an order made under sub-section (8) by the Divisional Commissioner or the officer authorised by the State

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Government.

(11) Nothing in this section shall apply to any land belonging to Deity, Devsthan Department, any public trust or any religious or charitable institution or a wakf.

(12) No proceedings or orders under this section shall be initiated or made in respect of lands for which proceedings under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (Central Act No.33 of 1976), the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (Act No.11 of 1973) and the Rajasthan land Reforms and Acquisition of Land Owners Estate Act, 1963 (Act No.11 of 1964) are pending.

Explanation: *I. part use of the land for purposes subservient to the agriculture such as residential house of the tenant 9subject to the limit of 1/50th part of his holding or 500 sq. yards whichever is less) cattle breeding, dairy farming, fodder storage, poultry farming, horticulture, forestry development, water tank, well, pasturage, grove land and such other purposes ancillary thereto or connected therewith shall not be construed to mean non-agricultural purposes.*

II. for the purpose of sub-section(1), urban area shall mean an area for which a municipality is constituted under the Rajasthan Municipality Act, 1959 (Act. No.38 of 1959) or Urban Improvement Trust is constituted under Rajasthan Urban Improvement Act,

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1959 (Act No.35) of 1959) or the Jaipur Development Authority Act, 1982 (Act no.25 of 1982)."

17. In ***Anjana Kothari Vs. State of Rajasthan & Ors. - 2011 (3) RLW 2327*** while dealing with the term 'person aggrieved' under Section 90-B (7) of the Act, this Court held that aggrieved person is only the land owner to whom the land in question is allotted back by the public body and not the third party and, therefore, the said third party cannot file any appeal before the Divisional Commissioner under Section 90-B (7) of the Act. The relevant portion from the said judgment is quoted below:-

14. *Sub-section (7) of Section 90-B of the Act, therefore, is a limited remedy provided to person aggrieved (land owner) only. This is not an appeal provided where land is vested back by the local body in the person concerned, who surrendered the land under the provisions of sub-section (1), (2) and (3) of the said Section 90-B. Sub-section (9) provides that order passed by the Divisional Commissioner on such appeal of the person aggrieved shall be final and sub-section (10) provides that no civil court shall have jurisdiction to entertain any suit with respect to such order.*

15. *On a plain reading of these provisions as*

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per Golden Rule of interpretation, and the scheme of Section 90-B of the Act of 1956, it is clear that appeal filed by said respondent- Krishna Nagar Vikas Samiti before the learned Divisional Commissioner was incompetent and was not filed by the person aggrieved because it was not the land owner who surrendered the land in question to the State Government. Since, the order dated 12.01.2004 in Case No.1592/2003 was neither passed in favour of said Krishna Nagar Vikas Samiti, nor against it, therefore, the question of said Krishna Nagar Vikas Samiti being an aggrieved person against such order dated 12.01.2004 under sub-Section (7) of Section 90-B of the Act does not arise. It is only the land owner against whom an adverse order is passed under sub-Section (5) vesting such land in State instead of it being revested in such land owner under proviso to sub-section (6) who can file an appeal under sub-Section (7) before the Divisional Commissioner. Neither the competent authority who himself grants such conversion order under the said Proviso to sub-section (6) nor any third party can file such appeal under sub-Section (7) of Section 90-B of the Act. Therefore, the appeal itself was not maintainable and the order passed by the learned Divisional Commissioner on 26.09.2007 was wholly without jurisdiction and passed on an incompetent appeal and the same, therefore, deserves to be

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quashed.”

Again following the said decision in ***Anjana Kothari's case (supra)*** in ***Meena Sharma vs. Rajendra Kumar Porwal & anr. - 2011 (4) RLW 3158***, the Court reiterated this position and held that the civil rights of the plaintiff and defendant could be determined by the civil court and not by the Divisional Commissioner under Section 90-B(7) of the Act. The relevant portion from the said judgment is also reproduced hereunder for ready reference:

“11. In the present case, since application made by Rajendra Kumar Porwal stood rejected vide Annex.2 dated 20/7/2007, he filed the present suit but he cannot be said to be a 'person aggrieved' of the order made in favour of present petitioners, Meena Sharma and Manisha and, therefore, his civil rights viz-a-viz that of defendant petitioners could be determined only by the civil court and not by the Divisional Commissioner. Thus, the learned counsel for the petitioner has wrongly contended that Rajendra Kumar Porwal could have filed appeal before the Divisional Commissioner and suit filed by him was barred under sub-section (10) of Section 90-B of the Act.

12. In view of this position, the rejection of the

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application under Order 7 Rule 11 CPC filed by the defendant petitioners, Meena Sharma and Smt. Manisha cannot be validly assailed, therefore, the impugned orders dated 24/8/2007 and 28/11/2007 are found to be just and proper and the present writ petitions and revision petitions filed by the present petitioners-defendants are found to be devoid of merit and same are liable to be dismissed and are dismissed accordingly. No costs."

