



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 11862/2024

Rasida Khatoon W/o Mainuddin Khan, Aged About 70 Years, R/o
Near Jama Masjid, Dholikhar, Karauli, Rajasthan - 322241

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Local-Self Government, Secretariat, Jaipur, Rajasthan
2. Director Local Bodies and Joint Secretary, To The Government (Local Self Department), Rajasthan
3. Additional District Collector, Karauli, Rajasthan
4. Tehsildar, Karauli, Rajasthan

----Respondents

Connected With

S.B. Civil Writ Petition No. 12086/2024

Rasida Khatoon W/o Mainuddin Khan, aged about 70 Years, R/o
Near Jama Masjid, Dholikhar, Karauli, Rajasthan -322241,
Currently Serving as Chairperson, Nagar Parishad, Karauli,
Rajasthan

----Petitioner

Versus

1. The State of Rajasthan, Through Director and Joint Secretary, Local Bodies, Jaipur, Rajasthan
2. Additional District Collector, Karauli, Rajasthan
3. Tehsildar, Karauli, Rajasthan

----Respondents

S.B. Civil Writ Petition No. 653/2025

Rasida Khatoon W/o Mainuddin Khan, aged about 70 Years, R/o
Near Jama Masjid, Dholikhar, Karauli, Rajasthan - 322241

----Petitioner

Versus

1. State of Rajasthan, Through Secretary, Local-Self Government, Secretariat, Jaipur, Rajasthan
2. Director, Local Bodies and Joint Secretary to The Government (Local Self Department), Rajasthan



- 3. Additional District Collector, Karauli, Rajasthan
- 4. Tehsildar, Tehsil Karauli, District Karauli, Rajasthan
- 5. Special Secretary, Law and Jt. Legal Remembrance And Judicial Inquiry Officer, Secretariat, Jaipur, Rajasthan.

-----Respondents



For Petitioner(s) : Mr. S.S. Hora with
Mr. Ishan Khandelwal

For Respondent(s) : Mr. Rajendra Prasad-AG assisted by
Mr. Sheetanshu Sharma
Mr. Tanay Goyal
Ms. Dhriti Laddha
Ms. Harshita Thakral
Mr. G.S.Gill-AAG with
Mr. S.P.S Rajawat-Asst.G.C.
Mr. Manoj Kumar
Mr. Prem Shanker Sharma with
Mr. Jitendra Kumar Sharma
Mr. Mahendra Shandilya
Mr. Manish Kumar Meena
Mr. Pradeep Kumar

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on 16/07/2025
Pronounced on 23/07/2025
Reportable

For convenience of exposition, this order is divided in the following parts: -

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Factual matrix of the case:-

- 1. Since, these writ petitions involve common questions of law and facts, therefore, with consent of the counsel for the parties,



arguments have been heard together in all these matters and the same are being decided by this common order.

2. The petitioner has submitted three different writ petitions by way of (i) challenging the suspension order dated 15.07.2024 passed by the respondents; (ii) challenging the judicial enquiry conducted against the petitioner under Section 39 of the Rajasthan Municipalities Act, 2009 (for short, 'the Act of 2009'); (iii) challenging the enquiry report, submitted by the Enquiry Officer, on the ground that the enquiry was not conducted by the Enquiry Officer, so appointed for this purpose, but instead the powers were delegated to the subordinate authorities.

Submissions on behalf of the petitioner:-

3. Counsel for the petitioner submits that the petitioner was elected as Chairperson, Nagar Parishad, Karauli and certain complaints were submitted against her with regard to issuance of pattas. Counsel submits that as per the proviso attach to Section 39(1) of the Act of 2009, the State Government was supposed to conduct an enquiry through existing or retired officer not below the rank of State Level Services. Counsel submits that in the instant case, the Additional Collector, Karauli was appointed as the Enquiry Officer to conduct an enquiry against the petitioner, but he did not conduct any enquiry himself rather delegated his powers to the subordinate Officers viz., the Tehsildar, Karauli as well as to the Commissioner, Municipal Council, Karauli and collected the report with regard to the allegations from them. Counsel submits that on the basis of the report, received from the aforesaid Officers, the order dated 05.06.2024, incorporating the said



report, was sent by the Additional Collector, Karauli to the Director, Local Bodies, without any enquiry being conducted by him. Counsel submits that relying upon the aforesaid order/report dated 05.06.2024, a show cause notice under Section 39(1) of the Act of 2009 was issued and served upon the petitioner and she was placed under suspension vide impugned order dated 15.07.2024 and an order was also passed for conducting judicial enquiry against her. Counsel submits that as per the proviso attached to Section 39 (1) of the Act of 2009, it was incumbent upon the Enquiry Officer i.e. the Additional Collector, Karauli to hold and conduct the enquiry himself and could not have delegating his power to the subordinate officers i.e. the Commissioner, Municipal Council, Karauli and Tehsildar, Karauli. Counsel submits that under these circumstances, all the subsequent orders which were passed, based upon the report furnished by the Additional Collector have no bearing to the case and the same are not sustainable in the eyes of law and are liable to be quashed and set aside. Counsel submits that the general rule, whatever a person has power to do himself, he may do the same by means of an agent, has been limited by the operation of the principle that a delegated authority/power cannot be further delegated i.e. *delegatus non protest delegare*. Counsel further submits that if the order/report dated 05.06.2024 goes, the subsequent orders arising out of the aforesaid order will automatically fall. In such a factual situation the latin maxim *sublato fundamento cadit opus* comes into play which means that when the foundation is removed, the structure falls. Counsel further submits that the entire action against the petitioner is





initiated on the allegation that pattas were illegally issued in favour of certain known persons by her. Counsel submits that the petitioner was simply a co-signatory of the pattas and the another signatory was the Commissioner, Municipal Council, Karauli against whom neither any action has been taken nor he has been placed under suspension or any inquiry has been initiated against him. Counsel submits that the aforesaid selective action of the respondents is nothing but adopting a pick and choose approach in the matter, inasmuch as when both the persons were at fault then certainly, the action was also required to be taken against both of them i.e. against the said Commissioner as well as the petitioner. In support of his contentions, he has placed reliance upon the judgment passed by this Court in the cases of **Satish Kumar Duhariya Vs. State of Rajasthan and Anr.** (S.B. Civil Writ Petition No. 11706/2023, decided on 23.01.2024) and **Vimla Devi (Smt.) Vs. State of Rajasthan and Ors.**, reported in **2007 SCC Online Raj. 458.**

