

**Jamal and ors. Vs. the State of Rajasthan and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/753570](http://sooperkanoon.com/753570)

**Court :** Rajasthan

**Decided On :** Dec-20-1971

**Reported in :** AIR1972Raj209; 1971(4)WLN660

**Judge :** V.P. Tyagi, J.

**Acts :** Central Excises and Salt Act, 1944 - Sections 6; Rajasthan Land Revenue (Saline Areas Allotment), Rules, 1962

**Appeal No. :** Civil Writ Petn. Nos. 218 and 1373 of 1969 and 1683 of 1970

**Appellant :** Jamal and ors.

**Respondent :** The State of Rajasthan and ors.

**Advocate for Def. :** Jagdish Swaroop, Solicitor General and; M.L. Shrimal, Dy. Govt. Adv.

**Advocate for Pet/Ap. :** Sagar Mal Mehta, Adv. (in W.P. Nos. 218 of 1969 and 1683 of 1970),; Guman Mal Lodha and;

**Disposition :** Petition allowed

**Judgement :**

ORDER

**V.P. Tyagi, J.**

1. Since common questions of law are involved in all these three writ petitions filed by the manufacturers of salt at Didwana and Pachpadra Salt Sources, I propose to dispose them of by one judgment.

2. Writ Petition No. 218 of 1969 and No. 1683 of 1970 are the petitions of the manufacturers of salt coming from Didwana who are known as Deshwals while Petition No. 1373 of 1969 is the petition from the manufacturer of salt at Pachpadra known as Kharwal.

3. The history of Kharwals and Deshwals is about three to four hundred years old. For the purpose of this judgment, it will be relevant to mention that the Deshwals who are generally Mohammedans by caste are the residents of Didwana. Their main occupation is to manufacture salt from the pans granted to them by His Highness the Maharaja of Jodhpur. These salt pans are also known in that area as salt factories. In these factories Deshwals claim Bapi rights which are both heritable and transferable. The petitioners in Writ Petition No. 218 of 1969 claimed to have inherited such rights from their forefathers in the pans alleged to have been owned by them. The position of the salt pan in Writ Petition No. 1683 of 1970 is different. According to the averments made by the petitioner the salt pan No. SDM. 86 was owned by some Deshwals whomigrated to Pakistan and consequently the pan was declared to be an evacuee property. The Custodian put this pan to auction on 17th of January, 1963, and Messrs. Jeewanmal Chanchaldas, resident of Didwana purchased this pan in an open auction by giving the highest bid. A certificate of sale was issued in favour of Messrs. Jeewanmal Chanchaldas by the Managing Officer-cum-Assistant Custodian on 19th of February, 1963. This certificate of sale has been produced along with the covering letter issued by the Assistant Custodian and is marked Ex. P/2. The covering letter is marked Ex. P/1. The salt pan SDM 36 was then sold by Messrs. Jeewanmal Chanchaldas to one Santok Chand by executing a sale deed (Ex. P/3). Santok Chand's son Poonam Chand, however, transferred this Pan to petitioner Abdul Rehman for a sum of Rs. 700/-. This transaction took place on the 13th of February, 1969. It is in this manner that petitioner Abdul Rehman came to be the owner of this pan.

4. Persons who have taken up the trade of manufacturing salt at Pachpadra are known as Kharwals and they claim to be the descendants of the Rajput clan. Like Deshwals they also claim ownership in the pans in the Pachpadra Salt Source and assert that they have heritable and transferable rights in these pans which were recognised by the Jodhpur Government and even today such rights are respected by those who deal with them.

