



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Revision Petition No. 122/2023

M/s S.A.S. R.K. Marble Udhyog, Nizarna, Proprietor Smt. Usha Kanwar W/o Shivdan Singh Chouhan Aged About 62 Yrs., R/o Fort Kothariya, Tehsil Nathdwara, District Rajsamand.

-----Petitioner

Versus

1. Shree Pustimargiya Tritiya Peeth-Pranyas, Shri Dwarkadhees Mandir, Shri Dwarkadhees Mandir, Kankroli, Through Executive Officer Bhagwatilal S/o Kajjulal Ji Paliwal, Aged 85 Yrs., R/o Kamal Talai Road Kankroli, Tehsil and District Rajsamand, Rajasthan.
2. State of Rajasthan through District Rajsamand, Rajsamand.
3. Department of Mines and Geology through Mining Engineer, Department of Mines and Geology, Block II, Rajsamand.

-----Respondents

S.B. Civil Revision Petition No. 123/2023

Rishi Raj Singh S/o Shri Dan Singh Chouhan, Aged About 42 Years, R/o Kotharia, Tehsil Nathdwara, District Rajsamand, Rajasthan.

-----Petitioner

Versus

1. Shree Pustimargiya Tritiya Peeth-Pranyas, Shri Dwarkadhees Mandir, Kankroli, Through Executive Officer Bhagwatilal S/o Kajjulal Ji Paliwal, Aged 85 Yrs., R/o Kamal Talai Road Kankroli, Tehsil and District Rajsamand, Rajasthan.
2. State of Rajasthan through District Collector, District Rajsamand.
3. Department of Mines and Geology, Through Mining Engineer Department Of Mines And Geology, Block II, Rajasthan.

-----Respondents



S.B. Civil Revision Petition No. 124/2023

Rishi Raj Singh S/o Shri Dan Singh Chouhan, Aged About 42 Years, Resident of Kotharia, Tehsil Nathdwara, District Rajsamand, Rajasthan.

-----Petitioner

Versus

1. Shree Pustimargiya Tritiya Peeth-Pranyas, Shri Dwarkadhees Mandir, Kankroli, through Executive Officer Bhagwatilal S/o Kajjulal Ji Paliwal, Age 85 Yrs., R/o Kamal Talai Road Kankroli, Tehsil and District Rajsamand, Rajasthan.
2. State of Rajasthan through District Collector, District Rajsamand, Rajasthan.
3. Department of Mines and Geology, Through Mining Engineer, Department of Mines and Geology, Block II, Rajsamand.

-----Respondents

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S.B. Civil Revision Petition No. 125/2023

Rishi Raj Singh S/o Shri Dan Singh Chouhan, Aged About 42 Years, Resident Of Kotharia, Tehsil Nathdwara, District Rajsamand, Rajasthan.

-----Petitioner

Versus

1. Shree Pustimargiya Tritiya Peeth-Pranyas, Shri Dwarkadhees Mandir, Kankroli, Through Executive Officer Bhagwatilal S/o Kajjulal Ji Paliwal, Age 85 Yrs., R/o Kamal Talai Road Kankroli, Tehsil and District Rajsamand, Rajasthan.
2. State of Rajasthan through District Collector, District Rajsamand, Rajasthan.
3. Department of Mines and Geology, Through Mining Engineer, Department of Mines and Geology, Block II, Rajsamand.

-----Respondents



For Petitioner(s) : Mr. Himanshu Choudhary
For Respondent(s) : Mr. O.P. Mehta

HON'BLE MS. JUSTICE REKHA BORANA

Order

03/01/2025

1. The present four revision petitions arise out of the same cause of action and hence, were heard together and are being decided by this common order.

2. The revision petitions have been preferred against the order dated 06.07.2023 passed by the Civil Judge, Rajsamand in Civil Original Suit Nos.42/2023, 43/2023, 44/2023 & 45/2023 respectively whereby the applications under Order VII Rule 11 r.w. Section 9, CPC r.w. Section 207 of the Rajasthan Tenancy Act, 1955 (for short 'the Act of 1955') as filed on behalf of defendant No.1 have been rejected and the suits in question have been held to be maintainable before a Civil Court.