Submissions by the rival sides:-

4. *Per contra*, the learned Advocate General as well as the learned Additional Advocate General, have opposed the arguments advanced by counsel for the petitioner and submitted that certain complaints were received against the petitioner alleging misuse of her post and issuance of pattas. Counsel submits that the matter was examined by the Additional District Collector, Karauli, who sought report from the Municipal Commissioner as well as the Tehsildar, Karauli. Counsel submits that after receipt of the aforesaid report from the concerned Officers, a report was prepared and sent to the Government for further examination of



the matter through audit, etc. Counsel submits that the Additional District Collector was never appointed as an "Enquiry Officer", rather he was simply asked to submit the report. Counsel submits that the proviso attached to Section 39(1) of the Act of 2009, does not mandate that the enquiry should be conducted only by a retired or existing officer not below the rank of State Level Service but a mechanism has been provided under the proviso which empowers the State to proceed in the matter either by conducting enquiry by itself or through the existing or Retired Officer of the rank of State Level Services or by any authority of the Government directly. Counsel submits that the allegations against the petitioner were prima facie found to be proved and accordingly, the matter was sent to the Government for taking appropriate action. Counsel submits that the report submitted by the Tehsildar, Karauli and the Commissioner, Municipal Council, Karauli was simply a fact finding report, hence the arguments raised by counsel for the petitioner with regard to delegation of power would not apply in the facts and circumstances of the present case. Counsel submits that the principle of *delegatus non protest delegare* is not applicable in the administrative actions or ministerial acts rather this principle applies to statutory judicial and quasi-judicial functions. Counsel submits that similar situation came up before the Co-ordinate Bench of this Court in the case of **Narendra Kumar Khodaniya Vs. State of Rajasthan and Ors.** while deciding SBCWP No. 15215/2024, vide order dated 23.09.2024 wherein the earlier judgment passed by the said Co-ordinate Bench in the case of **Mansoor Ali Vs. State of Rajasthan and Ors.** (SBCWP No. 17283/2021) was distinguished



and a view was taken by the said Co-ordinate Bench that the matter can be proceeded against the elected representative under Section 39 of the Act of 2009 on the basis of the fact finding report submitted by the Officers. Counsel submits that the petitioner cannot be allowed to claim negative parity on the ground that she was simply a co-signatory of the pattas. Counsel submits that even if the pattas have been issued under the signatures of the Commissioner, Municipal Council, Karauli as well as the petitioner and the action is taken against one of the authorities, the petitioner cannot be allowed to claim negative parity. Lastly, he argued that the petitioner is not only a signatory but also the a beneficiary in the matter. Counsel submits that on the basis of the report received from the aforesaid Officers, the matter was sent by the Additional District Collector to the Government where explanation/reply of the petitioner, was also sought under Section 39 (1) of the Act of 2009. After duly considering the reply submitted by the petitioner, a decision was taken by the State to conduct judicial enquiry into the allegations levelled against the petitioner as well as the other Officer, therefore, pending judicial enquiry, the petitioner was placed under suspension. Hence, under these circumstances, interference of this Court is not warranted and the present writ petitions are liable to be rejected.

5. In rejoinder, counsel for the petitioner submits that there has been a complete non application of mind by the Government, while passing the suspension order against the petitioner. Counsel submits that the suspension order has been passed in a mechanical and perfunctory manner, without duly considering the



reply submitted by the petitioner and without proper deliberation and evaluation of the facts. Counsel submits that the petitioner is an elected representative having a limited term and in case, the charges are ultimately not found to be proved in the judicial enquiry and she is exonerated of all the charges, the time lost during her suspension cannot be restored. Counsel submits that the petitioner has no intention to influence or interfere with the judicial enquiry, hence, her suspension is not warranted. Lastly, he argued that the petitioner alone was not the competent authority to issue the pattas, rather the pattas were issued by the competent authority, after verification of the record and if no action has been taken against him, then certainly, no action is required to be taken against the petitioner as well.

Discussions and Analysis:-

6. Heard and considered the submissions made at Bar and perused the material available on record.
7. Before dealing with the submission, it would be gainful to reproduce the provisions contained under Section 39(1) and (3) of the Act of 2009, which reads as under:-

"39. Removal of member. - (1) The State Government may, subject to the provisions of sub Sections (3) and (4), remove a member of a Municipality on any of the following grounds, namely: -

(a) that he has absented himself for more than three consecutive general meetings, without leave of the Municipality:

Provided that the period during which such member was a jail as an under trial prisoner or as a detainee or as a political prisoner shall not be taken into account,

(b) that he has failed to comply with the provisions of Section 37,



(c) that after his election he has incurred any of the disqualification mentioned in Section 14 or Section 24 or has ceased to fulfil the requirements of Section 21,

(d) that he has –

(i) deliberately neglected or avoided performance of his duties as a member, or

(ii) been guilty of misconduct in the discharge of his duties, or

(iii) been guilty of any disgraceful conduct, or

(iv) become incapable of performing his duties as a member, or

(v) been disqualified for being chosen as member under the provisions of this Act, or

(vi) otherwise abused in any manner his position as such member, or

(e) that after his election, it has come to the knowledge of the State Government that on the date of election, he was not qualified under section 21 or was disqualified under section 14 or section 24, to be chosen to fill the seat under this Act and his election as a member of a Municipality has not been questioned by an election petition and period of limitation for filing election petition has expired.