In the year 1879 the Ruler of Jodhpur State leased out these Salt Sources to the British Government by entering into an agreement, but according to the petitioners, this transaction between the Jodhpur Ruler and the British Government did not in any manner affect the rights of ownership of the Deshwals and Kharwals in the pans held by them. The contention of the petitioners is that in place of the State Government the British Government started dealing with these Deshwals and Kharwals and purchased salt produced by them. The Deshwals and Kharwals sold their product to the British Government at the price fixed by the Government. After the country became independent and political changes took place the Central Government continued to purchase the salt manufactured by the Deshwals and the Kharwals but from 1st of April, 1960, the licence was given under the Central Excises and Salt Act, 1944, to the Government of Rajasthan and since then it is alleged that the Government of Rajasthan started purchasing salt from the Kharwals and Deshwals at the price fixed by the Government. This practice continued but the grievance of the petitioners is that with the general rise in prices the Government of Rajasthan did not raise the price of salt and asked the petitioners to sell their product to the Government of Rajasthan on an arbitrary price fixed by the Government when the petitioners objected to sell their product to the Government of Rajasthan on the unrealistic price fixed by them, the Government threatened the petitioners with evil consequences, and issued an order on 16th January, 1969 (Ex. P/10) in Writ Petition No. 218 of 1969 that if petitioner Jamal refused to sell the salt manufactured by him to the Government and if he did not permit the sample to be taken by the Government for approval, then the petitioner shall not be allowed to water his pan in future. Another order Ex. P/14 threatening the petitioner Jamal to put a ban on the manufacture of salt if the salt is not delivered to the Department and deposit with the godown of the Department was issued by the Government. It is said that similar threats were also

given to other manufacturers and, therefore. Jamal in his writ petition has prayed that by issuing a writ of certiorari or any other suitable writ, order or direction the notices Exs. P/10 and P/14 served on the petitioner be quashed and that by issuing a writ of prohibition or any other suitable writ, order or direction the respondents be directed not to interfere with the process of manufacture of salt by the petitioners. Similar reliefs have been sought by the other petitioners also in writ petitions Nos. 1683 of 1970 and 1373 of 1969. Besides the State of Rajasthan, the petitioners have impleaded the General Superintendent. Salt and Sodium Sulphate Plant. Didwana: the Manager. Salts. Government of Rajasthan. Didwana and the Sub-Divisional Magistrate, Didwana whereas in Writ Petition No. 1373 of 1969 the General Manager. Rajasthan Salt Works. Jaipur the Commissioner. State Enterprise, Rajasthan. Jaipur, the Manager. Rajasthan Government Salt Works. Pachpadra the Commissioner for salt Central Government. Government of India. Jaipur and the State of Rajasthan are made the respondents.

5. Replies have been filed to these writ petitions on behalf of the respondents and rejoinders and counter-rejoinders have also been submitted by the parties to explain their respective cases.

6. The stand taken by the respondents is that the petitioners had never been recognised as Bapidars in the sense that they have any Khatedari rights in the lands. It is, however, submitted that sometimes past they were called Bapidars in the sense that they had been specialised as labourers for preparation of salt and this work was being done in their families from father to son and grandson. According to this reply, whenever a man works on a particular pan and his son comes of age he was also allowed to work on the same pan and thus from father to son they generally used to work on the same pan though it is not so in every case. Regarding the contention about the pan being declared evacuee and was auctioned by the Custodian, it is averred that when a worker of that particular salt pan had left for Pakistan the Custodian took possession of that pan and it was auctioned by the Custodian, but that auction did not in any manner affect the rights of the Government in that pan as is clear from the language of the notice. In support of this contention the State Government has placed reliance on the complete COPV of the notice issued for sanctioning the evacuee pan (Ex. P/3)

which contains the words 'all sales of huts and plots will be subject to such rights of Urban Improvement Board, the Municipal Board or the State Government as they may have in the site.'

7. The case of the respondents further is that the salt, being a mineral, belongs to the State and it cannot, therefore, be the property of the Deshwals or the Kharwals even though they might have enjoyed certain rights in the pans. Their contention is that the manufacturers who have been working in this area for ages are paid for their labour according to the production and the term 'purchase price' while taking their produce has been erroneously used by the respondents. According to the stand taken by the State, the salt Pans belong to the State and the salt produced from these pans is the property of the State. Since 1962 the pans in these areas are leased out under the provisions of the Rajasthan Land Revenue (Saline Areas Allotment) Rules, 1962. In areas other than the aforesaid two sources when a particular piece of land is leased out under the said Rules, the lessee has to obtain licence from the Central Government in case where the area of the plots exceeds more than 10 acres. In case where plots are less than 10 acres, no licence is necessary as these persons have been allotted plots for manufacture of salt and they can do so and sell salt to anybody. But according to this reply, the position in Sambhar, Didwana and Pachpadra is different. In these areas the State Government is the licensee and no one else except the State Government can manufacture salt. No leases have been given to private persons and the industry of manufacturing salt in these areas is carried on by the State in public sector and whatever the salt is produced in these areas when worked departmentally or through the agency of Kharwals or Deshwals is the product belonging to the State Government; the labourers who are called Deshwals in Didwana and Kharwals in Pachpadra get payment for their labour and not owners of salt and hence the question of purchase of salt from them does not arise at all. No purchase rate is fixed but it is the rate at which they are paid for their labour. While dealing with the notice Ex. P/4, the respondents aver that the words 'purchase price' in this notice Ex. P/4 have been wrongly used. It denotes the labour charges which are paid to the Deshwals per quintal. It is further averred that the price index of all the essential commodities has increased and with the increase in prices the labour rates have also been increased by the respondents and keeping in view this fact

