



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D. B. Civil Writ (P.I.L.) Petition No. 5132/2021

CAUSE TITLE

PETITIONERS

1. Papapuri S/o Chimanpuri, aged about 47 years,
Madanlal S/o Vinjaram, aged about 45 years,
Madanlal S/o Durgaram, aged about 42 years,
Dalaram S/o Jetharam, aged about 42 years,
Goparam Patel S/o Nathuram, aged about 43 years,
All are Villagers of Village Dungarpur, Tehsil Rohat, District Pali.

Versus

RESPONDENTS

1. State of Rajasthan, Through Secretary, Department of Revenue Government of Rajasthan, Jaipur.
2. Rajasthan State Industrial Development and Investment Corporation, through Regional Manager, Boranada Jodhpur.
3. Delhi Mumbai Industrial Corridor (DMIC), (a Unit of RIICO Rajasthan) Udyog Bhawan through its Commissioner, Jaipur (Raj.)
4. Jodhpur Pali Marwar Industrial Development Corporation, (a Unit of RIICO) through its Commissioner, RIICO, Boranada, Jodhpur.
5. District Collector, District Pali.
6. Tehsildar Rohat, District Pali.

For Petitioners : Mr. Moti Singh Advocate.

For Respondents : Mr. M.S. Singhvi Advocate General
(through VC) assisted by Mr. K.S. Lodha Advocate.



HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MS. JUSTICE REKHA BORANA
Order

REPORTABLE

28/04/2023

Bv the Court:(Per Manindra Mohan Shrivastava,Acting C.J.)

This public interest litigation petition seeks to assail correctness and validity of respondents' action in issuing directions to record all government lands situated in nine revenue villages of Tehsil Rohat, District Pali, namely, Dungarpur, Singari, Dhundhali, Doodali, Neembli Patelan, Neembli Bramnan, Danasani, Rohat and Dalpatgarh in favour of Jodhpur-Pali-Marwar Industrial Area Development Authority (a unit of RIICO) [hereinafter referred to as 'JPMIA Development Authority'].

2. The petitioners are villagers of Village Dungarpur, Tehsil Rohat, District Pali. Village Dungarpur is one of those nine revenue villages where all the government lands are directed to be recorded in the name of JPMIA Development Authority. The concern of the petitioners is on account of transfer of government lands, which according to them, include the lands recorded as Gochar(Pasture), Oran(Forest), Agore(Water catchment), Bhakar and other public utility lands situated in nine revenue villages of Tehsil Rohat, District Pali. The public interest which the petitioners seek to espouse is that the action of the respondents in transferring the aforesaid lands of public utility would seriously and adversely affect the rights of the villagers and they will be deprived of those public utility lands. It is their concern that public utility lands which include the lands reserved for grazing of cattle and other purposes would subsume in industrial development, depriving the villagers of all the benefits. It is also their concern that the impugned



action of the respondents would destroy the natural resources. The petitioners have prayed for following relief:

"It is therefore, humbly prayed on behalf of petitioner that this writ petition for Public Interest Litigation may kindly be allowed and passed the following direction:-

A. By an appropriate, writ, order or direction may kindly be issued and the impugned order dated 16.12.2020 **(Annexure-8)** passed by District Collector, Pali may kindly be quashed and set aside.

B. By an appropriate, writ, order or direction may kindly be issued and the letter dated 15.12.2020 **(reference given in Annexure-8)** issued by Commissioner, DMIC and also Deputy Secretary, Department of Revenue may kindly be declared illegal, arbitrary & against the provision of Rajasthan Tenancy Act, 1955.

C. By an appropriate, writ, order or direction may kindly be issued and the respondents may kindly be directed to restore all kind of the entries with regard to public land which was vested in the name of concerned Gram Panchayat or villagers for public utility of village Dungarpur, Tehsil Rohat, District Pali.

D. By an appropriate, writ, order or direction may kindly be issued against the respondents may kindly be directed that the land which is categorized or defined as a restricted land under Section 16 of the Rajasthan Tenancy Act or lands belongs to natural resources (likewise Oran, Pasture, Gochar, Agore, Pond & Paytan-Johar etc.) shall not be subject of any kind of the allotment for industrial or any other use except for development of natural resources and further directed that all kind of land which was reserved for the Natural Resources, Water Body, Grazing Ground, Oran, Johar-Paytan & Pasture may kindly be restore in the position which was entered at the time of settlement.

E. That any other relief, which this Hon'ble Court deems fit, by which the petitioner may get full justice may also be allowed."

3. Factual background leading to filing of PIL:

3.1 At the relevant time of settlement, nine villages namely Dungarpur, Singari, Dhundhali, Doodali, Neembli Patelan, Neembli Bramnan, Danasani, Rohat and Dalpatgarh of Tehsil Pali (now Tehsil Rohat) were declared as revenue villages. It is the case of the petitioners that under the settlement operation, parts of lands in every village were set apart as public utility lands viz. Gochar, Oran and other identified natural





resources. Lands were also set apart for abadi development. Particulars of such lands as recorded in the land records have been illustratively described in Para 4.3, 4.4 and 4.5 of the petition.

3.2 A historical background of changes brought about in the status of lands in the years 1979 and 1980 has also been narrated in Para 4.6 to 4.9 of the petition.

In Para 4.10 to 4.12 of the petition, details of mutation recording of the lands as Abadi and Gochar have also been stated.

3.3 Delhi Mumbai Industrial Corridor (hereinafter referred to as 'DMIC') is a planned industrial development project between India's capital i.e. Delhi and its financial hub and major port city, i.e., Mumbai. DMIC project was launched in pursuance of MOU signed between the Government of India and the Government of Japan in December, 2006. The project is aimed at developing industrial zones spanning across six States of India which would spur economic development in the region and develop industries. It has been conceived as one of the biggest infrastructure project in India. The project is expected to open gateways for major expansion of infrastructure and industry including industrial clusters along with rail, road, port and air connectivity in the States along the route of the Corridor. The project covers an overall length of 1504 kilometres and passes through the States of Uttar Pradesh, Delhi NCR, Haryana, Rajasthan, Gujarat and Maharashtra, with end terminals at Dadri in Delhi NCR and Jawaharlal Nehru Port (JNPT) near Mumbai.

As stated in the pleadings by the State in its reply, the backbone of DMIC project is the Western Dedicated Freight Corridor that would cut the logistical costs of manufactured goods to make it the lowest in the world. The pleadings of the State in its reply further discloses that about





40% of DMIC area falls in the boundary of Rajasthan and approximately 38% of DMIC influence zone lies in Rajasthan. It has been proposed to develop five investment nodes in Phase-I of DMIC in the State of Rajasthan which have been classified as follows:

(i) Khushkhera-Bhiwadi-Neemrana (KBNIR);

(ii) Jodhpur-Pali-Marwar (JPMIA);

(iii) Jaipur-Dausa;

(iv) Ajmer-Kishangarh; and

(v) Rajsamand-Bhilwara.

3.4 With the intention to give implementation to DMIC project and also to give impetus to all economic sectors, a concept of Special Investment Regions has been framed to attract investment, which shall be large sized regions covering vast areas in the State for industrial and other economic activities, with essential infrastructure and amenities to be provided by the State Government, Government agencies or Government companies or through public private partnership or private parties.

3.5 Towards implementation of DMIC project, the State enacted the Rajasthan Special Investment Regions Act, 2016 (hereinafter referred to as 'the RSIR Act, 2016') with the aim to provide for establishment, planning, development, operation, maintenance, management and regulation of Special Investment Regions in the State which came into force with effect from 01.07.2016.

3.6 In order to implement DMIC project, the State Government, in exercise of its power conferred under Section 3 of the RSIR Act, 2016, declared "Special Investment Region" consisting of nine revenue villages of Tehsil Rohat, District Pali, namely, Dungarpur, Singari, Dhundhali, Doodali, Neembli Patelan, Neembli Bramnan, Danasani, Rohat and





Dalpatgarh vide notification dated 12.10.2020 and this Special Investment Region has been named as "Jodhpur-Pali-Marwar Industrial Area" (hereinafter referred to as 'JPMIA').

Rajasthan State Industrial Development and Industrial Corporation Limited (RIICO), a fully government owned company under the Companies Act, 1956 has been designated as the Regional Development Authority by the State Government in exercise of its powers conferred under Section 9(7) of the RSIR Act, 2016.

3.7 Impugned order dated 16.12.2020 was passed by the District Collector, Pali directing mutation of all government lands situated in nine revenue villages of Tehsil Rohat, District Pali namely, Dungarpur, Singari, Dhundhali, Doodali, Neembli Patelan, Neembli Bramnan, Danasani, Rohat and Dalpatgarh in the name of JPMIA Development Authority (a unit of RIICO) and accordingly, make necessary entries in the revenue records to be ensured by Tehsildar, Rohat. In compliance of order dated 16.12.2020, various government lands situated in the aforesaid nine revenue villages were mutated by Tehsildar, Rohat in favour of JPMIA Development Authority which included lands of Khasra No. 119, 139, 183 and 222, total area 418.11 bigha, which were reserved as Gair Mumkin Gochar (Pasture land).

Similarly, land of Khata No. 1 of Village Dungarpur claimed to be under cultivation by the villagers has also been mutated in the name of JPMIA Development Authority by Tehsildar, Rohat.

All Government lands of Villages Dungarpur, Singari, Dhundhali, Doodali, Neembli Patelan, Neembli Bramnan, Danasani, Rohat and Dalpatgarh have also been mutated in the name of JPMIA Development Authority. Order dated 16.12.2020 passed by the District Collector, Pali



and all consequent proceedings of mutation of various government lands situated in the aforesaid nine revenue villages by revenue authorities are impugned and assailed by way of this petition.

4. Submissions on behalf of the petitioners:

Learned counsel for the petitioners contended that the government lands of the aforesaid nine revenue villages which have been recorded as Pasture or Paytan (Land for water reservoir) or Oran or Agore have been illegally entered in the name of JPMIA Development Authority. Transfer of the entire public utility lands for industrial development is illegal as there is distinction between government land and public land. It is argued that by virtue of Section 27 of the RSIR Act, 2016, only government lands could be transferred and the lands reserved as Pasture, Paytan, Oran or Agore, which fall in the category of public land reserved for public utility and other natural resources, could not be transferred. It is one of the contentions of learned counsel for the petitioners that all public utility lands vest in Gram Panchayat, constituted as local body/authority under the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act of 1994') and those lands having vested in the local authorities/panchayat institutions are outside the scope and ambit of vesting clause under Section 27 of the RSIR Act, 2016.

4.2 Further submission of learned counsel for the petitioners is that the only permissible mode under the law for transfer of the lands vested in the local body has been provided under Section 27(2) of the RSIR Act, 2016 that if the State Government is satisfied that any land vested in any local authority is required at any time by the Regional Development Authority for carrying out its functions, it may, place such land at the





disposal of the Regional Development Authority on appropriate terms and conditions, by way of notification only after giving an opportunity of hearing to the local authority concerned. In the absence of such mandatory procedure adopted or any notification issued in that regard

r giving an opportunity of hearing to the local authority, the impugned order and impugned proceedings are violative of the provisions

Section 27(2) of the RSIR Act, 2016. Further contention is that notwithstanding the provisions of Section 27 of the RSIR Act, 2016 having overriding effect over the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act of 1956'), public utility lands like Gochar, Oran, Paytan Agore, Pond and Johad(Pond) are in the category of restricted lands as described under Section 16 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') and, therefore, allotment or transfer of such category of public utility lands to any person, authority or institution is impermissible in law.

4.3 It is further contended by learned counsel for the petitioners that Pasture lands are meant for grazing of cattle of a village or villages and once the land is categorised as pasture land, it could not be allowed to be divested for any other purposes including industrial purposes. The State is obligated to preserve Pasture lands and the said lands could not be transferred in the name of industrial development in favour of JPMIA Development Authority. The impugned order and impugned mutation proceedings resulting in transfer of vast track of lands including Pasture lands and other natural resources for industrial purposes violate the principle of sustainable development.

4.4 Elaborating his submissions, learned counsel for the petitioners argued that Pasture lands situated in nine revenue villages, ad-



measuring 864.6148 hectares, earlier vested in respective Gram Panchayats by virtue of Section 88 of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as 'the repealed Act of 1953'), therefore, are excluded from the purview of vesting clause as provided in Section 27(1)

the RSIR Act, 2016. He would submit that the Act of 1953 was later repealed and substituted by the Act of 1994. In exercise of rule making power, the State Government framed the Rajasthan Panchayati Raj Rules, 1996 (hereinafter referred to as 'the Rules of 1996') and Rule 136 thereof clearly provided for vesting of all common lands in the Gram Panchayats. Therefore, it is argued that Gochar lands, which are part of the common land/public land remained vested in respective Gram Panchayats. Thus, Gochar lands are covered under exception to the vesting clause provided under Section 27(1) of the RSIR Act, 2016.

4.5 Referring to Rule 39 of the Rajasthan Land Revenue (Survey, Record & Settlement) (Government) Rules, 1957 (hereinafter referred to as 'the Rules of 1957') and Rule 4 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957 [hereinafter referred to as 'the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules of 1957'], it has been contended that all Gair Mumkin soils are protected as dry unculturable soil and Gochar lands are not available for allotment for agricultural purposes. Learned counsel for the petitioners also referred to the provisions contained in Section 16 of the Act of 1955 to submit that there is restriction under the law to acquire any Khatedari rights upon Pasture land by any person, institution and any other authority. Elaborating his submissions, learned counsel for the petitioners further referred to Rule 7 of the Rajasthan Tenancy (Government) Rules, 1955 (hereinafter referred to as 'the Rules of 1955')



and contended that in the absence of any proceedings drawn or order passed by the competent authority under the aforesaid provision, Pasture lands could not be mutated in favour of JPMIA Development Authority.