Provided that an order of removal shall be passed by the State Government after such inquiry as it considers necessary to make either itself or through such existing or retired officer not below the rank of State level services or authority as it may direct and after the member concerned has been afforded an opportunity of explanation.

(2) xxxx xxxx xxxx xxx

(3) Notwithstanding anything contained in sub-Section (1) where it is proposed to remove a member on any of the grounds specified in clause (c) or clause (d) of sub-Section (1), as a result of the inquiry referred to in the proviso to that sub-Section and after hearing the explanation of the member concerned, the State Government shall draw up a statement setting out distinctly the charge against the member and shall send the same for enquiry and findings by Judicial Officer of the rank of a District Judge



to be appointed by the State Government for the purpose.”

Perusal of the aforesaid provision indicates that a member of a Municipality can be removed from office if he/she has been found guilty in discharge of duties or has been found guilty of any disgraceful conduct. In the instant case, a memorandum of charges dated 26.06.2024 was served upon the petitioner enumerating several charges. The petitioner submitted her explanation with the reply and after considering the same it was found that the petitioner has misused her power and position by issuing pattas in violation of the Rules for her own benefit and such an act of the petitioner was found to be disgraceful. Hence, a decision was taken to hold and conduction a judicial enquiry against the petitioner and she was placed under suspension vide order dated 15.07.2024.

8. The star argument of counsel for the petitioner is that the Additional Collector was appointed as the 'Enquiry Officer' and he was supposed to conduct the enquiry himself against the petitioner, however, instead of doing so, he purportedly delegated his power to the sub-ordinate Officers i.e. the Tehsildar, Karauli and the Commissioner, Municipal Council, Karauli. He submits that the order impugned was passed against the petitioner solely on the basis of the report of these two officers. Counsel submits that the delegated power cannot be further delegated. Counsel submits that the well known maxim *delegatus non protest delegare*, is applicable in this matter. Hence, the entire action initiated against the petitioner stands vitiated. Counsel submits that the foundation of the entire case is bad, hence other maxim "*sublato fundamento cadit opus*" is also applicable in the present case. Hence, the



order/report dated 05.06.2024 and all actions taken thereupon i.e. initiation of judicial enquiry and placing the petitioner under suspension are legally untenable and liable to be quashed being bad in the eyes of law.

9. Perusal of the entire record indicates that the Additional Collector was not formally appointed as the 'Enquiry Officer' to conduct the enquiry against the petitioner. Rather, he was simply asked to submit a report with regard to the allegations levelled against the petitioner, in terms of the provisions contained under the proviso attached to Section 39 (1) of the Act of 2009 on the grounds mentioned in sub clause (c) to (d) attached thereto. The proviso attached to the Section 39 (1) reveals that an order of removal of a member shall be passed by the State, after holding an enquiry, as it considers necessary to make:-

- (i) either by itself; or
- (ii) through such existing or Retired Officer not below the rank of State Level Service; or
- (iii) by authority as it may direct and after affording an opportunity of explanation to such member. "Meaning thereby the enquiry may be conducted by the State itself or by any authority as may be directed by the State or by a retired or existing member of State Level Services. It is not necessary that the enquiry must always be conducted by an officer of the State Services authority.

10. Now, the questions which remain for consideration of this Court is "whether the Additional Collector, who submitted the report against the petitioner, was appointed as the 'Enquiry



Officer' or not", and "whether the report submitted by him holds any legal validity or not."

11. A complaint was received by the respondents wherein several allegations were levelled against the petitioner for misusing her power and postion. It was also alleged that the pattas were issued by her for her own benefits.

12. Thereafter, the Director, Department of Local Bodies, Jaipur (for short, 'the DLB') asked the Additional Collector, Karauli to submit his report after conducting enquiry in the matter. Thereafter, the Additional Collector submitted the fact finding report, received from the Tehsildar, Karauli and the Commissioner, Municipal Council, Karauli and submitted the following order/report to the Director, DLB on 05.06.2024 which reads as under:-

" श्रीमान् निदेशक महोदय
स्वायत्त शासन विभाग
जी-3 राजमहल रेजीडेन्सी एरिया सिविल लाइन
फाटक सी स्कीम राजस्थान सरकार जयपुर।

विषय :- नगर परिषद करौली द्वारा मोहरम सप्लाई की 5.50 करोड़ की निविदाएँ लगाकर किये गये घोटले की जाँच करवाने व जाँच होने तक निलम्बन करने के क्रम में।

प्रसंग :- श्रीमानजी का पत्रांक-प.2(क)()/जाँच/डीएलबी/2024/818 दिनांक 20.02.2024, 870 दिनांक 22.02.2024, 1337 दिनांक 26.03.2024, 1851 दिनांक 06.05.2024, 2028 दिनांक 17.05.2024, 2035 दिनांक 17.05.2024 के संदर्भ में।

महोदय,

उपर्युक्त विषयान्तर्गत प्रासंगिक पत्र के संदर्भ में निवेदन है कि भाजपा पदाधिकारी एवं कार्यकर्ताओं द्वारा प्रार्थना पत्र प्रस्तुत कर नगर परिषद सभापति द्वारा कचरा संग्रहण, सफाई मद और आवासीय मिश्रित पट्टों में जानबूझ कर भारी अनियमितता के संबंध में तहसीलदार करौली के पत्रांक 288 दिनांक 31.05.2024 द्वारा स्पष्ट जाँच कर एवं नगर परिषद द्वारा प्रस्तुत जबाब के प्रत्येक बिन्दु की राजस्व रिकार्ड/दस्तावेज/मौके पर जाकर जाँच रिपोर्ट प्रस्तुत की है जिसके अनुसार :-