the General Manager. Rajasthan Government Salt Sources. Jaipur, considered it advisable to increase the rate of labour charges. While admitting notice Ex. P/10 in the writ petition of Jamal and another, which has been impugned, it is contended that salt is an essential commodity for human consumption and, therefore, it is necessary for the Department to test the salt in the laboratory before the delivery thereof is taken by the respondents from the manufacturers. The salt must not be below 96% purity, otherwise it is unfit for human consumption. It is from that point of view that notice Ex. P/10 was issued to the petitioners. This long practice of salt being manufactured by Deshwals in Didwana and Kharwals in Pachpadra does not according to the stand taken by the respondents confer any right on the Deshwals or Kharwals in the land comprised in the pans where these communities work or in the brine with the aid of which the salt is manufactured by them. It is further contended that a licence has been granted to the State Government by the Central Government under the Central Excises and Salt Act. 1944, for the areas known as Didwana and Pachpadra Salt Sources and therefore, none but the Government can assert the rights for manufacture of salt in these areas. If the Deshwals and the Kharwa's are manufacturing salt in these areas, it is with the consent of the licensee which does not confer any right in the salt manufactured by these two communities. The respondents, therefore, prayed that the petitioners have no case and their petitions should, therefore, be dismissed.

8. None of the petitioners has filed the original Patta which might have been granted by the Ruler of Jodhpur to the forefathers of the petitioners. Mr. Sagar Mal Mehta, appearing on behalf of Jamal and Abdul Rehman, submitted that such old Pattas are not available with the petitioners. The petitioners in these two petitions in their rejoinder have placed reliance on certain Pattas which had been copied out by the Kanungo, an office perhaps created by the State of Jodhpur for keeping records. From these documents it is difficult to find out the exact nature of the rights conferred by the Ruler of Jodhpur on the Deshwals of Didwana. Reliance has been placed by learned counsel on various Government publications in this connection which describe the history and rights of Deshwals and Kharwals at Didwana and Pachpadra.

9. In a book published by the Government of India in the year 1956 under the name 'Pachpadra & Didwana Salt Sources' the author Shri S. C. Aggarwal, who was then Salt Commissioner to the Government of India, Ministry of Production, has traced the history of the Kharwals in Pachpadra. He has mentioned that 'the manufacturers of the tract are professionals by caste and call themselves 'Kharwals' a designation evidently derived from the word 'Khar' the local term for salinity. They think themselves to be Rajputs of Chohan and Cisodia blood, but they appear to be identical with Nunias. Agris and Numatis etc. of the Uttar Pradesh. They are hereditary salt workers and have carried on the work of extraction of salt in this area for generations past, the Kharwal excavating the pit and being responsible for extraction and storage of the manufactured salt. Under the system at present in vogue at Puchpadra a Kharwal wishing to excavate a new pit applies to the Salt Department for permission, which is generally given unless a lack of demand for more salt is anticipated by the Department. He then obtains from Government an advance sufficient to assist him in his excavation work, the advance being recovered from the proceeds of the first crop yielded by the Pit. after which the Kharwal becomes its owner. The ownership of a pit confers both profit and prestige on the Kharwal and the community as a whole appears to endeavour to secure the rights of ownership of as many pits as possible, several Kharwals combining if an individual is unable to undertake the excavation of a whole pit himself. The first year's crop is usually much greater than that of subsequent years thus making it easier for the Kharwals to pay off the loan.'