Relying upon the decisions of the Hon'ble Supreme Court in the cases of **Jagpal Singh & Others Vs. State of Punjab & Others (11) 11 SCC 396**; **State of Jharkhand & Others Vs. Pakur Jagran Singh & Others (2011) 2 SCC 591**; decision and order of Division Bench of this Court in the cases of **Jetha Ram & Others Vs. State of Rajasthan & Others (D.B. Civil Writ Petition (P.I.L.) No. 8816/2011 decided on 16.5.2012)**; and **Gulab Kothari Vs. State of Rajasthan & Others (D.B. Civil Writ Petition No. 1554/2004 & other connected matters)**, it has been argued that time and again, courts have issued directions for protection and preservation of Pasture lands and action of transferring Pasture lands for other purposes has been held to be illegal.

Placing reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Association For Environment Protection Vs. State of Kerala & Others (2013) 7 SCC 226**; order dated 12.03.2014 in **T.N. Godavarman Thirumulpad Vs. Union of India & Others (I.A. Nos. 2143 with 2283 and other IAs in Writ Petition (Civil) No. 202 of 1995)**; **Gulab Kothari Vs. State of Rajasthan & Others (supra)**; **Centre for Public Interest Litigation & Others Vs. Union of India & Others (2012) 3 SCC 1**; **Rameshbhai Virabhai Chaudhari Vs. The State of Gujarat & Others (Civil Appeal No. 5135 of 2021 arising out of SLP (Civil) No. 14222/2019 decided on 06.09.2021)**, it has been stated that industrial projects likely to adversely affect environment and livelihood of the people are violative of Article 21 of the Constitution





of India. It is further argued that natural resources are national assets and, therefore, it is the obligation of all concerned including the Government to conserve and preserve those natural resources which include Pasture land as well.

Contention of learned counsel for the petitioners is that transfer of a chunk of Pasture lands ad-measuring 864.6148 hectares for industrial purposes would destroy cattle habitat which could be avoided by excluding Gochar lands and transferring other lands which are not Gochar and public utility lands. Therefore, it is argued, impugned order and action of transfer of Gochar lands of nine revenue villages of Tehsil Rohat are violative of principle of sustainable development.

4.7 In support of his arguments, learned counsel for the petitioners has relied upon the decisions of the Hon'ble Supreme Court in the cases of **Jitendra Singh Vs. Ministry of Environment & Others (Civil Appeal No. 5109 of 2019 decided on 25.11.2019)**; **Hinch Lal Tiwari Vs. Kamala Devi & Others (Appeal (Civil) NO. 4787 of 2001 decided on 25.07.2001)**; **State of U.P. Vs. Smt. Sarjoo Devi & Others (Civil Appeal No. 2334 of 1968 decided on 27.07.1997)**; decisions of this Court in the cases of **Prem Singh & Others Vs. State of Rajasthan & Others (S.B. Civil Writ Petition No. 5078/2007 decided on 02.07.2019)**; **Suo Motu Vs. State of Rajasthan (S.B. Civil Writ Petition No. 11153/2011 decided on 29.05.2012)**; **Kanti Lal Vs. State of Rajasthan & Others (D.B. Civil Writ No. 7509/2016 decided on 13.11.2018)**; **Kalyan Singh & Others Vs. State of Rajasthan & Others (D.B. Special Appeal (Writ) No. 51/2020 & batch of appeals decided on 29.06.2021)**; **Jal Grahana Vikas Sanstha Vs. State of Rajasthan & Others (D.B. Civil Writ Petition**



No. 8472/2021); Shambhu Ram Vs. State of Rajasthan & Others (D. B. Civil Writ Petition No. 10457/2018 decided on 01.04.2021); Balu Ram Vs. State of Rajasthan & Others (S.B. Civil Writ Petition No. 5108/2020 decided on 06.04.2021); Bhanwar Singh Vs. The State of Rajasthan & Others (D.B. Civil Writ Petition No. 50/2021 decided on 09.02.2022).

Submissions on behalf of the respondents:

5.1 Learned Advocate General appearing on behalf of the respondents would contend that present public interest litigation petition is based on incorrect and misleading facts and the same is premature also because no restricted category of land, i.e., Oran or Agore has been mutated in favour of JPMIA Development Authority. By virtue of Section 77 of the RSIR Act, 2016, the provisions of the RSIR Act, 2016 have overriding effect over any other Rajasthan Law for the time being in force. Section 27 of the RSIR Act, 2016 overrides the Act of 1956. The lands, as defined under Section 103 of the Act of 1956 situated in Special Investment Region excluding those specified in the said provision, situated in nine revenue villages of Rohat Tehsil, immediately on constitution of JPMIA as Regional Development Authority by way of notification issued under Section 9 of the RSIR Act, 2016 are deemed to have vested in and placed at the disposal of JPMIA Development Authority which is authorised under the law to use the land for the purposes of development as provided under the RSIR Act, 2016.

5.2 Further contention of learned Advocate General is that Gochar lands situated in nine revenue villages, by virtue of vesting clause as contained in Section 27 of the RSIR Act, 2016, also vest in JPMIA Development Authority as those lands did not vest in respective Gram Panchayats



under the repealed Act of 1953 and the rules made thereunder in view of notification dated 22.04.1960 issued by the State Government in exercise of powers under Section 88 of the Act of 1953 (since repealed). Pasture lands, being unculturable lands, were excluded from the purview of coming in Gram Panchayats under the law.

It is contended that even after repeal of the Act of 1953 by the Act 1994, in exercise of powers conferred under Section 88 of the repealed Act of 1953, the same is saved under Section 124 of the Act of 1994.

5.3 Learned Advocate General would further argue that vesting of lands as provided under Section 27 of the RSIR Act, 2016 and consequent mutation of those lands in the name of JPMIA Development Authority is aimed towards achieving goal of industrial development. The plea that the action of the respondents is violative of principles of sustainable development is based on incorrect factual premise because the lands recorded as Agore or Oran have not vested, nor mutated in the name of JPMIA Development Authority. Vesting of Pasture lands would not adversely affect the availability of pasture lands as the State and its authorities have ample power under the Act of 1956 and the Act of 1955 to reserve any other parcel of land as Pasture/Gochar. The respondents are in the process of setting apart alternative lands in the adjoining villages as Pasture lands equal in area of the lands which have now vested in JPMIA Development Authority.

5.4 Elaborating his submissions, learned Advocate General further contended that Pasture lands are unculturable lands and never vested in Gram Panchayats under Section 88 of the repealed Act of 1953 as those lands were expressly excluded vide notification dated 22.04.1960. Learned Advocate General also referred to the provisions contained in



Sections 3(1) (i-b), 91, 92, 93, 95, 102A, 103 of the Act of 1956 and Rule 84 of the Rajasthan Land Revenue (Land Records) Rules, 1957 (hereinafter referred to as 'the Rajasthan Land Revenue (Land Records) Rules of 1957') as also Rule 39 of the Rules of 1957 and submitted that

har lands are unculturable Gair Mumkin lands and, therefore, under scheme of the Act of 1956 and the rules framed thereunder, Gochar is never vested in Gram Panchayats. He would further submit that

Section 63 of the Act of 1994 does not provide for vesting of Gochar lands in panchayat institutions. According to him, as there is no vesting of Gochar lands by an Act of the Legislature, Gochar lands are within the ambit of vesting clause as provided under Section 27(1) of the RSIR Act, 2016. In support of this submission, learned Advocate General placed reliance upon **Dr. Indramani Pyarelal Gupta & Others Vs. W.R. Nathu & Others, AIR 1963 SC 274.**

Learned Advocate General would further submit that notification dated 22.04.1960 issued earlier in pursuance of Section 88 of the repealed Act, i.e., the Act of 1953, continues to remain in force as it is saved by saving clause as provided in Section 124(1)(i) of the new Act, i.e., the Act of 1994. Relying upon the decisions of the Hon'ble Supreme Court in the cases of **Suraj Bhan & Others Vs. Financial Commissioner & Others (2007) 6 SCC 186** and **Rajinder Singh Vs. State of Jammu & Kashmir & Others (2008) 9 SCC 368**, learned Advocate General would submit that jamabandi entries/revenue records do not confer any title and do not have the effect of allocation of land by the Government in favour of Panchayat Institutions/Gram Panchayats. He would further submit that there is no absolute bar under the law against transfer of Gochar land. Learned Advocate General placed



reliance upon the decisions of this Court in the cases of **Gulab Kothari Vs. State of Rajasthan & Others (supra)** and **Gulab Chand & Others Vs. State of Rajasthan & Others 2007 (2) ILR (Raj.) 633**.

5.5 Learned Advocate General would further submit that no objection been raised by the Panchayats. Referring to the provisions contained Rule 7 of the Rules of 1955, he would submit that it is permissible for the law to set apart Gochar land for infrastructural projects and industrial purposes and the Collector may set apart an equal area of unoccupied culturable government land as Pasture land.

5.6 Referring to additional affidavit filed by the respondents, it has been stated that the respondents are in the process of setting apart alternate land of an equal area of 864.6148 hectares in adjoining villages as Pasture lands. Replying to the argument that amendment in Rule 7 of the Rules of 1955 vide notification dated 29.06.2020 has been stayed, a copy of order dated 28.04.2022 passed by Division Bench of this Court in **Shri Rajasthan Gau-Seva Samiti Vs. State of Rajasthan (D.B. Civil Writ Petition No. 326/2022 and other connected petition)** has been placed for perusal of the Court and it is submitted that earlier order dated 15.03.2022, whereby parties were restrained from altering the status of the lands recorded as Gochar in the revenue record, has been modified and it has been directed that no regularisation of lands entered as Gochar in the revenue record shall be undertaken without strict adherence to the rules and regulations.

5.7 It is also the contention of learned Advocate General that as the provisions of the RSIR Act, 2016 have overriding effect, the provisions of the Act of 1956, the Act of 1955, the repealed Act of 1953 and various



rules made under these enactments are overridden by the vesting clause as contained in Section 27(1) of the RSIR Act, 2016.

Referring to the decision of the Hon'ble Supreme Court in the case of **Lafarge Umiam Mining Private Limited T.N. Godavarman rumulpad Vs. Union of India & Others (2011) 7 SCC 338**, it has been submitted that the land of equivalent area is being set apart for industrial purposes and as only Government lands excluding those specified under Section 27(1) of the RSIR Act, 2016 have vested for industrial purposes, there is full compliance of the principle of sustainable development.

6. Analysis and conclusion:

6.1 Present public interest litigation seeks to challenge order dated 16.12.2020 passed by the District Collector, Pali on the pleadings that entire public utility lands like Oran, Agore, Bhakar have been transferred in favour of Respondent-JPMIA Development Authority for the project of industrial corridor. Having made a general statement of transfer of all public utility lands of nine revenue villages in Para 4.17 to 4.20 of the petition, it has been averred that in pursuance of impugned order dated 16.12.2020, lands reserved as Gair Mumkin Gochar, Barani(Agricultural land dependent on rainfall) have been entered in the name of JPMIA Development Authority. Thus, the petitioners, in their pleadings, have come out with a case that Pasture lands, Forest, Water Catchment and all other lands which are public utility lands and situated in nine revenue villages of Tehsil Rohat have been transferred in favour of JPMIA Development Authority.

6.2 However in the separate replies filed by Respondents No. 1 to 4 and Respondents No. 5 and 6 respectively, it has been denied and stated that





no restricted category of land, i.e. Oran or Agore situated in nine revenue villages has been transferred in favour of Respondent No. 4. As far as Gochar (Pasture) lands are concerned, it has been pleaded that lands of Khasra No. 183 and 222 of Village Dungarpur have been encroached by 11 persons. It has also been pleaded that all government lands falling in nine revenue villages of Tehsil Rohat have been directed to be entered in revenue records in favour of JPMIA Development Authority vide order dated 16.12.2020, except those excluded under Section 27(1) of the RSIR Act, 2016. There is no specific denial insofar as Gochar lands are concerned.

Therefore, from the returns of the respondents, it is reflected that according to the respondents, Gochar lands situated in nine revenue villages of Tehsil Rohat are treated as having been vested in JPMIA Development Authority by virtue of the provisions contained in Section 27(1) of the RSIR Act, 2016 which is also reflected from the action of the revenue authorities in mutating pasture lands in favour of JPMIA Development Authority in compliance of order dated 16.12.2020 passed by the District Collector, Pali.

6.3 In the rejoinder, the petitioners have confined their challenge to the action of the respondents in mutating Pasture lands situated in nine revenue villages of Tehsil Rohat in favour of JPMIA Development Authority. Therefore, the validity of order dated 16.12.2020 and various mutation entries made by the revenue authorities impugned in this petition have been confined to mutation of Pasture lands in favour of JPMIA Development Authority except other lands as stated in the petition allegedly transferred in favour of JPMIA Development Authority.