01. यह है कि श्रीमति कमोदा पत्नि पुरुषोत्तम के नाम से जारी पट्टे की जाँच रिपोर्ट में नगर परिषद आयुक्त का कथन है:- कि श्रीमति कमोदा पत्नि पुरुषोत्तम द्वारा पट्टा आवेदन के साथ दस्तावेज पेश किये गये थे जो निम्न प्रकार है।



(ए) नगरपालिका द्वारा नीलामी का प्लॉट जिसकी रजिस्ट्री दिनांक 11.12.1973

(बी) नगरपालिका द्वारा निर्माण मंजूरी सन् 1987

(सी) नोटरी से प्रमाणित शपथ पत्र दिनांक 14.05.2000

(डी) नगरपालिका नोटिस दिनांक 26.05.1981

नगरपालिका द्वारा आवेदक के पट्टे से सम्बन्धित आपत्ति आमंत्रण सूचना दिनांक 23.10.2021 को समाचार पत्र राष्ट्रदूत में प्रकाशित/प्रकाशन होने से पट्टा जारी होने तक किसी भी प्रकार की आपत्ति प्राप्त नहीं हुई व नगर परिषद के वरिष्ठ प्रारूपकार द्वारा अपनी मौका रिपोर्ट में नाला होना प्रदर्शित नहीं किया गया है।

श्रीमति कमोदा पत्नि पुरुषोत्तम शर्मा निवासी पुराना आ.टी.ओ. ऑफिस के पास करौली के नाम जाँच करने पर पता चलता है कि नगर परिषद करौली द्वारा 69-क पट्टा विलेख (फ्री होल्ड) मिश्रित पट्टा क्रमांक:एल.डी./2021-22/36279 दिनांक 22.07.2022 को जारी किया गया। उसकी छाया प्रति मय नक्शा की पटवारी हल्का करौली 09 से रिपोर्ट ली गई जिसके अनुसार **कमोदा पत्नि पुरुषोत्तम शर्मा मण्डरायल रोड करौली के नाम नगर परिषद करौली द्वारा जारी पट्टा संलग्न नक्शानुसार मौका मिलान करने पर खसरा नम्बर 4334 किस्म गैर मुमकीन नाले में स्थित है जो राजस्व रिकॉर्ड जमाबन्दी में नगर परिषद करौली के नाम दर्ज है।** श्रीमति कमोदा पत्नि पुरुषोत्तम शर्मा के नाम से नगर परिषद द्वारा उक्त जारी पट्टा राजस्व रिकॉर्ड के अनुसार गैर मुमकीन नाले में दिया गया जो माननीय उच्च न्यायालय के निर्णय अब्दुल रहमान बनाम राजस्थान सरकार 2004 की अवेहलना की श्रेणी में आता है।

02. यह कि अमीनुददीन पुत्र मईनुददीन को अम्बेडकर सर्किल पर 397.09 वर्ग मीटर का अपठित जारी किया गया है जिसके सन्दर्भ में आयुक्त, नगर परिषद करौली का कथन है कि:-

(ए) आवेदक द्वारा पट्टे के लिए भूमि की रजिस्ट्रीयों पेश की गई है।

(बी) आवेदक द्वारा चैनमिलान गाईडलाईन के अनुसार कार्यालय नगर परिषद करौली के गृहकर की नकल पेश की गई है।

(सी) आवेदक से पूर्व मालिक की रजिस्ट्रीयों की नकल पेश की गयी।

(डी) आवेदन को पट्टा जारी करने से पूर्व वरिष्ठ प्रारूपकार नगर परिषद करौली द्वारा मौका अवलोकन रिपोर्ट की गयी थी। जिसमें उक्त भूमि पर कोई भी मन्दिर या शिव मन्दिर होना नहीं दर्शाया गया है।

(ई) आवेदक से पट्टा आवेदन प्राप्त होने के पश्चात् कार्यालय नगर परिषद करौली द्वारा आपत्ति आमंत्रण सूचना समाचार पत्र दैनिक भास्कर में दिनांक 03.11.2021 प्रकाशित/प्रकाशन होने से पट्टा जारी होने तक भी कोई आपत्ति/एतराज नगर परिषद करौली को प्राप्त नहीं हुई थी, राज्य सरकार द्वारा जारी गाईडलाईन अनुसार पट्टा जारी किया गया था।

उक्त बिन्दु के संबंध में जाँच करने पर पाया की नगर परिषद करौली द्वारा अमीनुददीन पुत्र मईनुददीन निवासी जामा मजिस्द करौली के नाम से पुरानी आबादी क्षेत्र भट्टा बस्ती भँवर विलास के पास करौली, जो सभापति रशीदा खातुन का पुत्र है, मिश्रित पट्टा क्षेत्रफल 372.63 वर्गमीटर क्रमांक 07 दिनांक 12.11.2021 जारी किया गया। जारी किये गये पट्टे के साथ संलग्न नक्शा अनुसार पट्टे की



