HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No.2981/1990

1. Roodaram son of Shri Surjaram,
2. Banshidhar son of Ramnath grand sons of Shri Sola,
3. Rameshwar Son of Shri Sola,
4. Smt. Basanti D/o Shri Sola wife of Shri Hanuman Prasad, resident of Singhana Tehsil Khetri, District Jhunjhunu

----Petitioners

Versus

1. The Board of Revenue, Ajmer.
2. The Devasthan Department through Commissioner Devasthan Department, Udaipur.
3. Deity of Shri Brishabhanji @ Brajnath Ji through Pujari Village Papurna.
4. Deity Shri Gopalji through Pujari, Village Papurna resident of Village Papurna, Distt. Jhunjhunu.

----Respondents

For Petitioner(s)	:	Mr. M.M. Ranjan, Sr. Adv. with Mr. Shubham Sharma
For Respondent(s)	:	Mr. Kamlakar Sharma, Sr. Adv. with Mr. Madhusudan Rajpurohit Mr. Somitra Chaturvedi, Dy.GC

HON'BLE MR. JUSTICE AVNEESH JHINGAN

Order

Reserved on : 06/01/2025
Pronounced on : 21/01/2025

1. This petition is filed seeking quashing of the reference order dated 12.03.1984 and order of the Board of Revenue, Ajmer (for short 'the Board') dated 23.01.1990, allowing the reference.

2. The case set up by the petitioners is that the land in Khasra Nos.3498, 3499, 3500, 3501, 3502, 3505, 3506, 3507, 3509, 3510, 3511, 3512, 3518, 3519, 3520, 3521, 3522, 3604, 3605, 3606, 3607, 3609, 3610, 3611/1, 3611/2, 3612, 3613,

7062/3497, 7063/3614, 7064/3621, 7065/3465 situated in Village Papurana was entered in the name of temple Shri Gopalji (hereinafter referred to as 'temple'). The ancestors of the petitioners were in cultivating possession of the land prior to Samwat 2012. On the basis of request dated 28.10.1980 of Devsthan Department, the Collector made reference. The Board vide order dated 23.01.1990 accepted the reference and directed that the land-in-question be re-entered in the name of temple. The Board considered that in the revenue record from Samwat 2012-15 and 2018-21, the land-in-question was registered in the name of temple through Pujari Radhakrishna. The petitioners (in this petition) failed to disclose the basis on which Jamabandi for Samwat 2026-29 was entered in the name of Surja Ram and Sola, ancestors of the petitioners. Further that in light of the provisions of the Rajasthan Tenancy Act, 1955 (for short 'the Act') the khatedari rights of the temple land cannot be granted on the basis of possession.

3. Learned senior counsel appearing on behalf of the petitioners submits that prior to enforcement of the Act ancestors of the petitioners were in possession of the land and the khatedari rights accrued in their favour. The contention is that for correcting entries of Jamabandi for Samwat 2024-26, reference was made after thirteen years and should have been dismissed on the ground of delay.

4. As per contra, the land belongs to temple and even as per the revenue record annexed with the petition as Annexure-1 to 4, the land is entered in name of temple. The Jamabandi for Samwat

2024-26 was erroneously changed without any order from the competent authority.

5. The finding recorded by the Board that in Jamabandi for Samwat 2012-15 and 2018-21, the land-in-question was registered in the name of temple through Pujari remains unchallenged. It is also not disputed that the land-in-question was entered in the name of the temple since beginning. The petitioners had claimed the land on the basis of Jamabandi for Samwat 2026-29 and by pleading that prior to 1995 the cultivating possession was of ancestors of petitioners.