10. From the history of the Kharwals, it appears that upto 1879 their right to own a pit (pan) and to manufacture salt therefrom was recognised by the Ruler but in 1879 an agreement was entered into between the Ruler and the British Government whereby the monopoly to manufacture and sell salt was transferred to the British Government. The agreement of 1879 thus created certain clouds on the rights of the Kharwal in Pachpadra area and Deshwals in Didwana area. According to the arguments advanced by learned Solicitor General the Kharwals and Deshwals after the 1879 agreement was entered into, worked as licensees under the licences given by the British Government. Their rights which they claimed before the agreement as owners of the pits extinguished by virtue of the agreement entered between the Ruler of the Jodhpur State and the British

Government. In support of this argument learned Solicitor General placed reliance on Clause 8 of the agreement. Mr. Metha appearing on behalf of Deshwals and Mr. Lodha appearing on behalf of the Kharwals on the contrary, urged that the agreement of 1879 did not in any manner affect the existing rights of the Kharwals and Deshwals and in support of their claim they placed reliance on provisions 1, and 2 to Article 4 of the agreement.

11. The agreement of 1879 relates to the leasing out of the Pachpadra. Didwana. Phalodi and Lunj areas of the then Jodhpur State by the Ruler in favour of the British Government. Article 1 of the agreement says that His Highness the Maharaja of Jodhpur agrees to suppress and absolutely prohibit and prevent, the manufacture of salt within any part of the Jodhpur State, except at Salt Sources administered by the British Government or worked under special licenses from the British Government provided that nothing in this Article shall be held to prohibit the bona fide manufacture of salt petre at any work now existing within the Jodhpur State or the opening at any time, with the previous knowledge of the Political Agent of such new saltpetre works as the Maharaja of Jodhpur may consider necessary.

12. This proviso has nothing to do with the case of the petitioners who are not the manufacturers of saltpetre but who used to manufacture sodium chloride. Articles IV and VIII which have been relied upon by the parties are reproduced as below:

'Article IV

His Highness the Maharaja agrees to lease to the British Government from a date to be fixed by that Government, the right of manufacturing and selling salt at the Salt Sources or daribas here below named:

Pachpadra PhalodiDidwana. The Luni Tract. Provided that if the British Government shall at any time cease to carry on or permit the manufacture of salt at any or all of the said Salt Sources, they shall equitably compensate all proprietors of private works therein situated, and all manufacturers therein employed, for any losses they may in consequence sustain:

Provided also that the Maharaja of Jodhpur shall only be held to transfer to the British Government such rights, property and authority over any works or pits at present existing at any of the said Sources as are now actually vested in himself.'

#### 'Article VIII

The losses of Kharols and others connected with the manufacture of salt within the Jodhpur State having been considered in concert by the British Government and the Maharaja of Jodhpur, the British Government hereby agree to pay to His Highness the Maharaja the sum of Rupees three lakhs by way of compensation to the said persons, and His Highness the Maharaja undertakes to distribute the said sum of Rupees three lakhs among the said persons.'

13. The argument of learned Solicitor General is that under Article VIII all persons connected with the manufacture of salt within the Jodhpur State were compensated by the British Government through the Maharaja for taking away their rights of manufacturing salt at the Salt Sources and since the amount of Rupees three lakhs had been taken by the Maharaja, the petitioners had lost all their rights of manufacturing salt in these areas. It is not, however stated that the Kharwals and the Deshwals who were then manufacturing salt were paid by the Ruler any compensation for surrendering their rights.

14. Learned counsel appearing on behalf of the petitioners, on the other hand, urged that the second proviso to Article IV of the Agreement makes it abundantly clear that while entering into an agreement the Maharaja had transferred only those rights in the salt areas which were vested in him and since the right of manufacturing salt by the Deshwals and Kharwals was independent of the right of the Ruler, it cannot be said that the rights of these manufacturers were transferred by that agreement. In this connection reliance is placed on the first proviso and it is contended that under the agreement itself the British Government had taken on itself the responsibility to compensate all the proprietors of all private works situated within that area if they were to discontinue their trade of manufacturing salt on account of the action of the British Government.