पश्चिम भुजा की कुल लम्बाई (64+10) 74 फीट है। शिकायत कर्ता द्वारा उप पंजीयक कार्यालय करौली से उप पंजीयन दस्तावेज की सत्यप्रति लिपि प्राप्त कर जाँच हेतु प्रस्तुत की है जिसके साथ संलग्न भूखण्ड के नक्शा अनुसार भी **पश्चिम भुजा की लम्बाई (64+10) 74 फीट है। संशोधित पट्टे के साथ संलग्न भूखण्ड के नक्शे में पश्चिम भुजा की लम्बाई बढ़ाकर 88 फीट अंकित कर दी गई है।** मूल पट्टे के साथ संलग्न भूखण्ड के नक्शे में उत्तर दिशा की लम्बाई 58 फीट प्रदर्शित की है जिसे संशोधित पट्टे में बढ़ाकर 60 फीट कर दिया है। इस प्रकार नगर परिषद करौली द्वारा उक्त पट्टा जारी करने के बाद पुनः अमीनुददीन पुत्र मईनुददीन को उसी स्थान पर संशोधित मिश्रित पट्टा क्रमांक 07/239 दिनांक 06.07.2022 जारी किया गया। संशोधित पट्टे का क्षेत्रफल बढ़ाकर पूर्व में जारी पट्टे के क्षेत्रफल 372.63 वर्गमीटर से 397.09 वर्गमीटर कर दिया गया। इसी भूखण्ड के संबंध में माननीय न्यायालय संभागीय आयुक्त कोटा के प्रकरण संख्या 16/93 कल्याण प्रसाद एवं अन्य बनाम प्रशासक नं.पा. एवं अन्य करौली में निर्णय दिनांक 03.11.1997 में इस भूखण्ड में स्थित महादेव मंदिर तक आने जाने हेतु 05 फीट चौड़ा रास्ता छोड़ने के लिए नगर पालिका करौली को आदेश दिये गये हैं। न्यायालय आदेश के साथ संलग्न नक्शे में मंदिर को प्रदर्शित किया गया है। निर्णय दिनांक 03.11.1997 की प्रति संलग्न है। नगर परिषद द्वारा जारी मूल पट्टा क्रमांक 07 दिनांक 12.11.2021 के साथ संलग्न नक्शे में भी 05 फीट चौड़ा रास्ता प्रदर्शित किया गया है। नवीन संशोधित पट्टे क्रमांक 07/239 दिनांक 06.07.2022 में **मंदिर और रास्ते को विलोपित करते हुए पट्टा जारी कर दिया गया है।**

03. यह है कि शिकायतकर्ता द्वारा डूब क्षेत्र में 66 आवासीय/मिश्रित पट्टे धारा 69 ए के तहत जारी किये जाने की सूची संलग्न की है। नगर परिषद ने अपनी जाँच में शिकायतकर्ता द्वारा बताये गये डूब क्षेत्र की सूची एवं इससे संबंधित सूचना नगर परिषद कार्यालय में अनुपलब्ध होना बताया है। जबकि शिकायत कर्ता ने नगरपालिका द्वारा सहायक अभियन्ता पॉचना सिचाई उपखण्ड द्वितीय करौली को अपने पत्रांक: नं.पा./एफ/()/97/1324 दिनांक 02.08.97 (प्रतिलिपि संलग्न) कर नदी गेट प्रोटक्शन के अन्दर आने वाले मकान मालिकों की सूची उपलब्ध कराई है। जो शिकायत कर्ता द्वारा आर.टी.आई. के तहत सहायक अभियन्ता, जल संसाधन उपखण्ड करौली के कार्यालय से प्राप्त की है, शिकायत कर्ता के द्वारा यह भी बताया गया है कि पॉचना बॉध की डूब क्षेत्र सीमा में आने वाले मकान मालिकों द्वारा पॉचना सिचाई विभाग करौली से मुआवजा राशी के चैक प्राप्त करने के बाद भी नगर परिषद करौली से अपने परिवारजनो के नाम से पट्टे जारी करवा लिए जिसकी जाँच हेतु कार्यालय अधिशाषी अभियन्ता जल संसाधन विभाग करौली को अधोहस्ताक्षरकर्ता द्वारा पत्र क्रमांक 269 दिनांक 16.05.2023 प्रेषित कर उन व्यक्तियों के नाम की सूची चाही गई जो श्रीमान् उपखण्ड अधिकारी महोदय को मुआवजे के लिए प्रस्तुत की गई। उक्त सूची चैक नम्बर सहित उपलब्ध नहीं होने के कारण जाँच करना संभव नहीं हो पाया है। सिचाई विभाग एवं नगर परिषद के अधिकारियों की अपठित गठित कर मौके पर जाकर जाँच करना उचित होगा।

04. यह है कि आयुक्त, नगर परिषद करौली का कथन यह है कि:— अल्लानूर पुत्र शकूर खॉ अम्बेडकर सर्किल लोटनपीर करौली को जारी पट्टा 139.39 वर्गमीटर पूर्व में स्टेटग्रांट सन् 1961 के तहत पट्टा जारी



हो रखा था। इसके आधार पर राजस्थान सरकार की गाईड लाईन के अनुसार 69 ए के तहत पट्टा नियमानुसार जारी किया गया था। उक्त के संबंध में जाँच करने पर पट्टा नियमानुसार जारी किया जाना प्रतीत होता है। पट्टे एवं भूखण्ड के नक्शे की छाया प्रति जाँच रिपोर्ट के संलग्न है।

05. यह है कि कार्यालय हाजा के पत्रांक पी.जी./2024/172 दिनांक 19.03.2024 एवं 222-23 दिनांक 13.05.2024 में अंकित बिन्दु संख्या 01 लगायत 03 से संबंधित दस्तावेज जाँच हेतु उपलब्ध नहीं कराकर आयुक्त, नगर परिषद करौली के पत्रांक 248 दिनांक 30.04.2024 से अवगत कराया कि रिकार्ड शीघ्र ही उपलब्ध करवा दिया जावेगा। परन्तु रिकार्ड आदिनांक तक अप्राप्त होने के कारण जाँच करना सम्भव नहीं हो पाया है।

