



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 10252/2025

M/s Subhash Chand Mukesh Chand, Station Road, Bayana
Through The Partner Smt. Kamlesh Bhadana, W/o Shri Atar
Singh Bhadana, aged about 60 Years, R/o Sagar Farm,
Shergarh Bayana, District Bharatpur (Rajasthan)

----Petitioner

Versus

1. State of Rajasthan, through the Secretary,
Department of Mines and Geology, Secretariat, Jaipur
(Rajasthan)
2. Principal Secretary, Government of Rajasthan,
Department of Revenue (Group -3) Secretariat,
Jaipur (Rajasthan)
3. Director, Mines and Geology, Department of
Rajasthan, Ashok Nagar, Udaipur, (Rajasthan)
4. Assistant Mining Engineer, Department of Mines and
Geology, Rupbas, District Bharatpur (Rajasthan)
5. Collector, Office of Collector and District Magistrate,
Bharatpur (Rajasthan)
6. Superintendent of Police, Bharatpur (Rajasthan)

----Respondents

For Petitioner(s)	: Mr. R.K. Agarwal, Sr. Adv. with Mr. Ashwani Kumar Chobisa, Mr. Adhiraj Modi and Ms. Priyansha Gupta
For Respondent(s)	: Mr. G.S. Gill, AAG with Mr. S.P. Singh Rajawat Mr. Dinesh Chand Sharma and Ms. Megha Sharma for Mr. Bhuvnesh Sharma, AAG Mr. R.K. Mathur, Sr. Adv. with Mr. Ayush Goyal & Mr. Lucky Sharma Mr. Rahul Lodha, AGC



JUSTICE ANOOP KUMAR DHAND

Reserved on 26/08/2025
Pronounced on 29/08/2025

Order



1. By way of filing this writ petition, a challenge has been led to the impugned order dated 11.06.2025 passed by the Principal Secretary, Department of Revenue, by which the recommendations made by the District Collector dated 01.01.2025 have been turned down and proposal for declaring the subject land as a way has been rejected.

2. Mr. R.K. Agarwal, Sr. Adv. appearing for the petitioner submits that the petitioner was allotted a mining lease bearing No.3/93 and the lands bearing Khasra Nos.925, 926 and 927 are the only passage/access way to approach the aforesaid mining land/area allotted to the petitioner, which has been closed by the private respondents by raising unnecessary obstructions. Counsel submits that certain portions of Khasra Nos.925 and 927 are pasture lands and hardly 20 meters of land on the land bearing khasra No.926 is pokhar land which falls on the access way of the petitioner. Counsel submits that the concerned Gram Panchayat issued no objection in favour of the petitioner to use this passage as access way to the mining area allotted to the petitioner, which has now unnecessarily been obstructed by the private respondents. Counsel submits that the District Magistrate, Bharatpur has taken cognizance of the aforesaid fact and made a recommendation in favour of the petitioner to grant



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Government sanction to use these lands as way to the mining area allotted to the petitioner. Counsel submits that even the petitioner is ready to surrender certain portion of the land allotted to him, which falls adjacent to the aforesaid pasture land for the purpose of pasture land. However, without considering the recommendation made in favour of the petitioner by the District Magistrate, Bharatpur, the respondents have refused to accord sanction to the petitioner. Counsel submits that the impugned order has been passed by the respondents on the basis of the opinion given by the Additional Advocate General and on the basis of the judgment passed by the Division Bench of this Court in the case of **Abdul Rahman vs. State of Rajasthan (D.B. Civil Writ Petition No.1536/2003)**. Counsel submits that the judgment passed by the Division Bench of this Court in the case of **Abdul Rahman** (supra) was diluted at a subsequent stage by the Division Bench of this Court in the case of **Director General, Research and Development vs. State of Rajasthan and Others (D.B. Civil Writ Petition No.10384/2010)** reported in **RLW 2012 (1) Rj 331 (HC)**. Counsel submits that even the Apex Court in the case of **The State of Rajasthan vs. Ultratech Cement Limited** reported in **2022 (13) SCR 1**, has held that if any part of the land, though recorded in the revenue records as catchment area, is not used or utilized for a considerable time, then such part of the land can be allotted. Counsel submits that incorrectly relying on the judgment passed by this Court in



the case of **Abdul Rahman** (supra), the order impugned has been passed, which is not sustainable in the eye of law and is liable to be quashed and set-aside. Lastly, he submits that as per Rule 7 of the Rajasthan Tenancy (Government) Rules, 1955 (for short, 'the Rules of 1955'), pasture land can be set-apart for the purpose of allotment.

3. *Per contra*, Mr. G.S. Gill, Additional Advocate General, opposed the arguments raised by counsel for the petitioner and submitted that the lands bearing Khasra No.925 and 927 are pasture land and land bearing Khasra No.926 is a *Pokhar cum Nari* land. Counsel submits that when the proposal was prepared by the concerned Tehsildar and placed before the District Collector, there was no mention about the land bearing khasra No.926 indicating therein that the said land is a catchment area. Counsel submits that a catchment area cannot be allotted to anyone. The land bearing khasra No.926 is in-fact *Nari* land, which is surrounded by mountains and where rainy water used to collect during monsoon season. Counsel submits that the pasture land can be set-apart in terms of Rule 7 of the Rules of 1955, but for that purpose, consultation with the Panchayat by the concerned Collector is required to be made. In the instant case, the Panchayat has opposed the allotment of land to the petitioner. Therefore, under these circumstances, taking overall factors into mind, the order impugned has been passed by the respondents. Counsel submits that even while passing the impugned order, the concerned District Magistrate has been warned not to rely





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upon the reports submitted by the Subordinate Revenue Officers and before making any recommendation, the relevant revenue record was required to be seen. Counsel submits that under these circumstances, interference of this Court is not warranted. Lastly, he argued that recently the Government has issued a financial sanction of Rs.14,81,000/- for plantation under the Scheme of Amrit Sarovar in the close vicinity of the subject land, hence, under these circumstances also, interference of this Court is not warranted.