15. It is not the case of the parties that after the said agreement the petitioners discontinued their trade of manufacture of salt. In a suppressed tone the learned Solicitor-General also admitted that the Kharwals and Deshwals had some kind of rights in the pans worked by them which were both heritable and transferable, but his contention is that they were manufacturing salt as licensees from the British Government and they could not have claimed more than the labour charges that they had put in in manufacturing salt. According to learned Solicitor-General the salt produced by these manufacturers belonged, after the agreement of 1879, to the British Government. After the Britishers had left India, the Central Government by entering into agreement with the Part B State of Rajasthan got monopoly rights which the British Government enjoyed and after the lease was granted under the Central Excises and Salt Act, 1944 in favour of the Rajasthan Government those rights now vest in the State of Rajasthan vis a vis the Kharwals and Deshwals of Pachpadra and Didwana.

16. This question as to what is the nature of the rights of these manufacturers known as Kharwals and Deshwals in the salt pans situate in the aforementioned two Salt Sources was raised even during the times of the British Government. One Mr. R. M. Adam. Deputy Commissioner. Inland Customs in his 'General Report on the Salt Producing capabilities of the State of Jodhpur or Marwar dated the 13th June. 1877' gives an account of the legendary history of the salt production of Pachpadra and he pointed out in para 54 of that report that when a salt manufacturer wanted to excavate a pit he used to intimate his intention to the Hakim and when the pit was completed he had to present a nuzzer of Re. 1/- to that Hakim. Thereafter no rent of any kind was paid by the salt manufacturer to the then Jodhpur State for the use of the land. In para 57 Adam writes:

'The pits are the entire property of the men who excavated them, and they are transferred with their debts from father to son or next-of-kin. The Darbar never interferes with nor confiscates these pits. When the salt manufacturers incur its displeasure, fines are inflicted.'

17. In the Government publication 'Pachpadra & Didwana Salt Sources 1956' S. C. Aggarwal writes:

'From these paragraphs it appears that the Kharwals have certain prescriptive right in such pits as they may dig, but since the Agreement of 1879 no Kharwal has been allowed to dig a new pit without the express permission of the Department. This was admitted by the Kharwals in one of the memorials to His Highness the Maharaja of Jodhpur. The memorialists asserted that this permission, was not intended to interfere with their rights but was an arrangement by mutual agreement to facilitate manufacture on improved lines; but in fact and very much more obviously, the system follows naturally from the right leased to Government by Article IV of the Agreement, of manufacturing salt.'

18. In 1891 one Mr. Ashton probably proposed to create the departmental agencies for working the pits and while expressing his opinion he mentioned as follows:

Labourers Bhils, Beldars and other castes are numerous and these are the very men who are employed by the Kharwals to extract salt for them. The Sources, according to his assertion is Khalsa, every handful of soil, every drop of brine and every ounce of salt is Raj property and the only privilege possessed by the Kharwals is the right to labour -- 'hak-i-mazduri' on reasonable terms--'

19. Mr. Whitten, who was then Deputy Commissioner rejected this proposition of Mr. Ashton that the Kharwals have only a right to labour-- 'hak-i-mazduri' and wrote his note in the following manner:

'These proposals shortly put are to confiscate the Kharwals' property and use it as our own. They are accompanied by some rather extravagant assertions, such as that the source is Khalsa every handful of soil, every drop of brine and every ounce of salt is Raj property and that the only privilege possessed by the Kharwals is the right to labour -- 'Hak-i-mazduri' -- on reasonable terms. 'Hak-i-mazduri' is I imagine a term unknown before to describe the Kharwals rights. Please read Mr. Adam's report on Pachpadra in the printed volume. The Kharwals have owned the pits for at least 300 years and at page 67, in paragraph 57. Mr. Adam tells us that the pits are the entire property of them who excavated them and they are transferred with their debts from father to son or next of kin. The Darbar never interferes with or confiscates these pits. In a dozen other ways the right of

ownership is proved to belong to the Kharwals. Many pits have been closed for 100 years and even yet they are bequeathed as hereditary property. From time immemorial Kharwals have borrowed money on them. We paid the Kharwals debts in 1879 because they owned the pits. Over and over again have we had adoption disputes about the pits before us. When Mr. Adam went to Pachpadra in 1876 he found 21 new pits under construction by the Kharwals out of their own means, and since then under our management at least 20 other pits have been made by the Kharwals. For 12 or 13 years we have ourselves in the complete way recognised the Kharwals as the owners of the pits: from which we purchase, for a fixed price, as we have a right to do the salt we require to supply purchasers with.'