06. यह है कि करौली पटवार हल्का 09 में स्थित भूमि खाता संख्या नया 342 खसरा नं. 5267 से 5271 व पटवार हल्का करौली 08 में स्थित भूमि खाता संख्या नया 265 खसरा नं. 795 लगायत 800, 827, 846 लगायत 851, 863 लगायत 871, 874 लगायत 881 की वर्तमान जमाबन्दी में कास्तकार का नाम परमानन्द दास चेला घनश्याम दास जाति बाबूजी सा.देह. से संबंधित भूमि में नगर परिषद द्वारा भू राजस्व अधिनियम की धारा 90 ए/90 बी के अंतर्गत जारी समस्त पट्टे एक से अधिक खसरा नम्बरो में सम्मिलित पट्टा जारी किया गया है उन व्यक्तियों के नामों की सूची एवं वर्तमान जमाबन्दी जाँच रिपोर्ट के साथ संलग्न है।

07. यह है कि अब्दुल गफ्फार पुत्र अब्दुल गफुर निवासी नदी गेट के पास, खार रोड, करौली के नाम नगर परिषद करौली द्वारा 69ए के अन्तर्गत दिया गया आवासीय पट्टा क्रमांक: LD/KRLI/2021-22/105967 दिनांक 17.05.2022 क्षेत्रफल 400.37 वर्गमीटर के संबंध में शिकायतकर्ताओं का यह कथन है कि अब्दुल गफ्फार द्वारा उक्त आवासीय पट्टा जारी होने से पूर्व स्वयं के मकान के पॉचना डुब क्षेत्र में आने पर श्रीमान भूमि अवाप्त अधिकारी करौली द्वारा जारी चैक संख्या 762686 से 92299 रुपये का मुआवजा प्राप्त किया गया। उक्त के संबंध में दस्तावेजों की जाँच करने पर यह पाया गया कि नगरपालिका करौली द्वारा सहायक अभियन्ता पॉचना सिचाई उपखण्ड द्वितीय करौली को अपने पत्रांक: न.पा./एफ/()/97/1324 दिनांक 02.08.97 (प्रतिलिपि संलग्न) द्वारा नदी गेट प्रोटक्शन के अन्दर आने वाले मकान मालिकों की सूची उपलब्ध कराई है। जो शिकायत कर्ता द्वारा आर.टी.आई. के तहत सहायक अभियन्ता, जल संसाधन उपखण्ड करौली के कार्यालय से प्राप्त की है। उक्त सूची में क्रम संख्या 02 पर अब्दुल गफ्फार पुत्र अब्दुल गफुर, निवासी नदी गेट करौली का नाम अंकित है। (संलग्न उपरोक्तानुसार)

08. यह है कि कार्यालय नगर परिषद करौली द्वारा आपत्ति आमंत्रण सूचना क्रमांक 2684-87 दिनांक 06.09.2023 में 94 आवेदनकर्ताओं द्वारा 90ए/90बी के अन्तर्गत अपने भूखण्ड का नियमन कर पट्टा हेतु आवेदन प्रस्तुत किये गये। जिनके आवेदन पत्र नगर परिषद में प्रक्रियाधीन के संबंध में आयुक्त नगर परिषद करौली द्वारा संवाददाता ब्यूरो संदेश के नाम से स्थानीय संस्करण में डी०पी०आर० दर पर प्रकाशित किया जाना उल्लेखित है। जबकि नगर परिषद द्वारा



संवाददता ब्यूरो संदेश को प्रकाशन हेतु दी गयी प्रतिलिपि में ब्यूरो संदेश कार्यालय का पता का उल्लेख नहीं है। जिससे जाँच में यह स्पष्ट नहीं हो पा रहा है कि नगर परिषद द्वारा उपरोक्त सूचना किस माध्यम से प्रकाशन हेतु दी जाती है।

सारांशतः प्रकरण में प्राप्त शिकायतों के संबंध में न.प. आयुक्त करौली से जबाव/तथ्यात्मक रिपोर्ट प्राप्त होने तथा उनका परीक्षण तह. करौली से करवाये जाने एवं समस्त रिकॉर्ड का अवलोकन करने पर उपर्युक्तानुसार कुछ मामलों में अनियमितता उजागर होती है तथा संपूर्ण रिकॉर्ड उपलब्ध नहीं करवाये जाने से कुछ शिकायतों के बिन्दुओं की जाँच नहीं की जा सकी है।

अधोहस्ताक्षकर्ता के अभिमत में न.प. करौली के क्रियाकलापों/लेखों की निदेशालय स्तर से टीम गठित की जाकर विस्तृत ऑडिट/जाँच करवाई जानी चाहिए।”

13. After receipt of the aforesaid report, a notice under Section 39 (1) of the Act of 2009 was given to the petitioner along with the enquiry report. Hence, it is clear that the Additional Collector was never ever appointed as an Enquiry Officer. He was simply asked to submit a report and the same was submitted by him after getting fact finding report from the Tehsildar and the Commissioner of Municipal Corporation, Karauli.

14. Now the next issue which emerges for consideration is “whether the summary report, obtained from the subordinate Officers, amounts to a delegation of power/authority to them?”.

15. The issue involved in the present petition is no more *res integra*, having already been thoroughly examined by the same Co-ordinate Bench in the case of Narendra Kumar Khodaniya (*supra*), who decided the matter of Manzoor Ali (*supra*) and it has been held in paras 21 to 31, which read as under:-

“21. The case of Manzoor Ali (*supra*), was a case of sub-section (3) of section 39 of the Act of 2009 and the inquiry in question in clear terms was mentioned as ‘preliminary inquiry’ and it was not the stand of the State Government that another inquiry as contemplated under section 39(1) of the Act of 2009



will be undertaken, as is the position in the instant case.