In support of his contentions, learned Additional Advocate General has placed reliance upon the judgment passed by the Apex Court in the case of **Hari Vishnu Kamath vs. Syed Ahmad Ishaque and Others** reported in **AIR 1955 SC 233**.

4. Mr. R.K. Mathur, Sr. Advocate appearing for the intervenor-Gram Panchayat submits that the Gram Panchayat submitted a representation before the Principal Secretary, Department of Revenue for not granting sanction to use the subject land as the passage/access way by the petitioner, as the subject land is a pasture land and also a catchment area. Counsel submits that water body cannot be allotted and allowed to be used in the light of the order passed by this Court in a Suo Motu Petition titled as **Save the Rivers, Lakes & Water Bodies From Illegal Constructions and Encroachments**. He further submits that each and every aspect of the matter was looked into by the Principal Secretary at the time of passing the order impugned, which



warrants no interference by this Court. Hence, the instant writ petition is liable to be rejected.

5. In rejoinder, Mr. R.K. Agarwal, Sr. Adv. submits that the petitioner is using the subject land for the purpose of mining activities for last more than 20 years and no objection whatsoever was neither taken by the Panchayat nor by anyone else, rather the consent was given by the Panchayat at the relevant time for mining work to be carried out by the petitioner. Counsel submits that the petitioner is not claiming his *Khatedari* rights over the subject land, hence, the provisions contained under Section 16 of the Rajasthan Tenancy Act, 1955 (for short, 'the Act of 1955') are not applicable and will not be attracted in the present case. Counsel submits that in view of the submissions made herein above, the order impugned is liable to be quashed and set-aside and appropriate orders may be passed in favour of the petitioner.

6. Heard and considered the submissions made at the Bar and perused the material available on record.

7. Basically, the petitioner wants ingress and egress way over land bearing Khasra Nos.925, 926 and 927 which are alleged to be pasture as well as Nari/Pokhar (Water Body) land. As per the petitioner, they are using these lands as a way for last more than 20 years for the purpose of approaching to their mining activity area and recommendations have also been made in favour of the petitioner by the local administration to grant government





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sanction for that purpose. The Tehsildar, Sub Divisional Officer Weir and the District Magistrate, Bharatpur have made their recommendations in favour of the petitioner.

However, the Principal Secretary, Department of Revenue has refused to do so vide impugned order dated 11.06.2025 by holding that the lands bearing Khasra Nos.925 and 927 are pasture lands and the land bearing Khasra No.926 is 'Gair Mumkin Pokhar' (Water Body) and while giving reference of the judgment passed by this Court in the case of **Abdul Rahman** (supra) and the order passed by the Hon'ble Supreme Court in the case of **Jaspal Singh and Others vs. State of Punjab and Others** reported in **AIR 2011 SC 1123**, the proposal of the local administration has been refused by the Principal Secretary, Department of Revenue.

8. Various versions and cross-versions have been made with regard to the land bearing Khasra No.926 that it is a 'Gair Mumkin Pokhar' and it was recorded as 'Nari' (kind of river) in the revenue record, hence, the same cannot be allotted to the petitioner for the purpose of a way. As per the petitioner, there exists no 'Pokhar' or 'Nari' on the subject land, while as per the respondents, the subject land is surrounded by the mountains and seasonal river flows on the said land due to rain water in monsoon season. As per them, lakhs of rupees have also been sanctioned for plantation work near the subject land, under the Scheme of Amrit Sarovar.





Now following disputed questions of facts are raised by both the sides about the subject land bearing Khasra No.926:

- (i) Whether it is 'Nari/Pokhar' land or not?
- (ii) Whether there exists any water body or not?
- (iii) Whether such land can be allowed to be used as a way or not?

All these disputed facts cannot be adjudicated by this Court under its writ jurisdiction contained under Article 226 of the Constitution of India.

Identification and protection of disputed water bodies require technical expert evaluation. Mere revenue record entries are not sufficient and the ground conditions/realities must be verified by the competent Expert Authority.

In order to ascertain the nature of the subject land and in order to ascertain whether there exists any 'Nari/Pokhar' or not and whether the subject land can be allowed to be used as passage way or not? All these facts can be adjudicated by an Expert Committee, consisting of High Ranking Officers of the Departments of Revenue, Forest and Panchayati Raj, who would examine the old revenue records and practical ground realities aspects of the matter 'whether in fact there exists any water body or not' and then appropriate decision would be taken accordingly, after making physical inspection of the subject land and taking into account the provisions of law and judgments passed by the Hon'ble Apex Court as well as this Court, within a period of six weeks from the date of receipt of certified copy of this order.



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9. The respondents are directed to constitute an 'Expert Committee' for the aforesaid purpose forthwith.

10. With the aforesaid observations and directions, the instant writ petition as well as the stay application and all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J



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