20. This note of Mr. Whitten throws a considerable light on the rights of the Kharwals in Pachpadra area as recognised by the British Government during the period of the monopoly rights they enjoyed for manufacturing and sale of salt. According to the expressions given by Mr. Whitten, the Kharwals were recognised as owners of the pits or pans worked out by them and the British Government had a right to purchase salt manufactured by them at a price fixed by the British Government.

21. For the rights of the Deshwals in their pans in the area of Didwana, my attention has been drawn by learned counsel for the petitioners to the 'Manual of the Northern India Salt Revenue Department. Volume III' published by the Govt. of India as back as in the year 1927. In this volume there is a Chapter with the heading 'Amendment to the Northern India Salt Revenue Manual. Volume III' and in Chapter II. which deals with the Didwana Salt Sources, the rights of the manufacturers have been given. Para I of this chapter states:

'1 Manufacture.-- As at Pachpadra, the manufacture of salt at Didwand is effected by private agency. The salt made is purchased at varying rates according to quality.'

22. Para 2 states:

'2. Right of manufacturers. -- Manufacturers possess vested rights in their salt factories in the Source; they may alienate these by sale, or may lease them to

others for the manufacture of salt. The owners of existing factories may be allowed to sink brine wells as these may be required; but the construction of new pans shall not be permitted except with the sanction of the Commissioner.'

23. It is common ground between the parties that the salt factories at these sources are nothing but the salt pans from where the owner of the pan manufactures salt. From this Manual it is clear that the manufacturers at Didwana had vested rights in their pans which they could alienate by sale, lease or otherwise. These manufacturers had a right to sink brine wells for using brine for the manufacture of salt. The rights as described are transferable. The rights enjoyed by the Deshwals in the Didwana Salt Sources appear to be identical to the rights which were enjoyed by the Kharwals in Pachpadra area.

24. At one time the Kharwals raised a question that the British Government had no power to manufacture salt in the Pachpadra basin but this contention of the Kharwals was rejected by the British Government. In that connection, the question of interpreting Article IV of the agreement came up for the consideration of the British Government and it so appears that the British Government gave an interpretation to Article IV in favour of the Kharwals to this extent that in the existing pits which were worked out by them at the time of the agreement the rights of the Kharwals were not transferred to the British Government. The relevant discussion in this connection found in the Government publication 'Pachpadra & Didwana Salt Sources. 1956.' In Chapter X the learned author mentions as follows:

'The Kharwals' claim is that Government has no right to manufacture salt either in this area or in any other part of the Pachpadra basin all such rights being vested in themselves. There is no foundation for this contention. The most important document in this connection is the Agreement dated the 18th January, 1879, between the British Government and the Jodhpur Darbar. under which by Article IV. His Highness the Maharaja agreed to lease to the British Government the right of manufacturing and selling salt at (among other places) Pachpadra. The rights of the Kharwals are nowhere defined in the Agreement, but Article VIII provides for the payment by Government of a sum of Rs. 300000/- by way of compensation for

the losses of Khardas and others connected with the manufacture of salt within Jodhpur State; while the second proviso to Article IV. which recites that 'the Maharaja of Jodhpur shall only be held to transfer to the British Government such rights, property and authority over any works or pits at present existing at any of the said Sources as are now actually vested in himself seems to make it clear that the Maharaja had at the time of the Agreement certain positive rights over the pits then existing which he was capable of transferring, since in the absence of such rights the transference of the right of manufacturing salt would have been valueless.'

25. It is in this connection that the learned author discussed the report of Mr. R. M. Adam. Deputy Commissioner. Inland Customs and the report of Mr. Whitten another Deputy Commissioner of Inland Customs. These reports clearly mention that the Kharwals had exclusive right to produce salt and supported their claim to ownership in their pans.