22. True it is, that similar argument was advanced by the learned Additional Advocate General in the case of Manzoor Ali (supra) that it is only a fact finding inquiry, as has been advanced in the present case, but contra-distinguished from the Manzoor Ali's case, in the present case on 05.09.2024, the State Government has issued a notice under section 39 (1) of the Act of 2009. Moreso, not only the subject even the substance of the notice makes it clear that the statutory inquiry has commenced from 05.09.2024.

23. A careful reading of the judgment in the case of Manzoor Ali shows that a notice dated 08.12.2021 was under challenge therein, which was issued under section 39(3) of the Act of 2009 and the said notice was issued by the Director asking the petitioner as to why judicial inquiry be not conducted against him and prior to seeking such explanation he had directed the District Collector to conduct inquiry, who in turn had sent it to the Commissioner, Municipal Corporation who in turn appointed one Deputy Commissioner to be an inquiry officer and straightway on the basis of report sent by said Deputy Commissioner, the Director in that case had asked as to why case be not referred to judicial inquiry. As against this, in the instant case the Director has issued notice dated 05.09.2024 for the first time, eliciting petitioner's response during holding an inquiry- it is a notice under section 39(1) of the Act of 2009, during the process of inquiry.

24. According to this Court, in the present day scenario, when a host of complaints are being filed against elected representatives, State cannot be expected to straightaway launch an inquiry under section 39(1) of the Act of 2009 and engage its officers for conducting the inquiry without first ascertaining the facts. In order to avert unnecessary exercise and to ward off frivolous complaints, if the State Government has got done a fact finding exercise through the respondent No.3-Deputy Director, it cannot be said that the same is void or without authority of law.

25. As such exercise is for ascertainment of facts, this Court does not find any infirmity, if the respondent No.3-Deputy Director constituted a committee and





assigned or delegated the task of looking into the allegations levelled in the complaint.

26. Most important aspect of the matter is, that the respondent No.3 was not undertaking any statutory inquiry as contemplated under sub-section (1) of section 39 of the Act of 2009, and the communication dated 08.02.2024 was meant to assimilate facts.

27. The principle 'delegatus non potest delegare' cannot be applied to administrative actions or ministerial acts. This principle applies to statutory judicial and quasi-judicial functions. If the statute confers a power or delegates upon an authority a duty to perform certain act, such authority cannot ask someone else or delegate such power to another person, is the underlying principle. In absence of the inquiry being a statutory inquiry under sub-section (1) of section 39 of the Act of 2009, the fact that the job of inquiry has further been delegated and that the report of such delegatee has been sent by respondent No.3-Deputy Director by communication dated 28.08.2024, and acted upon, the process cannot be held to be vitiated.

28. This Court is of the considered view that practical necessity or exigency of the administration requires that the decision making authority who has been conferred with statutory power, be able to ascertain the foundational facts first, before initiating the actual proceedings or inquiry. Such exercise would as a matter of fact, avoid unnecessary harassment to none other than the elected representatives. Delegation to some extent becomes inevitable and an administrative necessity.

29. There is yet another aspect of the matter – by way of the communication dated 08.02.2024, the respondent No.2 (the Assistant Director) had asked the respondent No.3 (the Deputy Director), who is higher in the official hierarchy, hence, it cannot be said that the respondent No.2 had delegated his power to respondent No.3.

30. In the facts of the case in hands it cannot be said that there is an abdication of power by the State Government, when the inquiry has been initiated by the notice dated 05.09.2024, issued by the Director-cum-Joint Secretary of the Government.

31. As a consequence of the foregoing discussion, the present writ petition is dismissed."





The Co-ordinate Bench of this Court has held that the principle of *delegatus non protest delegare* is not applicable in to administrative action or ministerial act. Rather, the principle applies to statutory judicial and quasi judicial function. In absence of any enquiry under Section 39 (1) of the Act of 2009, the summary report obtained from the subordinate authorities cannot be held to be invalid and the entire process cannot be held to be vitiated on that ground.

16. This Court finds that even the maxim *sublato fundamento cadit opus* is not applicable in the facts and circumstances of the present case. As this Court finds no illegality in the order/report dated 05.06.2024 submitted by the Additional Collector to the Director, DLB, the subsequent actions taken against the petitioner viz., holding of judicial enquiry against her and placing her under suspension, stand on firm legal footing. The foundation of the proceedings initiated against the petitioner is legally valid and does not suffer from any legal infirmity. Therefore, this Court finds no error or arbitrariness on the part of the respondents in initiating the impugned actions against the petitioner. In the considered opinion of this Court, the Additional Collector was not appointed as the 'enquiry officer' for the purpose of conducting enquiry against the petitioner. He was simply asked to collect 'the fact finding report', which he did by obtaining the same from his subordinate Officers and after receipt of the aforesaid fact finding report, order/report dated 05.06.2024 was prepared and sent by him to the Government for further examination of the matter through audit, detailed inquiry, etc. Based on the order/report dated 05.06.2024, the impugned order was passed, initiating a



judicial enquiry against the petitioner after placing her under suspension.

17. This Court now proceeds to deal with the next set of arguments advanced by counsel for the petitioner that severe and disproportionate action has been taken against the petitioner for the allegation of issuing pattas in contravention of the Rules. Counsel submits that the patta in question was counter signed by the petitioner as well as by the Commissioner, Municipal Council, Karauli, yet no action has been taken against the latter.