18. In view of aforesaid judgments, though the locus of petitioner Rajasthan Housing Board to have even filed appeals before the Divisional Commissioner under Section 90-B (7) of the Land Revenue Act could be doubted as it could not be said to be a 'person aggrieved' within the meaning of that provision as it was not the land owner of the Khasra No. 130/2 but since the Divisional Commissioner has given findings on merits while dismissing the appeals of Housing Board, the findings returned by him are binding on the Rajasthan Housing Board.

19. The contentions of learned counsel for the petitioner Housing Board, Mr. P.C.Sharma that such proceedings under Section 90-B of the Act were undertaken without considering the objections of the

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petitioner Housing Board are wrong. Even though their objections vide letter dated 28/11/2007 in pursuance of Public Notice dated 23/11/2007 are not specifically dealt with in the order dated 3/12/2007 (Annex.7) passed by the competent authority but the same were considered in the order dated 4/3/2008 by which 'Pattas' were directed to be issued in favour of private respondents. The sum and substance of the objections raised by petitioner Housing Board is that the 'Pattas' have been issued not for the land of khasra no. 130/2 but for khasra no. 131 but there is no factual foundation laid for the same by the Housing Board at any point of time. The 'Pattas' and the order dated 4/3/2008 clearly show that such 'Pattas' have been issued in respect of khasra no. 130/2 only on the land measuring 8 bighas sold by khatedar Kanhaiya Lal to various private respondents by registered sale deed dated 3/12/1990. In fact, these private respondents had to initiate civil litigations by way of filing injunction suits against the Housing Board when under the aforesaid misconceived notion the petitioner Housing Board sought to dispossess them from the land in question for which they were granted 'Pattas' by the UIT, Jodhpur and such litigation is even now pending in the competent civil court. Against the grant of temporary injunction in favour of private respondents, the petitioner Housing

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Board had also approached this Court earlier and filed writ petitions against such temporary injunction order granted in favour of private respondents. While dismissing the writ petitions on 14/12/2009 (SBCWP No.741/2009 & other connected matters) filed by the petitioner Housing Board, this Court has also negated the reliance placed on the same map with Survey report dated 26/7/2006, which was relied upon again in the present writ petitions & had held as under: -

*“3. Firstly this Court is of the opinion that the defendant-petitioner **Rajasthan Housing Board is not entitled to place any new evidence on record of this Court including the map produced by them with IA No. 4483/2009 which was not placed before the Courts below for their consideration.** Under Article 227 of the Constitution of India, this Court will examine only the legality and correctness of the orders passed by the Courts below in temporary injunction matter on the basis of material which existed before them. This Court finds that the map produced by the Rajasthan Housing Board with the said application does not give any direction as pointed out by the learned counsel for the respondent-plaintiff. The said map shows some land of khasra no. 131 in the left hand side of the Nahar drawn in red lines, **which is also a piece of evidence at variance with earlier***

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evidence which existed before the Court below and which shows that the land of khasra no. 131 acquired for Rajasthan Housing Board was upto the right hand side of the Nahar only. This evidence, therefore, is apparently in contraction with the earlier evidence which existed before the Court below and therefore cannot be relied upon at this stage by this Court.

4. Having gone through the reasons given by the Courts below, while granting temporary injunction in favour of the plaintiff respondent that the defendant **Rajasthan Housing Board is not entitled to dispossess the plaintiff from khasra No. 130/2, whereas the acquisition for them was only for khasra no. 131 which existed on right hand side of said Nahar**, this court is of the opinion that the Courts below cannot be said to have erred in granting said temporary injunction in favour of the plaintiff-respondent as the plaintiff succeeded in proving before the Court below that they had right, title or interest over the land situated in khasra No. 130/2 which existed on the left hand side (western side of the said Nahar). **Therefore, this Court does not find any force in these writ petitions and the same are liable to be dismissed.**

9. Accordingly, the aforesaid four writ petitions are dismissed. No order as to costs.”

20. There was not even an iota of justification for the Housing

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Board to challenge the proceedings under Section 90-B of the Act as said proceedings were undertaken by other public body, namely; UIT, Jodhpur in accordance with Section 90-B of the Act itself. The objections of the Housing Board, if at all they can be said to be objections of whatever worth they were, were duly considered by the competent authority while passing the order dated 4/3/2008 and such objections were validly rejected by the said authority. The Divisional Commissioner in the impugned appellate order dated 28/7/2010 had again discussed the entire case of petitioner Housing Board and found the appeals to be meritless and dismissed the same. The only document, which is sought to be relied upon by the petitioner Housing Board is Annex.22, the alleged survey report dated 26/7/2006 with its map prepared on 20/7/2006. The said document cannot be even referred and relied upon by Housing Board now. The veracity of the said document is not only disputed by the learned counsel for the respondents but this Court finds considerable force in the contention of learned counsel for the respondents that the Canal or 'Nahar' shown in the map (page 150 of the paper book) in the black line goes through khasra no.129/1, 130/1 and 131/1 & not Khasra no. 131 acquired for Housing Board, whereas, the red lines drawn on the said map purportedly showing

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the existence of canal passing through khasra no. 128 and 131 do not bear any other demarcated khasra number on the said area of canal or 'Nahar', therefore, the veracity of the map is highly doubtful. Besides this, the said document has never been placed before the authorities below and, therefore, cannot be relied upon and referred for the first time before this Court in the present proceedings. They were earlier also refused to be referred & relief by Housing Board while dismissing their Civil Writ Petition No.741/2009 on 14/12/2009, as quoted above.