26. Apart from this historical background and the reports of the high officials of the British Government intimately connected with the manufacture of salt in Pachpadra and Didwana, a perusal of Article IV indicates that the Jodhpur Ruler while entering into the agreement was conscious of this fact that there were certain rights of some other persons in the area which he was not authorised to transfer by entering into this lease agreement and , therefore, a clear mention was made in the second proviso to Article IV that by means of this agreement the Jodhpur Ruler shall transfer only such rights, property and authority over any works or pits at present existing as are actually vested in himself. The right to manufacture salt at the time of the agreement of 1879 undoubtedly vested in the Kharwals and Deshwals of these two areas. Those rights therefore, were saved by means of this proviso and the further practice followed by the British Government leads to no other inference except that the Kharwals and Deshwals enjoyed these rights of manufacturing salt from the pans owned by them not under any new arrangement made between the British Government and themselves but in their own right they did so. It is not the case of the State of Rajasthan that under Article VIII of this agreement any compensation was paid to the Kharwals or Deshwals of Pachpadra and Didwana to surrender their rights in the pans in favour of British

Government. All these materials, therefore, lead this Court to infer that the Deshwals and Kharwals of Didwana and Pachpadra had heritable and transferable rights in their pits and they could as of right, manufacture salt from those pits in spite of the agreement of 1879 and the licence granted to the Government of Rajasthan by the Central Government under the provisions of the Central Excises and Salt Act. 1944.

27. There is a letter (Ex. P/18) in the file of Jamal and others addressed by the General Superintendent. Salt & Sodium Sulphate Plant. Didwana to the Deputy Secretary to the Government of Rajasthan, State Enterprises Department. Jaipur, dated 23rd of April. 1969, which clearly mentions that in the office of the General Supdt. a register which is known as Bapi register is maintained which records the transfers of the pans from one owner to the other and also the mutation of the pan in the name of the heir after the death of the owner thereof. The General Superintendent by this letter has referred the matter to the Deputy Secretary to the Government whether this record must now be maintained after Jamal had filed the writ petition in this Court claiming its right not to sell the product of the pan to the State Government. The State Government has, however, not admitted this letter but it has been mentioned in its reply to the rejoinder that a letter on 23rd of April, 1969, was sent from the office of the General Superintendent. Salt & Sodium Sulphate Plant Didwana to the Deputy Secretary to the Government of Rajasthan. The original copy of the letter was shown to the learned Solicitor General but he could not say definitely whether this is the letter which was issued by the General Superintendent. Salt & Sodium Sulphate Plant. Didwana. The General Superintendent was directed by the Court to produce this Bapi register before it but with regret I have to mention that this register has been withheld by the Department on a wrong excuse that such registers are never maintained. It is not expected of the Government Department to behave like an ordinary litigant and to hide documents from the inspection of the Court on such false pretexts. The register that was produced in compliance with the order of this Court is a register of labourers kept by the General Superintendent.

28. This letter Ex. P/18 clearly shows that uptill now the practice prevalent is to maintain the complete record of the owners of the pits and when one owner dies

his heirs are brought on the record and when a pit is either sold or mortgaged, then the new owner thereof is entered in such a register.

29. In case of Champalal (Civil Writ Petition No. 1373 of 1969) a document Ex. P/10 has been produced which shows that a record is maintained of each pit by the Department showing the owner of the pit and its share in the pit. Chapter XI of the Government publication on Pachpadra & Didwana Salt Sources. 1956, shows that the Superintendent has to maintain the record of the working pits by keeping three registers, (1) a register of working pits. (2) pit diary and (3) roster of pits. Ex. 10 in Champalal's case is a specimen of the pit diary maintained by the Superintendent in the Salt Sources. The details in this register clearly show that the person who works out the pit is recorded therein as the owner thereof. This entry and the other relevant matters discussed above repel the contention of the learned Solicitor General that the position of Kharwals and Deshwals in their pits is that of licensee and that they are entitled to receive in the form of the price of the sale taken from them only the labour charges for manufacturing that salt for the State. This theory of Hak-i-mazduri was rejected by the British Government as back as when the matter was discussed by Mr. Adam and Mr. Whitten. It has been established beyond doubt, that the petitioners are the owners of the Dans and they have got right to take the brine from the earth by sinking their own brine wells and manufacture salt from the saline soil owned by them from time immemorial. In these circumstances, the product made by their labour is owned by them and not by the State and it is why the salt is purchased from these manufacturers by the State Government as being a licensee from the Central Government under the Central Excises and Salt Act, 1944. It cannot, therefore, be accepted that the price which is fixed by the State Government to purchase the salt of the manufacturers namely the Kharwals or Deshwals is nothing but the labour charges of these manufacturers. In these circumstances, these manufacturers cannot be called either the licensees or the labourers of the Government. They manufacture salt in the exercise of their own rights and the product is their property; and unless they are required under any provision of law to part with their produce in a particular manner, they are at liberty to sell the salt produced by them in the manner they choose beneficial for them.