18. By advancing the above arguments, the petitioner is claiming "negative parity". If any wrongdoing has been committed by a person or more i.e. the petitioner and the Commissioner, Municipal Council, Karauli while issuing pattas illegally, by misusing their power and position, the petitioner cannot be allowed to claim immunity on the ground that no action has been taken against the Commissioner, Municipal Council, Karauli, who was also a counter signatory of the pattas. This Court finds no substance in the argument of the petitioner that the respondents have followed the practice of pick and choose while taking action against the petitioner alone. Such argument of the petitioner is legally not sustainable. If the pattas have been issued illegally, while giving benefits to the petitioner and the same have been counter-signed by the Commissioner, Municipal Council, Karauli, stern legal action must be taken against him as well strictly in accordance with law, after affording him a fair opportunity of hearing, complying the principles of natural justice. This Court hopes and trusts that the respondents will take appropriate legal measures/action against the said Commissioner, Municipal Council, Karauli, if his



involvement in the issuance of illegal pattas is prima facie established.

19. It is well settled proposition of law that no negative equality can be claimed as a matter of right under Article 14 of the Constitution of India, as has been held by the Hon'ble Apex Court in the case of **R. Muthukumar & Ors v. The Chairman And Managing Director TANGEDCO & Ors 2022 SCC Online SC 151** in para 24, which reads as under :-

"28.A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality."

20. **In Basawaraj and Anr. v. Special Land Acquisition Officer (2013) 14 SCC 81**, the Hon'ble Apex Court has held in para 8 as under :-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

21. Similarly, in the case of **The State of Odisha v. Anup Kumar Senapati 2019 SCC Online SC 1207**, it has been held by the Hon'ble Apex Court that :

"If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong



order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision."

22. Meaning thereby, Article 14 of the Constitution of India is not meant to perpetuate any illegality even by extending the wrong decisions made in other cases. If any wrong is committed by the authorities, then in similar matter it cannot be allowed to be perpetuated. Equality cannot be claimed in illegality and, therefore, cannot be enforced by a citizen or Court in a negative manner. This Court trusts and believes that appropriate action would be taken by the respondents against all the erring Officers who are involved in the incident of issuing illegal pattas in contravention of the Rules.

23. The judgment relied upon by the petitioner in the case of **Satish Kumar Duhariya** (Supra) is distinguishable and not applicable in the facts and circumstances of the present case because in that case the suspension orders were passed against the Sarpanch and the Government Officers and an enquiry was initiated against them and subsequently while the enquiry was pending against them all, their suspension orders were revoked. However, in the instant case, neither any suspension order has been passed against the Commissioner, Municipality Council, Karauli nor has any enquiry been initiated against him. If he has committed a wrongdoing while issuing pattas illegally in violation of the Rules, it is expected that the respondents shall taking appropriate action against him as well. Nonetheless, that certainly cannot be a ground to quash the orders, placing the petitioner under suspension and holding judicial enquiry against her.



24. It is a settled principle of law that this Court cannot interfere with the suspension orders lightly since suspension is only a deprivation of one's status and that too temporarily, it does not amount to penalty and it is normally ordered when the allegations of misconduct and/or corruption are under scrutiny. Power of this Court in such like matters should be used sparingly and that too with utmost care and caution. No exceptional case has been made out by the petitioner for interfering in her suspension order.

25. In the case of **Durga Ram Mali Vs. State of Rajasthan and Ors.** reported in **(2011) 4 RLW 3552**, it has been held by this Court that issue of suspension is not to be gone into by the Court and the same should be left to the objective satisfaction of the Government. It has been held as under:-

"I am of the opinion that when the matter of suspension is left to the objective satisfaction of the Government, the normal rule is that it is not unnecessarily justiciable before the High Court and the Court cannot look into the question as to whether the materials are adequate or inadequate from its point of view nor the Court should substitute its own satisfaction for that of the authority."

26. In the case of **Tararam Mali Vs. State of Rajasthan and Ors.**, [S.B. Civil Writ Petition No. 11814/2019, decided on 30.09.2019], it has been held by the Co-ordinate Bench of this Court at Principal Seat at Jodhpur in para 51 as under:-

"The charges levelled against the petitioner and the material available, show that a judicial inquiry in the matter is imperative. In case the petitioner continues to hold the office, not only the inquiry officer would be under a moral pressure, the petitioner himself will be in a position to influence the witnesses and may try to withheld, if not temper the record."

27. The facts, which have come on record, reveal that serious charge of issuing pattas illegally against the Rules, for her own



benefits, have been levelled against the petitioner, who is a public representative and was holding the highest and esteemed post of Chairman, Municipal Council, Karauli. The State, finding her above conduct as disgraceful, issued charge-sheet to her levelling several charges and placed her under suspension and initiated a judicial enquiry against her. Hence, in the light of these circumstances, this Court comes to the conclusion that the decision of the State does call for any interference by this Court.

28. The judgments relied upon by counsel for the petitioner are not applicable under the facts and circumstances of this case.

Conclusion and Directions:-

29. In view of the aforesaid and upon an overall appraisal of the facts and the material on record, this Court does not find it to be a fit case to interfere with the State's decision to place the petitioner under suspension.

30. In the light of the discussions made hereinabove, this Court finds no merit and substance in these writ petitions and the same are liable to be and are hereby rejected.

31. Stay application and all pending application(s), if any, also stand dismissed.

32. The respondents are expected to complete the enquiry proceedings against the petitioner expeditiously, as early as possible, not beyond the period of three months from the date of receipt of certified copy of this order, as the petitioner, being an elected public representative, is under suspension and she cannot be allowed to remain under suspension for an indefinite period.

33. Before parting with this order, it is made clear that the respondents/authorities shall conclude the enquiry on its merits,



after affording due opportunity of hearing to the petitioner and without being influenced by any of the observations made herein by this Court.

34. Let a copy of this order be sent to the respondent Nos. 1 and 2 for necessary compliance of the order/direction issued in para 18 and 23 of this order.

(ANOOP KUMAR DHAND),J

Ashu/161-163