6. Section 19 of the Act deals with conferment of rights on tenants of Khudkasht and sub-tenants.

7. As per Section 19(1), the tenant of Khudkasht or sub-tenant of a land, whose name is entered in annual register or not entered shall be conferred khatedari rights of such land, from the date of commencement of the Rajasthan Tenancy (Amendment) Act, 1959 but subject to other provisions of the chapter and the exception being grove land. The right shall be conferred subject to condition that the land does not exceed the minimum area prescribed by the State Government under Section 180 (1) (a) or the maximum area from which such person is liable to be ejected under clause (d) of Section 180 (1). Proviso to Section 19 carves out the exceptions for conferring the khatedari rights. Clause (i) stipulates that khatedari rights or rights in improvement shall not accrue if part of the land is held by any person enumerated in Section 46.

In Section 46(1) the persons enumerated are:

(a) a minor, or

(b) a lunatic, or

(c) an idiot, or

(d) a woman who is unmarried or divorced or separated from her husband, or is a widow, or

(e) a person incapable disability of cultivating his holding by reason of blindness or other physical disability or infirmity, or

(f) a person who is a member of the armed force of the Union, or

(g) a person who is suffering detention or confinement in prison, or

(h) a person not exceeding twenty-five years of age, who is a student prosecuting his studies in a recognized institution.

8. The land belongs to temple and was accordingly entered in the revenue records. The law is well settled that the idol is a minor. Reference in this regard be made to the decision of the Supreme Court in ***Sri Ganapathi Dev Temple Trust*** *vs.* ***Balakrishna Bhat and Ors.*** reported in **(2019) 9 SCC 495** wherein, it was held:

> *7. xxx xxx xxx*
> *Therefore, it is well-settled that the deity in a Hindu temple is in deemed to be a minor, and the Shebait, archaka, etc. or the person functioning as manager/trustee of such temple acts as the guardian of the idol and conducts all transactions on its behalf. However, the Shebait or archaka is obligated to act solely for the idol's benefit. In Sri Thakur Radha Ballabhji (supra), this Court affirmed the lower courts' finding that a sale made by the manager of the deity to a third party, which was not for the necessity of the benefit of the idol,*

> *would not be binding on the deity, and worshippers or other parties who had been assisting in the management of the temple could apply to have such a sale set aside.*

The Division Bench of Rajasthan High Court in ***Murti Mandir Shri Niyamaji Laxmangarh Versus State of Rajasthan & Ors.*** reported in **(2008) 3 RLR 632** held:

> *7. The deity is a perpetual minor and rights of deity are to be protected by the courts as is held by their Lordships of the Supreme Court in A.A. Gopalkrishnan v. Cochin Devaswom Board, (2007) 7 SCC 482 in para 10 thus:—*
>
> *"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/ archakas/shebaits/employees.*
>
> *Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."*

The Division Bench of Rajasthan High Court in ***Partap Ram Versus State of Rajasthan, through Secretary, Department of Devsthan and Others*** reported in **2024 SCC OnLine Raj 975** held as under:

> *"14. This Court further observes that as per the settled proposition of law, the Temple (deity) is a perpetual minor and the pujari/trustee acts only as its caretaker.*
>
> *xxx xxx xxx"*

9. On combined reading of Section 19 and 46 of the Act, the effect is that the khatedari rights of the land of minor cannot be conferred to Khudkasht tenant or sub-tenant whether their name is entered in annual register or not.

10. Another aspect is that the petitioner even in the writ petition failed to substantiate the basis on which jamabandi for Samwat 2026-29 was recorded in favour of the ancestors of the petitioners. In other words, entries in jamabandi were changed without order from the competent authority.