6.4 The order impugned in this petition was passed by the District Collector, Pali on 16.12.2020 (Annexure-8). Referring to notification dated 12.10.2020 of the Principal Secretary, Department of Industries, Government of Rajasthan and letters dated 15.12.2020 of the Commissioner, DMIC, Jaipur and the Deputy Secretary, Revenue, Government of Rajasthan respectively, the District Collector, Pali directed government lands situated in nine revenue villages, namely, Dungarpur, Singari, Dhundhali, Doodali, Neembli Patelan, Neembli Bramnan, Danasani, Rohat and Dalpatgarh of Rohat Tehsil to be mutated in favour of JPMIA Development Authority. In compliance of the aforesaid order passed by the District Collector, Pali, Gochar lands of village Dungarpur have been mutated in favour of JPMIA Development Authority and copies of the revenue records relating to village Dungarpur have been filed on record as Annexure-9 along with the writ petition. Copies of jamabandi records of revenue village Dungarpur in respect of lands recorded as "Barani Doyam" (agriculture land dependent on rainfall) have also been mutated in favour of JPMIA Development Authority and the relevant mutation entries have also been placed on record as Annexure-10. Jamabandi records regarding Gochar and Barani lands situated in village Neembli Bramnan, Rohat, Neembli Patelan, Danasani, Dhundhali have also been placed on record. These documents have been placed on record as Annexure-11 collectively.

The aforesaid documents have been referred in Para 4.18, 4.19 and 4.20 of the writ petition. The pleadings referring to aforesaid documents contain details regarding Gochar and Barani lands which have been mutated in favour of JPMIA Development Authority.



Though similar documents of mutation of Gochar and/or Barani lands situated in other revenue villages have not been placed on record but averments to this effect have been made that in the same terms, lands of other remaining revenue villages, which are lands of restricted nature, have also been entered in the name of JPMIA Development Authority.

In the returns filed by the respondents, while mutation of Gochar lands of nine revenue villages in favour of JPMIA Development Authority has not been disputed, there is clear denial in respect of other lands recorded as Oran or Agore.

6.6 The background in which Gochar lands of aforesaid nine revenue villages of Tehsil Rohat were mutated in favour of JPMIA Development Authority has already been stated in sufficient details by the petitioners as well as the respondents. Apparently, the action impugned in this writ petition is towards mutation of vast chunk of government lands in favour of JPMIA Development Authority.

Delhi Mumbai Industrial Corridor is conceived as a planned industrial development project between India's capital, i.e., Delhi and its financial hub and major port city, i.e., Mumbai. It aims at developing industrial zones spanning across six States of India including State of Rajasthan. According to the respondents, the backbone of DMIC project is the Western Dedicated Freight Corridor that would cut the logistical costs of manufactured goods to make it the lowest in the world. Further, 40% of DMIC area falls in the boundary of the State Rajasthan and approximately 38% of DMIC influence zone also lies in Rajasthan. It was further proposed to develop five investment nodes in Phase-I of DMIC in the State of Rajasthan. One of them is Jodhpur-Pali-Marwar. With the



intention to give implementation to DMIC project and also to give impetus to all economic sectors, a concept of Special Investment Regions has been framed to attract investment, which shall be large sized regions covering vast areas in the State for industrial and other economic activities, with essential infrastructure and amenities to be provided by State Government, Government agencies or Government companies through public private partnership or private parties.

Towards implementation of DMIC project, the State of Rajasthan enacted the RSIR Act, 2016 with the aim to provide for establishment, planning, development, operation, maintenance, management and regulation of Special Investment Regions in the State which came into force with effect from 01.07.2016. In exercise of its power conferred under Section 3 of the RSIR Act, 2016, the State Government issued notification on 12.10.2020 declaring "Special Investment Region" consisting of nine revenue villages of Tehsil Rohat, District Pali as referred to hereinabove. It further declared that entire area comprised in these nine revenue villages shall be known as "Jodhpur-Pali-Marwar Industrial Area" (JPMIA). Notification dated 12.10.2020, declaring Special Investment Region, is reproduced as below:

राजस्थान सरकार
उद्योग (ग्रुप-1) विभाग
(डीएमआईसी)

क्र. :-प.सं.15(9)डीएमआईसी/विविध/SIR Act/2019

दिनांक: 12 OCT 2020

अधिसूचना

राजस्थान विशेष विनिधान रीजन अधिनियम, 2016 (2016 का अधिनियम सं. 13) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्य सरकार एतद्वारा पाली जिले की रोहट तहसील के निम्नलिखित राजस्व ग्रामों के सम्पूर्ण क्षेत्रों को सम्मिलित करते हुए एक विशेष विनिधान रीजन (Special Investment Region) घोषित करती है तथा उक्त ग्रामों के सम्पूर्ण क्षेत्र को उसका भौगोलिक क्षेत्र विनिर्दिष्ट करती है जिसे जोधपुर-पाली-मारवाड़ औद्योगिक क्षेत्र (JPMIA) के नाम से जाना जाएगा, अर्थात् :-



तहसील रोहट के राजस्व ग्राम

1. डूंगरपुर
2. सिणगारी
3. ढूँढली
4. दूदली
5. निम्बली पटेलान
6. निम्बली ब्राह्मणान
- दानासनी
- रोहट
- दलपतगढ़



राज्यपाल की आज्ञा से,
-s/d-
(नरेश पाल गंगवार)
प्रमुख शासन सचिव

6.7 Section 5 of the RSIR Act, 2016 provides that the area comprising a Special Investment Region and the periphery thereof, except the abadi area, including the land set apart for development of abadi, of a village and the municipal area, shall be deemed to be an industrial township within the meaning of the provisions of clause (1) of Article 243Q of the Constitution of India from the date it is so notified in the Official Gazette by the State Government.

Further, Section 6 of the RSIR Act, 2016 provides that a Special Investment Region declared under the RSIR Act, 2016, except the abadi area, including the land set apart for development of abadi, of a village and the municipal area, shall cease to be under the jurisdiction of a local authority to the extent it relates to the provisions made in the RSIR Act, 2016. It further provides that while preparing the Master Development Plan for the Special Investment Region, the Regional Development Authority shall take into account the development plan, if any, prepared by the respective local authorities.

A conjoint reading of the aforesaid two provisions of the RSIR Act, 2016 would clearly show that consequent upon issuance of notification



under Section 3 of the RSIR Act, 2016, the area of nine revenue villages comprised in Special Investment Region, except the abadi area and the land set apart for development of abadi of the villages, is deemed to be an industrial township. Further, the land comprised in Special Investment Region ceases to be under the jurisdiction of a local authority to the extent it relates to the provisions of the RSIR Act, 2016.

Section 77 of the RSIR Act, 2016 gives the provisions of the RSIR Act, 2016 overriding effect over any other Rajasthan law for the time being in force. Section 77 of the RSIR Act, 2016 is reproduced hereinbelow for ready reference:

"77. Act to override other Rajasthan Law. - Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other Rajasthan Law for the time being in force."

6.9 Once notification under Section 3 of the RSIR Act, 2016 has been issued declaring any area or land to be Special Investment Region by specifying the geographical area thereof, notwithstanding anything contained in any other State law, which includes the Act of 1956, the Act of 1955, the repealed Act of 1953, the Act of 1994 as also the Rules of 1955, the legal consequences provided under Sections 5 and 6 of the RSIR Act, 2016 would flow. The area comprised in nine revenue villages with effect from 12.10.2020 is deemed to be an industrial township and ceases to be under the jurisdiction of a local authority to the extent it relates to the provisions of the RSIR Act, 2016.

Section 2, sub-section (s) of the RSIR Act, 2016 defines "local authority" as below:



"2. Definitions. - In this Act, unless the context otherwise requires,-

(s) "local authority" means a Panchayati Raj Institution, a municipality, Rajasthan Housing Board, an Urban Improvement Trust, or a Development Authority constituted by or under any Rajasthan Law;"

Thus, the entire land comprised in Special Investment Region, after statutory declaration issued under Section 3 of the RSIR Act, 2016, comes to be under the jurisdiction of the panchayat institutions to the extent it relates to the provisions of the RSIR Act, 2016, though abadi land and the land set apart for development of abadi has been excluded.

6.10 Section 7 of the RSIR Act, 2016 envisages establishment of a Board by issuance of notification, to be called as the Rajasthan Special Investment Regions Board. Section 8 of the RSIR Act, 2016 provides for the powers and the functions of the Board.

Chapter IV of the RSIR Act, 2016 deals with constitution of Regional Development Authority, its powers and functions. Chapter V of the RSIR Act, 2016 contains the provisions regarding planning for the Special Investment Regions Master Development Plan, Development Schemes and Development Plans.

6.11 In exercise of powers conferred under Section 9, sub-section (7) of the RSIR Act, 2016, the State Government issued a notification on 12.10.2020 designating Rajasthan State Industrial Development and Industrial Corporation Limited (RIICO), a fully government owned company under the Companies Act, 1956, as the Regional Development Authority. The aforesaid notification dated 12.10.2020 is reproduced as below:



राजस्थान सरकार
उद्योग (ग्रुप-1) विभाग

क्र. :-प.सं.15(9)डीएमआईसी / विविध / SIR Act / 2019

दिनांक: 12 OCT 2020

अधिसूचना

राजस्थान विशेष विनिधान रीजन अधिनियम, 2016 (2016 का अधिनियम सं. 13) की धारा 9 उप-धारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्य सरकार एतद्वारा उक्त नेयम की धारा 3 के अधीन घोषित जोधपुर-पाली मारवाड़ औद्योगिक क्षेत्र (जे.पी.एम.आई.ए.) विनिधान रीजन के लिए राजस्थान स्टेट इण्डस्ट्रीयल डवलपमेंट एण्ड इन्वेस्टमेंट कॉर्पोरेशन टेड (RIICO Ltd.) को क्षेत्रीय विकास प्राधिकरण के रूप में पदाभिहित करते हुए मुर-पाली मारवाड़ औद्योगिक क्षेत्र विकास प्राधिकरण का गठन करती है। उक्त क्षेत्रीय विकास प्राधिकरण का मुख्यालय जयपुर होगा।

राज्यपाल की आज्ञा से,
-s/d-
(नरेश पाल गंगवार)
प्रमुख शासन सचिव

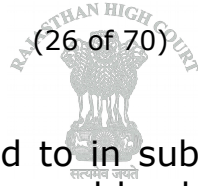
Thus, JPMIA Development Authority, a unit of RIICO, has been constituted as Regional Development Authority under the RSIR Act, 2016. It is enjoined with the powers and the functions to be discharged under Section 10 of the RSIR Act subject to the provisions of the Act and under the control, supervision and guidance of the State Government and the Board. The Regional Development Authority has been vested not only with the power to acquire, procure and hold the land within the Special Investment Region, by purchase, lease, exchange, agreement or otherwise, it has also been conferred with the power to give directions to any government agency or persons functioning in the Special Investment Region or the periphery thereof in matters pertaining to plans and schemes prepared under Chapter V of the RSIR Act, 2016. It has also been vested with the power to allot land as provided under Section 36 of the RSIR Act, 2016. It has power to regulate the development activities in the Special Investment Region in accordance with the plans and schemes prepared under Chapter V of the RSIR Act, 2016. It may enter upon any land or building to carry out surveys, make enquiry, inspection,



examination or measurement subject to the provisions of Section 49 of the RSIR Act, 2016. Amongst other powers and functions, it has also been enjoined with the power to make arrangements for observance and promotion of safety, order, health and environmental safeguards, disaster management for the Special Investment Region. It is empowered to constitute committees for proper regulation of traffic, environment, mining, land uses and any other purposes to achieve the objects of the RSIR Act, 2016. The aforesaid powers and functions of the Regional Development Authority are some of those which have been specified under Section 10 of the RSIR Act, 2016. Thus, the Regional Development Authority, for all legal purposes, possesses all powers and functions in relation to Special Investment Region. Therefore, the areas/lands of nine revenue villages included in notification dated 12.10.2020 are deemed to be industrial township, except abadi land and the land set apart for development of abadi, and ceased to be under the jurisdiction of local authorities to the extent they relate to the provisions of the RSIR Act, 2016.

6.12 In order to give effect to and implement Special Investment Region Master Development Plan, Development Schemes and Zonal Development Plans, Section 27 of the RSIR Act, 2016 has been enacted which provides for vesting of land in the Regional Development Authority and its disposal. The aforesaid provision, being relevant for adjudication of the core issue involved in this writ petition, is being reproduced hereinbelow:

"27. Vesting of land in the Regional Development Authority, and its disposal. - (1) Notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956), the land, as defined in Section 103 of that Act, situated in a Special Investment Region,



(excluding land referred to in sub-clause (ii) of clause (a) of the said section and nazul land placed at the disposal of a local authority under Section 102-A of that Act and the abadi area and the land set apart for development of abadi of a village and the municipal area and the land vested in any local authority by virtue of an Act of the State Legislature prior to the commencement of this Act) shall, immediately on constitution of the Regional Development Authority under Section 9, be deemed to have vested in and placed at the disposal of the Regional Development Authority on behalf of the State Government and the Regional Development Authority may use the same for the purposes of this Act and may dispose of the same subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe by rules, -

(a) without undertaking or carrying out any development thereon; or

(b) after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider proper.

(2) If the State Government is satisfied that any land vested in any local authority is required at any time by the Regional Development Authority for carrying out its functions, it may, notwithstanding anything contained in any Rajasthan Law, by notification in the Official Gazette, place such land at the disposal of the Regional Development Authority on such terms and conditions as it may deem fit:

Provided that, before taking any action under this subsection, the State Government shall give an opportunity of hearing to the local authority concerned.