3. The facts are that four suits for permanent injunction were filed by the plaintiff Shree Pustimargiya Tritiya Peeth-Pranyas, Shri Dwarkadhees Mandir, Shri Dwarkadhees Mandir, Kankroli with a prayer to restrain defendant No.1 from conducting mining operation on the respective lands in question without the consent of the plaintiff and further to restrain defendants No.2 & 3 from issuing any permission/sanction or *rawanna* to defendant No.1 for mining on the said lands.

4. Applications under Order VII Rule 11, CPC read with Section 207 of the Act of 1955 were filed on behalf of defendant No.1 and



also by defendants No.2 & 3 in each suit with a submission that the land in question was evidently an agricultural land and hence, the suit for permanent injunction qua an agricultural land could not have been maintained before a Civil Court.

5. Learned Trial Court proceeded on to reject the applications while recording a finding to the effect that as per the *Jamabandi* and even as averred by the plaintiff in the plaint, nature of the land in question was recorded as 'mining area' (खनन क्षेत्र) and therefore, the same could not be termed to be 'agricultural' and hence, the suit was maintainable before a Civil Court.

6. Learned counsel for the petitioner submitted that merely because sanction for mining operation had been granted qua the land in question, the nature of the same did not change and the land definitely remained to be agricultural only. He submitted that Rule 32(6) of the Rajasthan Minor Mineral Concession Rules, 2017 (for short 'the Rules of 2017') pre-supposes a khatedari land and it is qua a khatedari land only that the licence/lease for mining is granted. The grant of lease/licence is only for a particular purpose but the nature of the land effectually does not change and it remains agricultural.

7. Counsel further submitted that admittedly, the land in question was never converted and in absence of any conversion it definitely remained agricultural and hence, the Civil Court did not have the jurisdiction to entertain the suit for relief of permanent injunction qua an agricultural land.

8. In support of his submissions, learned counsel relied upon judgments rendered in the cases of ***Hastimal & Ors. Vs. Pushpa***



Devi & Ors., S.B. Civil Revision Petition No.84/2017 (decided on 20.11.2020), 2020/RJJD/018646; Karan Singh Chouhan & Ors. Vs. Manu Bal Sikshan Sansthan, Soorsagar Jodhpur and Ors.; 2018(3) RLW 1988(Raj.) and Smt. Premi Devi Vs. Deva Ram & Ors., 2009 (1) DNJ (Raj.) 401.

9. Per contra, learned counsel for the respondents submitted that the land in question was evidently not an agricultural land *firstly*, because the *jamabandi* itself reflected/recorded the same as 'किस्म खनन क्षेत्र'. *Secondly*, mining is a civil right and once mining lease/licence had been granted qua the land in question, the nature of the land definitely changed as it was no more used for agricultural purposes. Relying upon the definition of "land" as defined under Section 5(24) of the Act of 1955, learned counsel submitted that the land in question was neither let or held for agricultural purposes and hence, could not have been termed to be an "agricultural land". As it is settled position of law, nature of user of land becomes relevant to decide the jurisdiction of a Court and herein the land in question being used for mining purposes is not denied, rather admitted.

10. In support of his submissions, learned counsel relied upon the following judgments:

(i) ***Harpal Singh Vs. Ashok Kumar; AIR 2017 SC 5852.***

(ii) ***Shyam Singh Vs. Bhanu Prakash Saxena; AIR 2015 Raj. 40.***

(iii) ***Tota Ram & Ors. Vs. Deep Chand & Ors.; 2014 (1) WLN 105 (Raj.).***



(iv) **Ravindra Kumar Vs. Swapan Choudhary & Ors.;**

2012(2) DNJ (Raj.) 822.

(v) **Banshidhar & Anr. Vs. Ram Narain; 1997 WLC**

(Raj.) UC 676.

(vi) **Anandi J. Datwani Vs. Ms Geeti Bhagat Datwani;**

2013 AIR CC 2223.

(vii) **Adhunik Grah Nirman Sahaklari Samiti LTD. Vs.**

State of Rajasthan; AIR 1989 SC 867.

(viii) **Bhanwar Singh Vs. State of Rajasthan & Ors.;**

2022 (1) DNJ (Raj.) 322.