21. This Court, therefore, finds no force in the contentions raised by the learned counsel for the petitioner Housing Board and the present writ petitions filed by the petitioner Housing Board deserve to be dismissed.

22. This Court has already expressed its anguish above for launching a misconceived legal battle by the petitioner Housing Board against another public body, namely UIT, Jodhpur, which is now reconstituted as Jodhpur Development Authority, Jodhpur and wastage of public money in the form of litigation between two public bodies all through. To put an end to such frivolous litigations, these

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writ petitions are dismissed with cost of Rs.1000/- for each writ petition to be paid by the petitioner Housing Board to the respondent Jodhpur Development Authority, Jodhpur. This Court can only express the sanguine hope that before two autonomous public bodies of the State or two departments of the State Government bring their legal battle or point of dispute on the Court dockets, they obtain the clearance from the higher authorities of the State Government in the Secretariat, may be a committee of the Principal Secretaries representing such rival departments or public bodies and headed by the Chief Secretary of the State, so that lengthy and costly litigation consuming the precious time of the courts of law at various levels & precious public money can be saved and the saying '**a stitch in time saves nine**' can possibly bring good counsels to prevail at the right time.

23. The applications filed by learned counsel for the applicants, Mr. Amit Tatia, for impleading the applicants as party respondents in the present writ petitions are also hereby disposed of.

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24. The writ petitions of Rajasthan Housing Board are dismissed with costs, as indicated above. Copy of this judgment be sent to parties & Chief Secretary of the State forthwith for needful action.

(DR.VINEET KOTHARI), J.

item no.31 to 65
baweja/-

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SCHEDULE

1. **SBCWP No.2285/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
2. **SBCWP No.2287/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
3. **SBCWP No.2288/2012**
Rajasthan Housing Board Vs. Smt. Hastu Devi & Ors.
4. **SBCWP No.2290/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
5. **SBCWP No.2292/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
6. **SBCWP No.2293/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
7. **SBCWP No.2294/2012**
Rajasthan Housing Board Vs. Jagga Ram & Ors.
8. **SBCWP No.6195/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
9. **SBCWP No.6197/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
10. **SBCWP No.6198/2012**
Rajasthan Housing Board Vs. Smt. Hastu Devi & Ors.
11. **SBCWP No.6199/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
12. **SBCWP No.6200/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
13. **SBCWP No.6201/2012**
Rajasthan Housing Board Vs. Smt. Hastu Devi & Ors.
14. **SBCWP No.6202/2012**
Rajasthan Housing Board Vs. Anna Ram & Ors.
15. **SBCWP No.6239/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
16. **SBCWP No.6240/2012**
Rajasthan Housing Board Vs. Anna Ram & Ors.
17. **SBCWP No.6241/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
18. **SBCWP No.6242/2012**
Rajasthan Housing Board Vs. Smt. Mangu Devi & Ors.
19. **SBCWP No.6245/2012**
Rajasthan Housing Board Vs. Anna Ram & Ors.
20. **SBCWP No.6246/2012**

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- Rajasthan Housing Board Vs. Anna Ram & Ors.
- 21. SBCWP No.6247/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
- 22. SBCWP No.6248/2012**
Rajasthan Housing Board Vs. Chaila Ram & Ors.
- 23. SBCWP No.6256/2012**
Rajasthan Housing Board Vs. Anna Ram & Ors.
- 24. SBCWP No.6257/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 25. SBCWP No.6258/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 26. SBCWP No.6259/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 27. SBCWP No.6260/2012**
Rajasthan Housing Board Vs. Chhaila Ram & Ors.
- 28. SBCWP No.6261/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 29. SBCWP No.6262/2012**
Rajasthan Housing Board Vs. Smt. Hastu Devi & Ors.
- 30. SBCWP No.6487/2012**
Rajasthan Housing Board Vs. Anna Ram & Ors.
- 31. SBCWP No.6488/2012**
Rajasthan Housing Board Vs. Anna Ram & Ors.
- 32. SBCWP No.6489/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 33. SBCWP No.6490/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 34. SBCWP No.6491/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.
- 35. SBCWP No.2289/2012**
Rajasthan Housing Board Vs. Smt. Mangu Devi & Ors.
- 36. SBCWP No.2286/2012**
Rajasthan Housing Board Vs. Jagga Ram & Ors.
- 37. SBCWP No.6203/2012**
Rajasthan Housing Board Vs. Hasta Ram & Ors.