(3) If any land vested in the Regional Development Authority is required at any time by any local authority for carrying out its functions or by the State Government for any other purpose, the State Government may, by notification in the Official Gazette, place such land at the disposal of such local authority or any Department of the State Government on such terms and conditions as it may deem fit:

Provided that, before taking any action under this subsection, the State Government shall give an opportunity of hearing to the Regional Development Authority concerned.

(4) The State Government may, for the purposes of this Act, acquire land in accordance with the provisions of the law relating to land acquisition, in force, at the time of acquisition.

(5) The State Government may transfer land owned, acquired or controlled by it to the Regional Development Authority for the purposes of this Act as per laws relating to land revenue.

(6) Where any land or any other property of the government agencies are transferred and vested in the





Regional Development Authority under this Act, and compensation, if any, for such land and other property is to be paid to such government agencies, the compensation shall be such as may be decided by the State Government."

A close analysis of the aforesaid provision reveals that the RSIR Act, 2016 seeks to make provision for procurement of land in four ways, namely, (i) vesting by operation of law; (ii) transfer of land vested in any local authority to Regional Development Authority; (iii) acquisition of land, and (iv) transfer of land vested in State Government to Regional Development Authority. Immediately upon constitution of Regional Development Authority under Section 9 of the RSIR Act, 2016, the land, as defined in Section 103 of the Act of 1956, situated in a Special Investment Region, excluding land referred to therein shall be deemed to have vested in and placed at the disposal of the Regional Development Authority on behalf of the State Government and the Regional Development Authority may use the same for the purposes of the RSIR Act, 2016 and may dispose of the same subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe by rules without undertaking or carrying out any development thereon or after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider proper.

Sub-section (2) of Section 27 of the RSIR Act, 2016 provides for another mode that if the State Government is satisfied that any land vested in any local authority is required at any time by the Regional Development Authority for carrying out its functions, it may, notwithstanding anything contained in any Rajasthan Law, by notification



in the Official Gazette, place such land at the disposal of the Regional Development Authority on such terms and conditions as it may deem fit. However, it is further provided that before taking any action under sub-section (2), the State Government shall give an opportunity of hearing to local authority concerned.

Sub-section (3) of Section 27 of the RSIR Act, 2016 provides that if land vested in the Regional Development Authority is required at any time by any local authority for carrying out its functions or by the State Government for any other purpose, the State Government may, by notification in the Official Gazette, place such land at the disposal of such local authority or any Department of the State Government on such terms and conditions as it may deem fit. It further provides that before taking any action under sub-section (3), the State Government shall give an opportunity of hearing to the Regional Development Authority concerned.

Sub-section (4) of Section 27 of the RSIR Act, 2016 provides that the State Government may, for the purposes of the Act, acquire land in accordance with the provisions of the law relating to land acquisition, in force, at the time of acquisition.

Sub-section (5) of Section 27 of the RSIR Act provides for fourth mode by which the State Government may transfer land owned, acquired or controlled by it to the Regional Development Authority for the purposes of the RSIR Act, 2016 as per laws relating to land revenue.

6.13 The bone of contention of the petitioners is that Gochar/Pasture lands of nine revenue villages, by operation of law, have already vested in respective Gram Panchayats and are, therefore, excluded under the exclusionary clause specified in sub-section (1) of Section 27 of the RSIR





Act, 2016. This contention has been controverted by the respondents by stating that Pasture lands of nine revenue villages never vested in respective Gram Panchayats either under the repealed old Act, i.e. the Act of 1953 or under the new Act, i.e. the Act of 1994.

As Section 27 of the RSIR Act, 2016 provides that the land as mentioned in Section 103 of the Act of 1956 shall be deemed to have vested and placed at the disposal of the Regional Development Authority, it would be apposite to reproduce Section 103 of the Act of 1956 as below:

“103. Land and abadi defined for the Purposes of Chapter VI.-For the purposes of this Chapter, unless the subject or context otherwise requires, -

(a) **"Land"** means land belonging to all or any of the following categories :

- (1) Land as defined in clause (24) of section 5 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955)
- (2) land acquired under the provisions of the Rajasthan Land Acquisition Act, 1953 (Rajasthan Act 24 of 1953) for the purpose of Government or a local authority or an educational institution while such land remains the property of Government or such local authority or educational institution as the case may be;
- (3) land surveyed and recorded, whether before or after the commencement of this Act, during any proceeding relating to survey and preparation of records or otherwise, as belonging to the Government or a local authority, which is used for any public purpose such as a road or pathway,
- (4) Land surveyed and recorded as aforesaid for the use of the community such as gocher, cremation-ground or graveyard,
- (5) Land in possession of the State Government or a local authority obtained by transfer or otherwise,
- (6) Nazul land as defined in clause (iv) of Section 3, and
- (7) Land within the abadi area vesting in a local authority or land reserved and set apart for special purposes under section 92, and includes benefits to arise out of such land and things attached to the earth or permanently fastened to anything attached to the earth; and

(b) **"abadi"** or **"abadi area"** or **"abadi land"** means the populated area of a village, town or city, and includes the site of such village, town or city, land reserved and set apart under Section 92 for the development of abadi therein and land held there in for building purposes whether a building has been constructed thereon or not.]”





The category of land has been divided into two clause under Section 103 of the Act of 1956, i.e. clause (a) and (b). Land specified under clause (a) has been further divided into seven categories. Clause (b) refers to "abadi" or "abadi area" or "abadi land". Fourth category of land specified in clause (a) of Section 103 of the Act of 1956 clearly refers to land surveyed and recorded for the use of the community such as har, cremation-ground or graveyard. It is, thus, clear that even Gochar (Pasture) land is included under Section 103 of the Act of 1956, however, there are certain categories of lands which have been excluded from the ambit of vesting and they are- (A) land referred to in sub-clause (2) of clause (a) of Section 103 of the Act of 1956; (B) Nazul land placed at the disposal of a local authority under Section 102 of the Act of 1956; (C) abadi area and the land set apart for development of abadi of a village and the municipal area; and (D) land vested in any local authority by virtue of an Act of the State Legislature prior to commencement of the RSIR Act, 2016.

Therefore, the aforesaid lands do not come under the purview of vesting clause as provided in sub-section (1) of Section 27 of the RSIR Act, 2016.

6.14 Pasture lands of nine revenue villages do not fall under category (A), (B) or (C). Therefore, unless it is held that Gochar or Pasture lands of the aforesaid nine revenue villages included in JPMIA vested in local authority, i.e. respective Gram Panchayats constituted under the old Act, i.e., the repealed Act of 1953 or under the new Act, i.e., the Act of 1994 by virtue of an Act of the State Legislature prior to commencement of the RSIR Act, 2016, Gochar or Pasture lands would also be within the mischief of vesting clause.



6.15 Contents in the writ petition with regard to Gochar lands, which are subject matter of dispute, recorded as such in the name of respective Gram Panchayats of nine revenue villages have not been substantially disputed by the respondents in their returns. The historical background which the parts of the lands situated in nine revenue villages were set apart as Gochar lands have also not been disputed by the respondents.

Therefore, before proceeding on this admitted factual position, it needs to be examined whether Pasture lands situated in nine revenue villages and recorded in the name of respective Gram Panchayats in the revenue records vested in the respective Gram Panchayats of nine revenue villages, by operation of any law for the time being in force. Under the scheme of the Act of 1956, there is no provision of automatic vesting of Pasture land in the panchayat institutions. Section 92 of the Act of 1956 provides for setting apart of the land for special purposes including free pasturage of cattle. Subject to the general orders of the State Government, the Collector has been empowered to set apart land for special purposes including pasturage of cattle and it also provides that such land shall not be used otherwise than for such purpose without the previous sanction of the Collector.

Section 102A of the Act of 1956 empowers the State Government to place at the disposal of a local authority any Nazul land or land set apart under Section 92 of the Act of 1956 with the restriction of use of such land for the special purpose for which it has been set apart subject to conditions and restrictions as may be imposed by the State Government. Learned counsel for the petitioners though referred to various rules framed by the State Government in exercise of its rule making power,



there is no provision under any of the rules providing for automatic vesting of Pasture lands in respective Gram Panchayats.

6.16 The Act of 1955 though defines land under Section 5(24) which includes land for pasturage, pasture land defined under Section 5(28) of

Act of 1955 would mean the land used for grazing of the cattle of a village or villages or recorded in settlement records as such at the commencement of the Act of 1955 or thereafter reserved as such in

accordance with the rules framed by the State Government, there is no provision of automatic vesting by operation of law of any land categorised under Section 5(24) or Section 5(28) of the Act of 1955 in any local authority including Panchayati Raj Institutions.

6.17 Prior to commencement of the Act of 1994, old Act, i.e. the repealed Act of 1953 remained in force until repealed. The repealed Act of 1953 came into force with effect from 01.01.1954.

Section 88 of the repealed Act of 1953 dealt with panchayat property. For ready reference, the aforesaid provision is extracted hereinbelow:

“**[Sec. 88 : Panchayat Property-(1)]** Subject to such reservations as may from time to time be made by the State Government all property of the nature hereinafter in this sub-section specified shall vest in and belong to a Panchayat, that is to say :-

- (i) all common lands lying within its Panchayat Circle;
- (ii) all public streets together with the pavement, stones & other materials thereof and all trees, erections materials and implements provided therefor;
- (iii) all public gates, markets, buildings, tanks, reservoirs, wells, bridges, culverts, tunnels, gutters, water-works, water-courses, lamps and lamp-posts which have been constructed or provided for, or are maintained, out of the Panchayat fund;
- (iv) all dirt, dust, dung, ashes, refuse, and dead bodies of animals lawfully collected by the servants of the Panchayat from public or private places;





(v) all Government buildings and all private buildings and lands transferred to the Panchayat by gift or otherwise; and

(vi) all Government lands lying within the abadi area of the Panchayat Circle,

(2) The State Government may, subject to such conditions and restrictions as it may think fit to impose, vest in the Panchayat any properties, works, materials or things belonging to the State Government;

(3) All properties mentioned in sub-sections (1) and (2) shall be under the direction, management and control of the Panchayat and shall be held by it as trustee for the purposes of this Act.

(4) All markets and fairs, except those managed by the State Government or a Panchayat Samiti, that are held upon lands vested or vesting in, the Panchayat, shall be managed and regulated by it.

(5) All properties mentioned in sub-section (1), together with the proceeds thereof, or the income therefrom and any dues levied or imposed in respect of markets and fairs mentioned in the last foregoing sub-section (which shall be received to the credit of the Panchayat Fund), shall, subject to the provisions of this Act and the rules made thereunder, be applied by the Panchayat in the achievement of the objects of this Act.

(6) The properties mentioned in sub-section (2) shall be leased out or sold, and the proceeds thereof shall be utilised, by the Panchayat in the prescribed manner and subject to the prescribed conditions and any lease or sale otherwise granted or made, shall be void as against the State Government.

(7) The State Government may from time to time, by notification in the Official Gazette, resume, in consultation with the Zila Parishad concerned any property mentioned in sub-section (2)-

(i) if the Panchayat is found upon inquiry to have mismanaged the same, or

(ii) if the same is otherwise required by the State Government in the public interest,

on such terms, as the State Government may determine.]”

Sub-section (1) of Section 88 of the repealed Act of 1953 clearly provided for vesting of property of the nature specified under Clause (i) to (vi), subject to such reservations as may be made by the State Government from time to time. Sub-clause (i) of Section 88(1) of the repealed Act of 1953 declared that all common lands lying within the Panchayat Circle shall vest in and belong to a Panchayat.





Sub-section (2) of Section 88 of the repealed Act of 1953 provided that the State Government may, subject to such conditions and restrictions as it may think fit to impose, vest in the Panchayat any properties, works, materials or other things belonging to the State Government.

Sub-section (3) of Section 88 of the repealed Act of 1953 provided : all properties which are mentioned in sub-section (1) and (2) shall be under the direction, management and control of the Panchayat and shall be held by it as trustee for the purposes of the repealed Act of 1953.

6.18 Word, "common land" as mentioned in sub-clause (i) of sub-section (1) of Section 88 of the repealed Act of 1953 was also defined under definition clause, i.e., Section 2(7) of the repealed Act of 1953 as under:

"2. Definitions-In this Act, unless there is any thing repugnant in the subject or context
(7) '**Public land**' or '**Common land**' means land which is not in exclusive possession and use of any individual but is used by the inhabitants of a Panchayat Circle commonly."

According to the aforesaid definition, public land or common land would mean the land which is not in exclusive possession and use of any individual but in use of inhabitants of a Panchayat Circle commonly. Thus, a plain and natural meaning has been assigned to the words, "public land" or "common land" to mean that all those lands which are used by the inhabitants of a Panchayat Circle commonly, i.e. of common use, would fall within the meaning of the words, "public land" or "common land". Therefore, subject to such restrictions and conditions as may be imposed by the State Government in exercise of powers conferred on it under Section 88 of the repealed Act of 1953, all public



lands or common lands vested in Panchayat by virtue of Section 88 of the repealed Act of 1953.