11. So far as the judgment in the case of **Hastimal** (supra) is concerned, counsel for the respondents submitted that the same is not a good law as ratio laid down by the Hon'ble Apex Court in **Harpal's** case (supra) had not been considered in the said judgment. Learned counsel therefore submitted that the findings as recorded by the learned Trial Court are perfectly in consonance with law and does not deserve any interference.

12. In rejoinder arguments, learned counsel for the petitioner submitted that the nature of user of land would make no difference so far as jurisdiction of the Court is concerned. He submitted that the land being used for mining purposes is totally different from the same being used for abadi/residential/commercial purposes. In all the latter cases, the land requires a mandatory conversion but for mining purposes, no conversion is required rather the mining lease is granted on the agricultural land only. Therefore, the judgments as relied upon by



learned counsel for the respondents would not apply to the present matter.

13. Heard learned counsels and perused the record.

14. For adjudication of the dispute in question, the consideration of the terms "land" and "agriculture" as defined under the Act of 1955 is essential. Section 5(24) of the Act defines "land" as under :

*"(24) **"land"** shall mean land **which is let or held for agricultural purposes** or for purposes subservient thereto or as grove land or for pasturage, including land occupied by houses or enclosures situated on a holding, or land covered with water which may be used for the purpose of irrigation or growing singhara or other similar produce but excluding abadi land; it shall include benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth."*

Section 5(2) defines agriculture as under :

*"(2) **"Agriculture"** shall include horticulture, ³[Cattle breeding, dairy farming, ⁴[Poultry farming and forestry development]."*

15. What can be concluded by a conjoint reading of the above definitions is that the land in terms of the Act of 1955 is the one which is let or held for agricultural purposes or for purposes subservient thereto; and agriculture includes horticulture, Cattle breeding, dairy farming, Poultry farming and forestry development. Meaning thereby, as per the above definitions, neither can mining be termed to be an agricultural activity nor can



the mining operation be termed to be an agricultural purpose. In the specific opinion of this Court, the land used for mining operations cannot, by a bare reading of the above definitions, be concluded to be a land used for agricultural purposes.

16. So far as the matters in hand are concerned, the land in question is admittedly entered in the revenue records as "बंझड खनन क्षेत्र". Evidently, the land is neither a cultivated one nor is being used for any agricultural purposes therefore, even going by the position of law that the nature of land would not change by mere change in user, evidently, the nature of the land in question is recorded in the revenue records for 'mining purposes'. By all means, the said entry in the revenue record cannot be read to be for 'agricultural purposes' and hence, the land in question definitely would not be covered by the definition as provided under Section 5(24) of the Act of 1955.

17. Once this Court has held that the land in question is not governed by definition of "land" in terms of Section 5(24) of the Act of 1955, the Court is not required even to analyse the judgments as relied upon by the learned counsel for the petitioner. Even otherwise, the judgments as relied upon by learned counsel for the petitioner are of no help to him as therein the land in question evidently was an agricultural land. **Premi Devi** (supra) was a case wherein the Court held that just because the land was not cultivated, it could not be held that it was not an agricultural land. In **Hastimal's case** (supra), the land in question was used for residential purposes but without any conversion for the said purposes in terms of Section 90A of the Land Revenue Act. The



Court therefore opined that without the conversion of the land in terms of law, its nature would not change and the land would remain to be an agricultural land. In **Karan Singh Chouhan's case** (supra), the Court specifically concluded the nature of the land to be agricultural and hence, held the suit in question to be barred under the provision of Section 207 of the Act of 1955.

18. The issue in question therefore would definitely be governed by the ratio as laid down by the Hon'ble Apex Court in the case of **Harpal Singh** (supra). Therein, the Hon'ble Apex Court while dealing with the definition of "land" under the Delhi Land Reforms Act, 1954 (akin to the definition of "land" under the Rajasthan Tenancy Act, 1955) observed that where the land has not been used for any purpose contemplated under the Land Reforms Act, it would cease to be an agricultural land.

19. Further more, the reliefs as prayed for in the present suits evidently do not fall under Schedule 3(2) of the Act of 1955 and hence, Section 207 of the Act of 1955 would not even apply.

20. In view of the above analysis/discussion, this Court does not find any ground to interfere with the orders impugned and hence, the present revision petitions are **dismissed**.

21. All the pending applications, if any, also stand **disposed of**.

(REKHA BORANA),J

Vij/-1to4