11. The Board rightly accepted the reference and ordered that the land-in-question be re-entered in the name of temple.

12. The contention that the reference should have been dismissed on the ground of limitation, lacks merit.

13. Section 82 of The Rajasthan Land Revenue Act, 1956 prescribes no limitation for reference. The law is settled that the reference is to be made within reasonable time and it depends upon the facts of each case. Reference be made to **Chhail Singh And Ors. vs. State of Raj. and Ors** reported in **2008 SCC OnLine Raj. 843.** The relevant part of the order is reproduced below:-

> *"27. In this regard again we may refer to the cases cited by the learned Counsel for either side, as cataloged above, and on going through these judgments, what we gather is, that in none of these judgments cited on the side of the learned Counsel for the appellant, it has precisely been laid down, as to within what period of time reference can be made, on*

the face of absence of any provision for time limit enacted in Section 232, except the judgments holding, that it could be made only within a reasonable time, it cannot be made after unreasonable delay, and so on. Strongest judgments relied upon in this regard are the judgment in Anandi Lal's case and Situ Sahu's case. Of course, in some of the judgments relied upon by the learned Counsel for the respondent, including those in Uttam Namedo Mahale v. Vithal Deo and Ors., reported in AIR 1997 SC 2695 and S.C. Prashar's case, a view has been taken, that in absence of period of limitation being prescribed, action can be taken at any point of time. All other judgments practically uniformly take a view, that reference can be made within a reasonable time. So far this Court is concerned, the matter can be said to have to be resting settled by the Full Bench judgment in Chiman Lal' case, wherein Anandi Lal's judgment has been expressly over-ruled, and even in Chiman Lal's case it has been held, that the power has to be exercised within reasonable period, but then in Chiman Lal's case in para-25, certain more guidelines have been laid down. We may gainfully quote para-25, which reads as under:

25. In view of the above discussion, we are of the opinion that it is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. As held by the Supreme Court in Ajaib Singh's case (supra) the Courts only interpret law and do not make laws. Personal view of the Judges presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. Hence, we are of the opinion that when no period of limitation under Rule 272 of the Rules 1961 is prescribed by the legislature then we cannot prescribe any period of limitation that in what time the revisional powers can be exercised by the authority under Rule 272 of the 1961 Rules. When no period of limitation is provided then in our opinion the

same has to be exercised within a reasonable time and that will depend upon facts and circumstances of each case like; (i) when there is fraud played by the parties; (ii) the orders are obtained by mis-representation or collusion with public officers by the private parties; (iii) Orders are against the public interest; (iv) the orders are passed by the authorities who have no jurisdiction; (v) the orders are passed in clear violation of rules or the provisions of the Act by the authorities; and (vi) Void orders or the orders are void ab initio being against the public policy or otherwise. The common law doctrine of public policy can be enforced wherever an action affect/offends the public interest or where harmful result of permitting the injury to the public at large is evident. In such type of cases, revisional powers can be exercised by the authority at any time either suo moto or as and when such orders are brought to their notice.

29. xx xx xx xx

Thus, it cannot be said that the application for reference has been filed belatedly. In view of the various decisions referred by the learned Counsel for either side, wherein it is laid down, what is to be the reasonable time depends upon facts and circumstances of each case, the facts and circumstances of the present case are also required to be considered, to find out, as to whether the application has been moved with unreasonable delay. And from the above we find, that the application cannot be said to be unreasonably delayed."

14. The land in question belongs to deity, a minor who is precluded from availing legal remedies without human intervention. The reference for correction of Jamabandi was made on the request of Devsthan Department. The procedure and working pace of government department should not render perpetual minor remediless. Moreso, when the land-in-question was continuing in the revenue records in the name of temple and

was changed without any basis. The mutation entry made in favour of the petitioner was in violation of Section 19 of the Act. Petitioner on basis of possession could not have claimed khatedari rights of the land belonging to the deity. The proviso to section 19(1) creating exception of not conferring khatedari rights of land held by persons listed in section 46 of the Act is a beneficial piece of legislation for protecting right of such persons. For reasons mentioned it cannot be said that reference application was not made within reasonable time.

15. There is no legal error much less perversity in the impugned orders. The writ petition is dismissed.

16. All pending application(s) stand dismissed.

(AVNEESH JHINGAN),J

Simple Kumawat/258

Whether Reportable: **Yes**