6.19 In the case of **Chattar Singh & Others Vs. Madho Singh (Dead)**

& Others (2019) 16 SCC 262, while dealing with an issue as to

whether 'Charnoi' land (land reserved for pasture) could vest in the State

by virtue of vesting clause contained in Section 4 of the Madhya Bharat

Zamindari Abolition Act, 1951, it was held that the land recorded as

'Charnoi', i.e. the land reserved for grazing of cattle of villages are

common land and would, therefore, vest in the State by virtue of the

provisions contained in Section 4(1)(a) of the Madhya Bharat Zamindari

Abolition Act, 1951. It was held as below:

"11. In order to save the land from vesting Section 4(2) requires land to be "personally cultivated" by Zamindar or through employees or hired labourers and another sine qua non is that it should be so recorded in revenue papers as "khudkasht", otherwise all land vest in the State as provided in Section 4(1)(a). Once the land is recorded as "charnoi" i.e., common land reserved for grazing of cattle of villagers, such common land clearly vests in the State as provided in Section 4(1)(a) all the land, the forest, trees, village sites, pathways etc. vest in the State absolutely. Since the land was "charnoi" i.e., common grazing land for cattle of the villagers having huge area 72 bighas 18 biswa the fruit-bearing trees of custard apple also vested in the State.

14. Thus, when land is primarily used for "charnoi" i.e. common grazing land for cattle of villagers, it would not fall into the category of "grove" and provision of Section 5(f) would not save such trees from vesting. The village sites, comprise of common land reserved for villagers, vest in the State. It cannot be retained by Zamindar as he had no existing right on such land even before date of vesting, it being common land, it belonged to villagers. No individual can claim that such land belongs to him exclusively."

6.20 In the case of **Sharad Kumar Dwivedi Vs. State of U.P. &**

Others, Public Interest Litigation (PIL) No. 7472 of 2021 decided

on 05.07.2022, Allahabad High Court examined the validity of transfer





of land which was recorded as 'Jangal Dhak'. The issue arising for consideration before the Court was whether the land recorded as 'Jangal Dhak' could be considered as a public utility land. The Court noted the relevant provisions of U.P. Land Records Manual, particularly, class of res and categories of land within each village as provided in Para A- of the Manual. The Court referred to clause 5(iii)(b)(2) of Para A- of the Manual wherein various lands vested in Gram Sabha were recorded as 'Jangal Dhak'. It was contended before the Court that the lands recorded as 'Jangal Dhak' are public utility lands. However, the other side contended that such lands do not constitute public utility lands.

Referring to its earlier decision in the case of **Gyanendra Singh Vs. Additional Commissioner, Agra Division, Agra, 2003 (95) RD 286**, Allahabad High Court held that the land recorded as 'Jangal Dhak' is a forest land as also a public utility land, taking into consideration that the area of 'Jangal Dhak' comprises of small trees having large leaves and is a forest land and forest land is beneficial for human life and environment.

6.21 It is relevant to notice that in the definition clause under Section 2(7) of the repealed Act of 1953, words, "common land" or "public land" have been assigned same meaning. For the purposes of the repealed Act of 1953, public lands or common lands are one and the same and legislative intention is to give wide meaning to the word, "common land".

6.22 In the case of **State of Jharkhand & Others Vs. Tata Steel Limited & Others (2016) 11 SCC 147**, one of the cardinal principle of



construction of statute based on ordinary meaning was explained by the Hon'ble Supreme Court as below:

"**24.** In *Doypack Systems (P) Ltd. v. Union of India* (1988) 2 SCC 299, a two-Judge Bench while emphasising on the concept of interpretation opined thus: (SCC pp. 331-32, paras 58-59)

"58. The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to. See *Chandavarkar S.R. Rao v. Ashalata* (1986)4SCC 447 approving Halsbury's Laws of England, 4th Edn., para 856 at p. 552, *Nokes v. Doncaster Amalgamated Collieries Ltd.* 1940 AC 1014 at p. 1022. It must be emphasised that interpretation must be in consonance with the directive principles of State policy in Articles 39(b) and (c) of the Constitution.

59. It has to be reiterated that the object of interpretation of a statute is to discover the intention of Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand."

The aforesaid principle has been reiterated in *Keshavji Ravji and Co. v. CIT* (1990) 2 SCC 231."

6.23 In the case of **Subramanian Swamy vs. Union of India, Ministry of Law & Others (2016) 7 SCC 221**, relying upon its earlier decision in the case of **Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer (2004) 1 SCC 755**, the principle of *noscitur a sociis* was explained by the Hon'ble Supreme thus:

"**74.** At this juncture, we may note that in *Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer*, it has been stated that *noscitur a sociis* is a legitimate rule of construction to construe the words in an Act of Parliament with reference to the words found in immediate connection with them. In this regard, we may refer to a passage from Justice G.P. Singh, *Principles of Statutory Interpretation* (13th Edn. 2012) 509 where the learned author has referred to the lucid explanation given by Gajendragadkar, J. We think it appropriate to reproduce the passage:





"It is a rule wider than the rule of ejusdem generis; rather the latter rule is only an application of the former. The rule has been lucidly explained by Gajendragadkar, J. in the following words:

'This rule, according to Maxwell, Interpretation of Statutes (11th Edn., 1962) 321 means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general.' "

The learned author on further discussion has expressed the view that meaning of a word is to be judged from the company it keeps, i.e. reference to words found in immediate connection with them. It applies when two or more words are susceptible of analogous meanings are coupled together, to be read and understood in their cognate sense Principles of Statutory Interpretation by G.P. Singh (8th Edn.) 379. Noscitur a sociis is merely a rule of construction and cannot prevail where it is clear that wider and diverse etymology is intentionally and deliberately used in the provision. It is only when and where the intention of the legislature in associating wider words with words of narrowest significance is doubtful or otherwise not clear, that the rule of noscitur a sociis is useful."

6.24 In view of above consideration and taking into consideration the words of wide meaning as contained in definition clause under Section 2(7) of the repealed Act of 1953, even though Pasture land has not been expressly included as part of the public land or common land, the legislative intention as is gathered from the context and the wide meaning assigned to the words, "common land", the meaning of the words, "common land" includes Pasture land as it is not a land under exclusive use of anyone, but in common use i.e. grazing of cattle belonging to the villagers.

6.25 However, learned Advocate General has placed reliance upon notification dated 22.04.1960 issued by the State Government in exercise of powers under Section 88 of the repealed Act of 1953, which reads thus:



 DEVELOPMENT DEPARTMENT
 (Panchayats)
NOTIFICATION.
 Jaipur, April, 22, 1960.

No. F.4(LJ)2(9)-26691._In pursuance of section 88 of the Rajasthan Panchayat Act, 1953 (Act No. 21 of 1953), the State Government hereby acts, that notwithstanding anything in clause (1) of the said section, agricultural lands, forest lands and unculturable lands, (not being di land, as defined in clause (b) of section 103 of the Rajasthan Land Revenue Act, 1950, situated in a Panchayat Circle, shall vest in or belong to the Panchayat of that circle or shall be under its directions, management and control.

By Order of the Governor,

sd/- G.K. Bhanot,
 Deputy Secretary to the Government,
 (Panchayat Wing),
 Rajasthan Jaipur.

6.26 It is manifest from reading of the aforesaid notification dated 22.04.1960 that the State Government exercised its powers under subsection (1) of Section 88 of the repealed Act of 1953 excluding certain categories/classes of lands from the scope of vesting clause. Amongst various categories of lands, one of the category of land described in the aforesaid notification as "unculturable lands" situated in a Panchayat Circle to be excluded from vesting.

6.27 We shall now refer to the provisions of various rules framed by the State Government in exercise of its powers under the Act of 1956. Rule 39 of the Rules of 1957 provides for broad division of soils. Clause D thereof declares Gair Mumkin Soil as Dry unculturable. Rule 84 of the Rajasthan Land Revenue (Land Records) Rules of 1957 clearly provides for the areas which are not available for cultivation and described as unculturable. Rule 84(e) thereof clearly provides for the lands reserved by the Government for pasturage, Johads or permanent pastures and other grazing grounds as area not available for cultivation. Relevant



extract of Rule 84 of the Rajasthan Land Revenue (Land Records) Rules of 1957 is extracted as below:

"84. Area not available for cultivation (Unculturable area).-The following lands may be considered as 'Not available for cultivation:-

- (a) xxxxxx
- (b) xxxxxx
- (c) xxxxxx
- (d) xxxxxx
- (e) Lands reserved by Government for pasturing e.g., 'Johars' or permanent pastures and other grazing grounds."

6.28 It is, therefore, clear that Pasture land is categorised as unculturable area under the law. Thus, while excluding certain categories of lands from the purview of vesting, in exercise of its powers under sub-section (1) of Section 88 of the repealed Act of 1953 by issuing notification dated 22.04.1960, the words, "unculturable lands" clearly meant to include, amongst other things, "Pasture lands (Gochar)". It, therefore, can be logically concluded that even though Pasture lands are otherwise included within the meaning of the word, "common land" as defined under Section 2(7) of the repealed Act of 1953 and by virtue of vesting clause (i) of sub-section (1) of Section 88 of the repealed Act of 1953, situated in a Panchayat Circle would have vested in Panchayat, but said lands stood excluded vide notification dated 22.04.1960. Therefore, it has to be held that in view of notification dated 22.04.1960, Pasture lands did not vest in Panchayats under Section 88(1)(i) of the repealed Act of 1953 and remained excluded from the purview of vesting. Irrespective of whether the Pasture lands remained under control or management of the Panchayats, it cannot be said that Pasture lands as common lands vested in Panchayats under Section 88 of the repealed Act of 1953.



6.29 In view of above considerations, Pasture lands did not vest in Panchayats either under the provisions of the Act of 1956; the Act of 1955 or the repealed Act of 1953 or under any rules framed under the respective Act.

The Rajasthan Panchayat Act, 1953 was, however, repealed by new legislative enactment known as the Rajasthan Panchayati Raj Act, 1994 (Act of 1994) and by virtue of repealing provisions as contained in Section 124 of the Act of 1994, the Rajasthan Panchayat Act, 1953 stood repealed subject to saving clause as enumerated therein. Perusal of Section 2 of the Act of 1994, containing definition clauses, would reveal that the words, "public land or "common land" were defined exactly in the same manner as defined under the repealed Act of 1953. Section 2(1)(xx) of the Act of 1994 reads as under:

"2. Definition.-(1) In this Act, unless the context otherwise requires-
(xx) **"Public Land" or "Common Land"** means land which is not in exclusive possession and use of any individual but is used by the inhabitants of a local area commonly;"

Therefore, the interpretation of the aforesaid clause defining public land or common land, as stated above, would also apply with full force so as to include a pasture land.

6.31 Section 63 of the Act of 1994 provides for power to acquire, hold and dispose of properties which reads as below:

"63. Power to acquire, hold and dispose of properties.-

(1) A Panchayati Raj Institution shall have the power to acquire, hold and dispose of property and to enter into contracts :

Provided that in all acquisition or disposal of immovable property the concerned Panchayati Raj Institution shall obtain the previous approval of the State Government.

(2) All roads, buildings or other works constructed by a Panchayati Raj Institution with its own funds shall vest in it.

(3) The State Government may allocate to a Panchayati Raj Institution any public property situated within the





jurisdiction of such Panchayati Raj Institution and thereupon such property shall vest in and under the control of such Panchayati Raj Institution.

(4) Where a Panchayati Raj Institution requires land to carry out any of the purpose of this Act, it may negotiate with the person or persons having interest in the said land or it may make an application to the State Government or officer authorised in this behalf for the acquisition of the land, who may, if he is satisfied that the land is required for a public purpose, take steps to acquire the land under the provisions of the Land Acquisition Act, 1894 (Central Act No. 1 of 1894) and such land shall, on acquisition, vest in the concerned Panchayati Raj Institution."

6.32 A comparative reading of Section 88 of the repealed Act of 1953 and Section 63 of the Act of 1994 would reveal that the statutory scheme of vesting under the provisions of the repealed Act of 1953 did not continue as it was but was modified. Common lands or public lands were excluded from the purview of the vesting clause under Section 63 of the Act of 1994. Sub-section (2) of Section 63 of the Act of 1994 provides for vesting of all roads, buildings or other works constructed by a Panchayati Raj Institution with its own funds. Thus, under the Act of 1994, there is no automatic vesting of various categories of lands which included public land or common land, by virtue of Section 63 of the Act of 1994.

Sub-section (3) of Section 63 of the Act of 1994, however, empowers the State Government to allocate to a Panchayati Raj Institution any public property situated within the jurisdiction of said Panchayati Raj Institution and further provides that upon such allocation, property shall vest in and under the control of said Panchayati Raj Institution. The other mode of vesting has been provided under sub-section (4) of Section 63 of the Act of 1994 which may be by way of negotiations with the persons having interest in the land or by way of acquisition under the acquisition laws.



6.33 Though, under Section 63 of the Act of 1994, unlike Section 88 of the repealed Act of 1953, there is no automatic vesting of common land or public land including Pasture land, in exercise of its rule making power under the Act of 1994, the State Government framed rules known as the Rajasthan Panchayati Raj Rules, 1996 (the Rules of 1996) vide notification dated 30.12.1996 which was published in Rajasthan Gazette : IV (Ga)(I) on 30.12.1996.

Rule 136 of the Rules of 1996, as amended from time to time, provides for Panchayat properties as below:

"136. Panchayat properties:(1) All common lands and public streets together with pavements, stones and other material thereof within the Panchayat Circle as well as all Government lands lying within the Abadi Area shall vest in and belong to a Panchayat. All other Government lands within the Panchayat Circle shall be managed by Panchayat subject to such conditions and restrictions as may be imposed by the State Government, from time to time.
(2) The State Government may, subject to such conditions and restrictions, as it may think fit to impose, vest in the Panchayat any land, properties, works, materials, things belonging to the State Government.
(3) All properties mentioned in sub-section (1) and (2) shall be under the direction, management and control of the Panchayat and shall be held by it as a trustee for the purposes of this Act.
(4) All the markets and fairs, except those managed by the State Government or Panchayat Samiti, that are held on the lands vested or vesting in the Panchayat, shall be managed and regulated by it.
(5) Income from sale proceeds or lease of such properties or material produce therefrom and any dues levied or imposed in respect of markets and fairs held on such lands, shall form part of Panchayat Fund and shall be applied by the Panchayat in the achievement of objects of Panchayati Raj Act.
(6) The State Government, may resume any such property vested in the Panchayat:-
(i) if the Panchayat is found upon enquiry to have mismanaged the same or utilised in contravention of terms and conditions imposed at the time of vesting, or
(ii) if the same is otherwise required by the State Government in the public interest, on such terms, as the State Government may determine."





Importantly, under the aforesaid rule, all common lands and public streets together with pavements, stones and other material thereof, as well as all government lands lying within the abadi area of the panchayat circle declared as vested in and belonging to a Panchayat.

Sub-rule (2) of Rule 136 of the Rules of 1996 empowers the State Government to impose conditions and restrictions as it may think fit, subject to which such vesting would take place.

6.34 It is, therefore, clear that while under the Act of 1994, the provisions of the Act by itself did not declare vesting of common lands or public lands in Panchayati Raj Institutions, in exercise of rule making power, such vesting clause was provided under Rule 136 of the Rules of 1996 framed by the State Government.

In view of the provisions contained in sub-rule (2) of Rule 136 of the Rules of 1996, if there is any restriction, limitation or condition imposed by the State Government in respect of any land, such land may not vest in Panchayati Raj Institution. It has already been noticed hereinabove that certain categories of lands were excluded by the State Government from the purview of vesting under Section 88 of the repealed Act of 1953 by issuing notification dated 22.04.1960.

The respondents, however, have not placed any notification issued in exercise of its rule making power to show that similar exercise of exclusion of certain categories of lands including Pasture lands was undertaken by the State by issuing any notification on the similar lines to that of earlier notification dated 22.04.1960 issued under the provisions of the repealed Act of 1953.

6.35 At this stage, it would be apposite to refer to and answer two important submissions which were raised by learned Advocate General.





First submission of learned Advocate General is that in view of the provisions contained in Section 27 of the RSIR Act, 2016, the land would be excluded from the purview of vesting only when such vesting is under an Act of the State Government. It is his contention that as there is no vesting of common lands or public lands by virtue of the provisions contained in Section 63 of the Act of 1994, Pasture lands, even though situated as part of the common land or public land, would not vest in any local authority, i.e. Panchayati Raj Institutions and would, therefore, by virtue of the provisions contained in Section 27 of the RSIR Act, 2016, vest in Special Investment Region only under Section 3 of the RSIR Act, 2016. To buttress his submission, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Dr. Indramani Pyarelal Gupta & Others Vs. W.R. Nathu & Others (supra)**.

The aforesaid decision of the Hon'ble Supreme Court essentially involved decision of an issue as to whether the power conferred by a bye-law framed under the Act could be interpreted to mean the power conferred "by or under the Act or as may be prescribed". The question, therefore, was whether a power conferred by a bye-law could be held to be a power "conferred under the Act". The distinction between the meaning of the words, "under the Act" and words, "by an Act" was emphasised by the Hon'ble Supreme Court. The discussion contained in Para 15 of the report is relevant for the purpose and is quoted hereinbelow:

"(15). A more serious argument was advanced by learned Counsel based upon the submission that a power conferred by a bye-law framed under S. 11 or 12 was not one that was conferred "by or under the Act or as may be prescribed". Learned Counsel is undoubtedly right in his submission that a power conferred by a bye-law is not one conferred "by the Act", for in the context the expression



"conferred by the Act" would mean "conferred expressly or by necessary implication by the Act itself". It is also common ground that a bye-law framed under Section 11 or 12 could not fall within the phraseology "as may be prescribed", for the expression "prescribed" has been defined to mean "by rules under the Act", i.e., those framed under S. 28 and a bye-law is certainly not within that description. The question therefore is whether a power conferred by a bye-law could be held to be a power "conferred under the Act." The meaning of the words "under the Act" is well-known. "By" an Act would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words "under the Act" would, in that context signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, bye-laws made by a Subordinate law-making authority which is empowered to do so by the parent Act. This distinction is thus between what is directly done by the enactment and what is done indirectly by rule-making authorities which are vested with powers in that behalf by the Act. (Vide Hubil Electricity Co. Ltd. v. Province of Bombay, 76 Ind App 57 at p.66 : (AIR 1949 PC 136 at p. 139), and Narayanaswamy Naidu v. Krishna-Murthi, ILR (1958) Mad 513 at p. 547 : (AIR 1958 Mad 343 at p. 359). That in such a sense bye-laws would be subordinate-legislation "under the Act" is clear from the terms of Ss. 11 and 12 themselves. Section 11(1) enacts:

"11. (1) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts," and sub-s. (2) enumerates the matters in respect of which bye-laws might make provision. Sub-s. (3) refers to the bye-laws as those made under this section and the provisions of sub-s. (4) put this matter beyond doubt by enacting:

"11. (4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate:

.....
Section 12 under which the impugned bye-law was made states in sub-s. (2):

"12. (2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognized association is situate, and on the publication thereof in the Gazette of India the bye-laws so



made or amended shall have effect as if they had been made or amended by the recognised association," and in sub-s. (4):

"12. (4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

....."
Having regard to these provisions it would not be possible to contend that notwithstanding that the bye-laws are rules made by an Association under S. 11 or compulsorily made by the Central Government for the Association as its bye-laws under S. 12, they are not in either case Subordinate legislation under S. 11 or 12 as the case may be, of the Act and they would therefore squarely fall within the words "under the Act" in S.4(f). Indeed, we did not understand Mr. Pathak to dispute this proposition."

6.36 From the aforesaid exposition of law, the words, "by an Act" would mean "by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom." On the other hand, the words, "under the Act" would in that context signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done by way of subordinate law making authority. Therefore, it has to be held that there is no vesting of common land or public land (including Pasture land) by the Act of 1994, though such vesting takes place by virtue of subordinate legislation, i.e., the Rules of 1996.

6.37 In the context of above legal position, if the words used in vesting clause as provided under Section 27 of the RSIR Act, 2016 are carefully read, it is found that the expression used under the exclusionary clause is "land vesting in any local authority by virtue of an Act of the State Legislature prior to commencement of this Act" (RSIR Act, 2016), we find that neither the expression, "by the Act", nor the expression, "under the Act" has been used by the Legislature, but in its place, expression, "by virtue of an Act of the State Legislature" has been used. The said

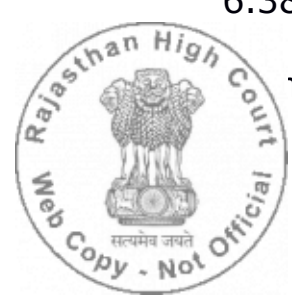


expression, therefore, requires interpretation to find out whether it includes a provision contained in the rules framed in exercise of powers of subordinate legislation, i.e. the Rules of 1996.

6.38 Having considered the distinction between two legal connotations, namely, "by the Act" and "under the Act", if we look into the expression, "by virtue of an Act of the State Legislature", it would mean "by the Act". The word, "virtue" does not make any material difference between the expression, "by the Act" and "by virtue of the Act", nor does it create a third category different and distinct from expression "by the Act" and "under the Act". The exclusion clause under Section 27 of the RSIR Act, 2016, therefore, on rational and logical interpretation, would mean that one of the categories of lands which is excluded from the purview of vesting is the land vested in any local authority by virtue of an Act of the State Legislature and that too prior to commencement of the RSIR Act, 2016. There is nothing, either expressly or by necessary implication in the RSIR Act, 2016, to warrant addition much less substitution of words, "under the Act" in the expression "by virtue of an Act of the State Legislature".

It is well settled principle and a cardinal rule of interpretation that a statute has to be read as it is and the intention of the Legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said as also what has not been said. Addition of words in a statute is ordinarily not permissible and it is contrary to all rules of construction to read words in the Act, unless it is absolutely necessary to do so.

In the case of **C.V. Raman etc. etc. vs. Management of Bank of India & Another, AIR 1988 SC 1369**, while construing the expression,





"establishment under the Central Government", the Hon'ble Supreme Court refused to substitute "of" for "under" and held that an establishment not owned by the Central Government would fall within the expression if there is deep and pervasive control of the Central Government over the establishment.

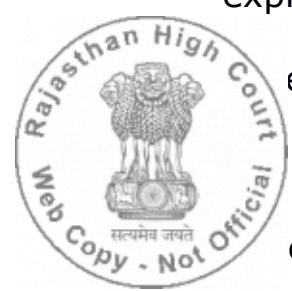
We are unable to discern from the scheme of vesting as provided under Section 27 of the RSIR Act, 2016 or any other provisions of the RSIR Act, 2016 which warrant extending the meaning of the vesting clause not only by virtue of an Act of the State Legislature, but also by virtue of any rules made under an Act of the State Legislature.

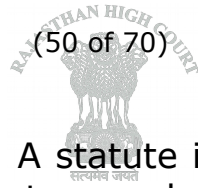
6.39 The expression, "by virtue of an Act of the Legislature", would mean that an Act (Law) enacted by the Legislature of the State of Rajasthan. The word, "Act", occurring in the said expression, in the absence of any express words including "rules, regulations" would exclude all subsidiary legislations made by the rule making authority. The Rajasthan General Clauses Act, 1955 (hereinafter referred to as 'the Rajasthan General Clauses Act of 1955') does not define the word, "Act," but it defines "enactment" under Section 32(26). The definition clause "enactment" is extracted hereinbelow:

"32. Definitions. (1) Unless there be anything repugnant in the subject or context or unless the contrary intention appears, the following expressions shall have the meanings respectively assigned to them hereby, namely:-
(26) "enactment" shall mean any law and shall include any provision contained in any law;"

6.40 In the case of **The Vishnu Pratap Sugar Works (P) Ltd. Vs. The Chief Inspector of Stamps, U.P., AIR 1968 SC 102**, it was explained thus:

"3. A statute, according to Maxwell on Interpretation of Statutes, 11th Ed. p. 1 is the will of the legislature, i.e. an





edict of the legislature. A statute is, however, different from a statutory instrument as defined by the Statutory Instruments Act (9 and 10 Geo. 6, c. 36) 1946 where power to make confirm or approve orders rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown, a document by which that power is exercised is a statutory instrument. Similarly, whereby an Act passed before enactment of the Statutory Instruments Act, 1946, power to make statutory rules is conferred on any rule-making authority, any document by which that power is exercised is a statutory instrument. Thus, whereas a statute is an edict of the legislature a statutory instrument as distinguished from such an edict is a document whereby the rule-making power is expressed."



6.41 Neither in the RSIR Act, 2016, nor in the Rajasthan General Clauses Act of 1955, the word, "Act" is defined as including rules, regulations made under an Act. In the absence of express words in the statute, it is not permissible to give wider meaning to the expression "Act of the Legislature" to include subordinate legislation framed under the Act of the Legislature.

6.42 In the case of **Municipal Council, Palai through the Commissioner of Municipal Council, Palai v. T.J. Joseph, AIR 1963 SC 1561**, the Hon'ble Supreme Court held that the Legislature, while enacting a law, has a complete knowledge of the existing laws on the same subject matter. While interpreting the repealed clause, their Lordships observed as under:

"(9) It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. Of course, this presumption will be rebutted if the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together."



6.43 Section 88 of the repealed Act of 1953 provided for statutory scheme of vesting, as has been discussed hereinabove. Clause (i) of sub-section (1) of Section 88 of the repealed Act of 1953 read with sub-section (2) thereof provided for statutory scheme of vesting of common

lands lying within Panchayat Circle of a Panchayat in the concerned Panchayat, subject to restrictions and conditions as the State Government may think proper to impose. In exercise of powers under

Section 88, sub-section (1) of the repealed Act of 1953, the State Government issued notification dated 22.04.1960 excluding certain categories of lands including unculturable lands which excluded Pasture lands. A detailed discussion and conclusion in that regard has already been made by us in the preceding paragraphs.

6.44 The statutory scheme of vesting of all common lands lying within Panchayat Circle into Panchayat by virtue of an Act of the Legislature, i.e., the repealed Act of 1953 was, however, omitted by the Legislature while framing the Act of 1994, as would be clear from reading of Section 63 of the Act of 1994. Instead, it was left to be decided by the rule making authority. Though, there is no vesting of common lands by virtue of the Act of 1994, vesting has been introduced in the form of Rule 136 of the Rules of 1996.

Therefore, it is abundantly clear that vesting of common lands under the repealed Act of 1953 was by virtue of an Act of the Legislature, but under the new Act, i.e., the Act of 1994, such a statutory vesting was omitted while enacting Section 63 of the Act of 1994. The vesting clause, therefore, is not by virtue of an Act of the Legislature, but under a subsidiary legislation in the form of the rules framed by the State Government in exercise of its rule making power under the Act of 1994.





6.45 While enacting the Act of 1994, the Legislature had knowledge of its earlier statutory scheme, yet it decided to omit sub-clause (i) of sub-section (1) of Section 88 of the repealed Act of 1953 from the new Act so as to take common lands out from the vesting clause in the Act.

Therefore, the legislative intention is clear that the Legislature no longer intended vesting of common lands in Panchayats by virtue of the Act, but it to be considered by the rule making authority. It was only when the State Government framed the Rules of 1996, a vesting clause under Rule 136 was introduced which can only be said to be vesting under the law, i.e. subsidiary legislation, but cannot be interpreted to mean that it is a case of vesting by virtue of an Act of the State Legislature. Consequently, it has to be held that the State Legislature, while farming the RSIR Act, 2016, intended to exclude from the purview of vesting under Section 27 of the RSIR Act, 2016, only those lands which vested in local authority by virtue of an Act of the Legislature and not to exclude such vesting under the Act, i.e., the scheme of vesting under subsidiary legislation like rules, regulations etc.

6.46 Another important submission of learned Advocate General is that even after repeal of the Act of 1953, notification dated 22.04.1960 issued by the State Government excluding certain categories of lands including unculturable lands from the purview of vesting under Section 88 of the repealed Act of 1953 is saved by virtue of saving clause as contained in Section 124 of the Act of 1994. To appreciate this submission, it would be apposite to look into and analyse the scheme of repeal clause under the Act of 1994. Section 124 of the Act of 1994 dealing with repeal and savings is extracted hereinbelow:





"124. Repeal and savings.-[(1)] On the date of commencement of this Act, hereinafter in this section referred to as "the date of commencement", the Rajasthan Panchayat Act, 1953 (Rajasthan Act 21 of 1953) and the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (Rajasthan Act 37 of 1959) shall stand repealed and the following consequences shall ensue, that is to say -

(a) all property, movable and immovable, and all interests of whatsoever kind therein, which vested in an existing Panchayati Raj Institution, immediately before the date of commencement, shall be deemed to be transferred to, and shall vest in the successor Panchayati Raj Institution, subject to all limitations, conditions and rights or interests of any person, body or authority in force or subsisting immediately before the date of commencement;

(b) all rights, liabilities and obligations of an existing Panchayati Raj Institution, (including those arising under any agreement or contract) shall be deemed to be the rights, liabilities and obligations of the successor Panchayati Raj Institution.

(c) all functions of the existing Panchayati Raj Institutions, whether under the Acts repealed as aforesaid or under any other law for the time being in force, shall be deemed to have been transferred to the successor Panchayati Raj Institutions under this Act;

(d) all sums due to an existing Panchayati Raj Institution, whether on account of any tax or otherwise, shall be recoverable by the successor Panchayati Raj Institution and for the purposes of such recovery the successor Panchayati Raj Institution shall be competent to take any measure of institute any proceedings which it would have been open to an existing Panchayati Raj Institution or any authority thereof to take or institute before the date of commencement;

(e) the unexpended balance in the funds of the existing Panchayati Raj Institutions and all sums due to such Institutions and such sums of any other body or bodies as the State Government may direct shall form part of, and be paid into, the funds of the corresponding successor Panchayati Raj Institution;

(f) all contracts made with, and all instruments executed by or on behalf of an existing Panchayati Raj Institution shall be deemed to have been made with, or executed by or on behalf of the successor Panchayati Raj Institution, and shall have effect accordingly;

(g) all proceedings and matters pending before an existing Panchayati Raj Institution or any authority of an existing Panchayati Raj Institution under the repealed Acts immediately before the commencement shall be deemed to have been instituted and to have been pending before the successor Panchayati Raj Institution or such authority as the successor Panchayati Raj Institution may direct;





(h) in all suits and legal proceedings pending on the date of commencement in or to which an existing Panchayati Raj Institution, is a party, the successor Panchayati Raj Institution, shall be deemed to be substituted therefor;

(i) any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted in respect of any existing Panchayati Raj Institution or the local area thereof under the repealed Acts and in force immediately before the date of commencement, shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force as if made, issued, imposed or granted under this Act in respect of the successor Panchayati Raj Institution or the corresponding local area thereof until superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, regulation or form made, issued, imposed or granted under this Act.

(j) all budget estimates, assessments, assessment lists, valuations of measurements made or authenticated by or in respect of an existing Panchayati Raj Institution under the repealed Acts and in force immediately before the date of commencement shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or authenticated by the successor Panchayati Raj Institution;

(k) all officers and servants in the employment of an existing Panchayati Raj Institution immediately before the date of commencement, shall, subject to the provisions of this Act, be deemed to be transferred to the service of the successor Panchayati Raj Institution; and

(l) any reference in any law or in any instrument to any provision of the repealed Acts, or any authority constituted, elected or appointed thereunder shall, unless a different intention appears, be construed as a reference to the corresponding provision of this Act, or as the case may be, to the corresponding authority constituted, elected or appointed under this Act.

[(2)] On the date of commencement of the Rajasthan Panchayati Raj (Amendment) Act, 1994 (Act No. 23 of 1994), Sec. 43 of the Rajasthan Gramdan Act, 1971 (Act No. 12 of 1971), shall stand deleted, and as a result of such deletion, consequences enumerated in Clauses (a) to (l) of Sub-sec. (1) shall ensue as if the Gram Sabha of a Gramdan Village referred to in the aforesaid deleted section was in existing Panchayati Raj Institution.]

Explanation.- For the purposes of this section-

(a) "*an existing Panchayati Raj Institution*" means a Panchayat, Panchayat Samiti or a Zila Parishad existing immediately before the date of commencement and, where any such Panchayti Raj Institution has been superseded or dissolved or the term thereof has expired, includes the person or persons appointed to exercise the powers or to





perform the functions of such; Panchayati Raj Institution;
and

(b) "**the successor Panchayati Raj Institution**" means a Panchayat, a Panchayat Samiti or a Zila Parishad constituted under this Act for such local area as corresponds to the respective local area of the existing Panchayat, Panchayat Samiti or Zila Parishad."

7 At this stage, we may mention that Section 6 of the Rajasthan General Clauses Act of 1955 deals with effect of repeal. The said provision is of general application in relation to any enactment made and the general provision with regard to repeal of Rajasthan law by subsequent enactment. However, as there is a special provision dealing with repeal and savings under Section 124 of the Act of 1994, the contention of learned Advocate General shall be examined with reference to the provisions contained in the Act of 1994 and the statutory scheme of repeal and savings engrafted therein. Sub-clause (i) of sub-section (1) of Section 124 of the Act of 1994 expressly provides, amongst other things, that any notification issued in respect of any existing Panchayati Raj Institution or the local area thereof under the repealed Act and in force immediately before the date of commencement of the new Act shall insofar as it is not inconsistent with the provisions of the new Act, continue to be in force as if issued under the new enactment.

Therefore, earlier notification issued on 22.04.1960, referred to and reproduced hereinabove, excluding from the purview of vesting unculturable lands including pasture lands, would continue to remain in force by virtue of saving clause provided it is not inconsistent with the new Act. Therefore, the question which arises for consideration is whether earlier notification dated 22.04.1960 is inconsistent with the new enactment, i.e. the Act of 1994.





Notification dated 22.04.1960 was issued by the State Government in exercise of powers under Section 88(1) of the repealed Act of 1953, but in the said notification, by virtue of sub-clause (i) of sub-section (1) of Section 88, all common lands lying within the Panchayat Circles vested in Panchayats. When the State Government enacted new provision with regard to vesting, properties of the Panchayats, including vesting clause, in the new Act, i.e., the Act of 1994 did not contain any provision with regard to vesting of common lands as would be clear from perusal of Section 63 of the Act of 1994. Therefore, notification dated 22.04.1960 excluding unculturable lands which included Pasture lands as well cannot be said to be inconsistent with the new Act, i.e., the Act of 1994.

Subsequently, when the State Government promulgated the Rules of 1996 in exercise of its rule making power, it provided for vesting of common lands lying in Panchayat Circle, into concerned Panchayati Raj Institution, by framing Rule 136 in that regard. A comparative study of the provisions contained in Section 88 of the repealed Act of 1953 and Rule 136 of the Rules of 1996 would show that the statutory scheme of vesting of common lands in Panchayats remained subject to such restrictions and conditions as may be imposed by the State Government. Thus, even under the Rules of 1996, similar statutory scheme continuing the power of the State Government to restrict operation of the vesting clause relating to vesting of common lands continued under the new Act, i.e., the Act of 1994 which would clearly mean that even under the Rules of 1996, State is empowered to issue notification to restrict vesting clause by imposing restrictions. This particular part of the scheme of Rule 136 of the Rules of 1996 is similar to Section 88 of the repealed Act of 1953. Therefore, it cannot be said that notification issued on



22.04.1960 by the State Government restricting application of the vesting clause and excluding from its purview Pasture lands became inconsistent with the scheme of the new Act or the Rules made thereunder. Therefore, in any case, on the date of commencement of R Act, 2016, there was no vesting of Pasture lands situated in the local area of concerned Panchayat into those Panchayats.

3 In view of above analysis and discussions, we are inclined to conclude and hold that till the date of coming into force the RSIR Act, 2016, Pasture lands situated in the local area of nine revenue villages/Gram Panchayats of Tehsil Rohat, District Pali never vested in the concerned Gram Panchayat (Local Authority), so as to be excluded from the purview of the vesting clause under Section 27 of the RSIR Act, 2016. Contention of learned counsel for the petitioners that as all Pasture lands had already vested in Gram Panchayats and were, therefore, excluded from the purview of vesting under Section 27 of the RSIR Act, 2016, has to be rejected.

6.49 Thus, there is no substance in the argument of learned counsel for the petitioners that in the present case, without taking recourse to mode of transfer as provided under sub-section (2) of Section 27 of the RSIR Act, 2016, Pasture lands situated in nine revenue villages/Gram Panchayats of Tehsil Rohat, District Pali could not be recorded in the name of JPMIA.

6.50 Having dealt with the issue with regard to vesting aspect, we shall now deal with other submissions made on behalf of the petitioners. One of the arguments is that notwithstanding anything contained in Section 27 of the RSIR Act, 2016 and overriding effect given to the provisions of this Act, Pasture lands could not be transferred in the name of JPMIA





Development Authority in violation of the provisions contained in the Act of 1955 and the Act of 1956 as also the rules framed under the respective Act. Referring to Section 16 of the Act of 1955, it has been contended that the Gochar lands are public utility lands and, therefore, / could not be subjected to allotment to any person, authority and institution.

1 Reference has been made to Section 5(28) of the Act of 1955 which defines Pasture land as land used for grazing of cattle of village or villages and reserved as such. Further, reference is made to Section 92 of the Act of 1956 which regulates setting apart of land for limited purposes including public purposes. Section 93 of the Act of 1956 has also been referred to submit that right of grazing on pasturage land is reserved for the cattle of village or villages for which such land has been set apart and can be regulated by rules made by the State Government meaning thereby such land once set apart earlier for pasturage could not be used for transfer for any other purpose. Reference has also been made to provisions contained in Rule 7 of the Rules of 1955 as amended up till date vide notification 29.06.2020 which restricts and regulates allotment of Pasture land to submit that these rules will prevail and will operate against the exercise of the District Collector, Pali to direct transfer of lands in favour of JPMIA Development Authority.

But for overriding effect given to the provisions of the RSIR Act, 2016 as provided under Section 77 thereof, the submissions made by learned counsel for the petitioners may have required examination of statutory scheme under the Act of 1955, the Act of 1956 and the rules made under the respective Act, as has been referred to hereinabove. Section 77 of the RSIR Act, 2016 which has been quoted hereinabove





clearly spells out that save as otherwise provided in the RSIR Act, 2016, the Act shall have effect notwithstanding anything inconsistent therewith contained in any other Rajasthan law for the time being in force. Per force, the overriding effect given under the RSIR Act, 2016, all those restrictions and regulations contained in the Act of 1955, the Act of 1956 the rules framed under the respective Act, have no application, nor they come in the way of vesting of lands by operation of law in view of the provisions contained in Section 27 of the RSIR Act, 2016. In other cases, if a Pasture land is required to be set apart and allotted for any other purpose, various restrictions, conditions and fetters imposed under the aforesaid laws were required to be complied with. However, as those laws are overridden by Section 77 of the RSIR Act, 2016, no such compliance is required under the law and the argument in this regard is, therefore, liable to be rejected.

6.52 In addition to aforesaid submissions based on necessity of compliance of various provisions under the Act of 1955, the Act of 1956 and the rules framed under the respective Act, learned counsel for the petitioners emphasised that any vesting of Pasture land in the Regional Development Authority including its power to dispose of those lands in the manner provided under the Scheme of the RSIR Act, 2016, is violative of various directions and guidelines issued by the Hon'ble Supreme Court as also this Court.

6.53 Learned counsel for the petitioners has also raised concern that as under the scheme of the RSIR Act, 2016, upon declaration of area of nine revenue villages as Special Investment Region, resulting in vesting of huge chunk of pasture lands, forest lands, water catchment areas will





lead to complete destruction of natural habitats and thus, would be violative of principle of sustainable development.

6.54 Firstly, the submission that the impugned order directing mutation of all government lands in the name of JPMIA Development Authority would be violative of principle of sustainable development proceeds on exaggerated and incorrect factual premise. The averments made in the petition filed by the petitioners are that by impugned order, all the Oran (forest land), Agore (water catchment land), Gochar (pasture land), Barani (agriculture land dependent on rainfall) and Paytan-Johad have been transferred in the name of Regional Development Authority, i.e. JPMIA Development Authority. However, the respondents in their returns have clarified and made emphatic statement that no Oran (forest land), Agore (water catchment area) has been mutated in the name of Regional Development Authority. The returns of the respondents would show that along with the lands defined in Section 103 of the Act of 1956 excluding certain categories of lands mentioned in Section 27 of the RSIR Act, 2016, Gochar lands have been directed to be recorded in the name of Regional Development Authority, meaning thereby, the same has not been treated as excluded from the vesting under Section 27 of the RSIR Act, 2016.

While filing rejoinder, the petitioners have not traversed the aforesaid specific averments made in the returns, nor have come out with any material to show that forest lands, water catchment area, ponds or paytan lands have been mutated in favour of Regional Development Authority. On such incorrect factual premise, argument of violation of principle of sustainable development has been advanced. Under Section 27 of the RSIR Act, 2016, various categories of lands have been excluded





from the purview of vesting which have been considered while scanning the provisions contained in Section 27 of the RSIR Act, 2016 hereinabove.

6.55 Under Chapter III of the RSIR Act, 2016, provisions have been made for establishment of the Rajasthan Special Investment Regions Board and its powers and functions. Under Section 8 of the RSIR Act, 2016, the Board has the power to monitor the development of Special Investment Regions and issue necessary instructions to the agencies involved.

6.56 Chapter IV of the RSIR Act, 2016 contains the provisions with regard to constitution of Regional Development Authority and its powers and functions. Under Section 10(i) and (t), the Regional Development Authority, under the control, supervision and guidance of the State Government and the Board, is empowered to make arrangements for observance and promotion of safety, order, health and environmental safeguards, disaster management for the Special Investment Region as also to conduct, prepare and assess the techno-commercial, economic and environmental feasibility studies relating to infrastructure projects. Thus, it is clear that while exercising powers and performing functions under the RSIR Act, 2016, the Regional Development Authority has to keep in view the environmental safeguards.

6.57 Chapter V of the RSIR Act, 2016 provides for planning for the Special Investment Regions Master Development Plan. Under Section 11 of the RSIR Act, 2016, the Regional Development Authority, subject to general or specific directions of the State Government or the Board, is empowered to carry out a civic survey and prepare an existing land use map and prepare draft Master Development Plan for the Special





Investment Region. Section 12 of the RSIR Act, 2016 provides that if before coming into force the RSIR Act, 2016, the State Government has notified a Master Development Plan for any area of Special Investment Region, such Master Development Plan shall be the Master Development Plan for that area of the Special Investment Region. It further empowers the Regional Development Authority to carry out such alterations or modifications in respect of area of any local authority or a development authority which is included in Special Investment Region. There are no restrictions also in the manner that buffer for abadi development as provided in the Master Development Plan of a local authority or development authority shall not be altered or modified by the Regional Development Authority while adopting the Master Development Plan.

Section 14 of the RSIR Act, 2016 provides for public notice of draft Master Development Plan and invitation of objections from the public including the suggestions. Sanction of draft Master Plan lies in the hands of the State Government.

6.58 The RSIR Act, 2016 is a comprehensive and modern legislation providing for development of the Special Investment Regions, planned development through Master Development Plan and Zonal Development Plan and at the same time, to ensure observance and promotion of safety, order, health and environmental safeguards. The vesting of the land as contemplated under Section 27 of the RSIR Act, 2016 is intended to enable the Regional Development Authority to carry out its functions efficiently towards fulfillment of the objectives of the enactment. The discussions made hereinabove would also reveal that there are enough safeguards under the RSIR Act, 2016. Therefore, merely because Government lands of certain categories as enumerated in Section 27 of





the RSIR Act, 2016 have vested in the Regional Development Authority, would not by itself, mean that it would necessarily lead to any environmental hazard. However, as and when the development plans are prepared and implemented, the question as to whether particular area of development under the RSIR Act, 2016 is adversely affecting environment, may arise.

9 In the additional affidavit filed by Respondents No. 2 to 4, it has been clearly averred that the respondents are in the process of setting apart alternate land in the adjoining villages as Pasture land. Further, in para 5 of the additional affidavit, the details with regard to areas of Pasture lands of nine revenue villages which have vested in JPMIA Development Authority and the areas of the proposed lands to be set apart as Pasture land have been stated in a tabular form. A perusal of the details reveals that equivalent area of Pasture land which has vested in JPMIA Development Authority by virtue of Section 27 of the RSIR Act, 2016, is proposed to be set apart for pasture purposes. Therefore, it is not a case where facility of pasturage will disappear, but alternative arrangements have been made. It has also been stated that there is grass cover over Oran (forest) and Agore (water catchment area) of all the villages and is used for the purpose of grazing of the cattle. Further averment is that agriculturists who own cattle are also khatedars of their agricultural lands which is sufficient for the purpose of grazing of their cattle. The khatedari lands, as has been stated in the additional affidavit, falling in nine revenue villages are not subject matter of acquisition. Therefore, on facts, the petitioners' case of violation of principle of sustainable development on mere vesting of lands under Section 27 of the RSIR Act, 2016 is not made out.



6.60 In the case of **Lafarge Umiam Mining Private Limited T.N. Godavarman Thirumulpad Vs. Union of India & Others (supra)**, it has been observed by the Hon'ble Supreme Court as under:

"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilisation of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play. Our above view is further strengthened by the decision of the Court of Appeal in *R. v. Chester City Council* (2011) 1 AII ER 476 reported in AII ER paras 14 to 16."

6.61 Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Jagpal Singh & Others Vs. State of Punjab & Others(supra)**. That was a case where common village land/community land was encroached upon and the land was regularised in favour of encroachers by recovering cost. It was held that Gram Sabha land must be kept for use of villagers of the village and common interest of villagers shall not suffer merely because unauthorised occupation has subsisted for many years. Directions were issued to all the State Governments in the country to prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and





its restoration to concerned Gram Sabha/Gram Panchayat for common use of villagers of the village. The petitioners are not entitled to any benefit from the aforesaid decision because present case is a case of vesting of land by operation of law and not a case of encroachment.

2 In the case of **Gulab Kothari Vs. State of Rajasthan & Others**

pra), Division Bench of this Court dealt with permissibility of use of

ure land set apart for grazing of the cattle, for other purposes. In

Para 187 to 197 of order dated 12.01.2017 passed by the Division Bench in the aforesaid case, the restrictions on diversion of user of Pasture land were examined with reference to the provisions contained in the Act of 1955 and other local laws and it was held that the power to change the classification of Pasture land should be exercised sparingly only in the larger interest of public and not so as to subserve the interest of any individual. In the present case, Pasture lands, by operation of law, have vested in the Regional Development Authority, which has been constituted for larger public interest of development of industrial corridor as a part of ambitious project for development in the country involving lands and corridors of more than one State.

6.63 Reliance has been placed on **T.N. Godavarman Thirumulpad Vs. Union of India & Others (supra)**. The aforesaid reliance has been placed on incorrect factual premise that Oran lands (Forest lands) have also been transferred to Regional Development Authority. From the facts stated in the reply by the respondents, which have not been traversed in the rejoinder filed by the petitioners, it is clearly established that Oran lands (Forest lands) have not been transferred to JPMIA Development Authority.



6.64 Reliance has also been placed on the decision of the Hon'ble Supreme Court in **Centre for Public Interest Litigation & Others Vs. Union of India & Others(supra)**. On facts, that was a case where allotment and distribution of spectrum was challenged. Award of contract grant of licence on first come first serve basis was held to be suffering from fundamental flaw. The said decision has no application in the present case.

In the case of **Jitendra Singh Vs. Ministry of Environment & Others(supra)**, the Hon'ble Supreme Court was dealing with a grievance against allotment of local ponds to private industrialists. Concern was raised and observations were made to the effect that protection of village commons was essentially to safeguard the fundamental rights guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court was dealing with water bodies which were sought to be diverted for certain purposes. It was found that schemes which extinguish local water bodies despite there being availability of alternatives are violative of constitutional principles. Allotment of water bodies to private industrialists was declared illegal.

In the case of **Hinch Lal Tiwari Vs. Kamala Devi & Others(supra)**, the Hon'ble Supreme Court examined validity of allotment of plots forming part of pond area to private respondents therein. Taking into consideration the scheme of vesting of certain lands under U.P. Zamindari Abolition and Land Reforms Act, 1950, it was held that such lands could not be allotted to anybody for construction of house, building or any allied purposes. Present is not a case of allotment of any public land to any private person as such but vesting of the land



by operation of law in Regional Development Authority under special enactment is under challenge.

In the case of **Rameshbhai Virabhai Chaudhari Vs. The State of Gujarat & Others(supra)**, the issue of unauthorised encroachment on Gochar land of the village was under consideration. It was held that use of Gochar land contrary to permissible use whether by the State or by third party cannot be allowed. Therefore, use of Gochar land contrary to the permissible use under the law was held to be illegal.

Another judgment of **Association For Environment Protection Vs. State of Kerala & Others(supra)** has also been relied upon by the petitioners. In that case, the issue of construction of building on the banks of river within the area of municipality was considered. The execution of construction project of hotel/restaurant was found contrary to mandate of government order. The said decision does not help the petitioners.

In the case of **State of Jharkhand & Others Vs. Pakur Jagran Manch & Others (supra)**, Gochar land was identified by the State authorities as suitable for construction of hospital towards effective implementation of national leprosy eradication programme and for improving the standards of health of the tribal residents of the area. The condition under the Tenancy Act applicable in the State of Jharkhand was taken into consideration and on facts, it was found that use of Gochar land for construction of hospital was against the statutory scheme. The Hon'ble Supreme court observed that de-reservation of any government land reserved as Gochar, should only be in exceptional circumstances and for valid reasons, having regard to the importance of Gochar in every village. It was also held that whenever it becomes inevitable or necessary



to de-reserve any Gochar land for any public purpose, the procedure prescribed under the regulations is required to be followed. Present is not a case where land of Gochar has been de-reserved by the State authorities in purported exercise of powers under the Act of 1955 or the of 1956, violating the statutory mandate and other pre-conditions er the law.

Reliance has also been placed upon the decision of this Court in the case of **Prem Singh & Others Vs. State of Rajasthan & Others(supra)**. In that case, order of the Collector allotting the land for construction of college of nursing was assailed mainly on the ground that the land was recorded as Charagah land. Allotment of the land for educational purposes was upheld. Right to life, broad spectrum of freedom by World Health Organisation of Animal Health, Universal declaration of Animal Welfare including approach with compassion, humanism towards animals was examined. Decision of the Hon'ble Supreme Court in the case of **Jagpal Singh & Others Vs. State of Punjab & Others(supra)** was also taken into consideration. In the present case, there is vesting of lands by operation of law under Section 27 of the RSIR Act in the Regional Development Authority which includes Gochar lands also as the same is not saved from vesting by operation of law. On facts of the present case, as would be clear from the reply of the respondents, equivalent area of land has been proposed to be reserved for pasturage.

Reliance placed on the decision of the Hon'ble Supreme Court in **State of U.P. Vs. Smt. Sarjoo Devi & Others(supra)** is also misplaced both in law as well as on facts.



In the case of **Suo Motu Vs. State of Rajasthan (supra)**, this Court was dealing with challenges due to scarcity of water in the State of Rajasthan and the need to protect water reservoirs. Necessity to preserve catchment areas of water reservoirs was also highlighted.

However, in the present case, on facts, it has been found that no water catchment area has been transferred to JPMIA Development Authority, has it vested under Section 27 of the RSIR Act, 2016.

In the case of **Jetha Ram & Others Vs. State of Rajasthan & Others (supra)**; this Court was dealing with illegal mining in pasture land. Restrictions imposed on activities other than that of pasturage in the light of provisions contained in the Act of 1955 and the Act of 1956 as also the Rules of 1955 were taken into consideration to hold that mining activities would not be permissible.

In the case of **Kanti Lal Vs. State of Rajasthan & Others(supra)**, legality of action whereby land categorised as Gairmumkin Nadi allotted to Gram Panchayat for expansion of abadi was assailed. Legality of the same was examined referring to statutory scheme of the Act of 1955, the Act of 1956, the Rules of 1955 and relying upon the decision of the Hon'ble Supreme Court in the case of **Jagpal Singh & Others Vs. State of Punjab & Others(supra)**, other decisions of this Court, it was held that traditional water sources of village have to be protected and shall be open to the public at large. In the present case, as water bodies, water catchment areas have neither vested, nor transferred, the aforesaid decision has no application.

In the case of **Kalyan Singh & Others Vs. State of Rajasthan & Others(supra)**, on facts, allotment of public utility land in favour of a private company was held to be illegal.





In the case of **Jal Grahani Vikas Sanstha Vs. State of Rajasthan & Others(supra)**, allotment of plots in favour of private respondents which were reserved as Talab were under challenge, therefore, the said decision does not come to the aid of the petitioners.

The decision in the case of **Shambhu Ram Vs. State of Rajasthan & Others(supra)** is of no help as it relates to issue of roachment of Gair Mumkin Agore(water catchment area).

In the case of **Balu Ram Vs. State of Rajasthan & Others(supra)**, the issue with regard to use of Gair Mumkin Johad was under consideration and relying upon Section 16 of the 1955, it was held that tenancy rights cannot accrue in respect of catchment area.

Reliance on the decision of this Court in the case of **Bhanwar Singh Vs. The State of Rajasthan & Others(supra)**, is misplaced on facts as that was a case belonging to challenge to government orders and circulars bringing in scheme of regularisation of unauthorised occupants and possession of land.

6.65 In the result, we do not find any merit in the writ petition and the same is, accordingly, dismissed, though with no orders as to costs.

(REKHA BORANA),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

Manoj Narwani..