30. Learned Solicitor-General placing reliance on the provisions of Section 6 of the Central Excises and Salt Act, 1944, argued that the Deshwals and the Kharwals are not entitled to produce salt from their pans as Section 6 of the 1944 Act puts a ban on the manufacture of salt without a licence from the Government of India. This Act came into force in the State of Rajasthan on 1st of April, 1950 and therefore, it is argued by learned Solicitor-General that from the said date even if the petitioners had any right in their salt pans they could not manufacture, salt unless they obtained licence from the Central Government under the 1944 Act.

31. Before taking into consideration this argument of learned Solicitor-General. I would like to throw some light on the historical background on the rights of the small scale manufacturers of salt who hold saline land not exceeding 10 acres. Before 1931, nobody in India could manufacture salt and sell it in the market except under the permission of the Government of India. After the historical Dandi March of Mahatma Gandhi, an agreement was arrived in 1931 between Mahatma Gandhi and the Government of India whereby relaxations were made in the policy of the Government of India and everyone who had a lawful access to the saline soil was permitted to produce salt for his bona fide use. This arrangement is known as Gandhi-Irwin Pact of 1931 which continued till 1948. After the formation of the first interim National Government in India further concessions were given to small scale manufacturers and a new policy to step up salt production was formulated and under this policy individuals or group of individuals were allowed to freely produce salt in any land to which they have lawful access for this purpose without obtaining licence from the Government of India under the 1944 Act provided the total area of land covered by the salt works set up by an Individual or group of individuals did not exceed 10 acres. It is not the case of the respondents that Kharwals or Deshwals fall within the category of large scale manufacturers. The pans owned by the petitioners do not exceed the limit of 10 acres and, therefore, the above referred policy of the Government of India would govern the case of these small scale manufacturers after the Act of 1944 came into force in the State of Rajasthan. As the consumption of salt has a direct bearing on human health the Government of India while allowing the said concession to individuals or group of individuals however, kept quality control on salt production by small scale manufacturers who produce salt without licence.

32. Section 6 of the Central Excises and Salt Act, 1944, reads as follows:

'Section 6. The Central Government may by notification in the Official Gazette, provide that, from such date as may be specified in the notification, no person shall, except under the authority and in accordance with the terms and conditions of a licence granted under this Act, engage in-

(a) the production or manufacture or any process of the production or manufacture of any specified goods included in the First Schedule or of saltpetre or of any specified component parts or ingredients of such goods or of specified containers of such goods, or

(b) the wholesale purchase or sale whether on his own account or as a broker or commission agent or the storage of any specified goods included in the First Schedule.'

33. Salt has been mentioned as a specified goods in the First Schedule and. therefore, the provisions of Section 6 of 1944 Act will undoubtedly be attracted in respect of the manufacture of salt. But Section 6 of the Act can be applied only when the Central Government by issuing a notification fixes a date for applying the prohibition contained therein. Learned Additional Government Advocate Mr. Shrimal informed the Court that after the Act was extended to the State of Rajasthan no such notification was ever issued by the Central Government under Section 6 fixing a date for putting a ban on the manufacturers of their right to produce salt. In such circumstances, learned Solicitor-General cannot resort to the provisions of Section 6 to urge that the Deshwals or the Kharwals could not manufacture salt from the salt pans owned by them in their respective areas. It may also be mentioned here that even if a notification had been issued under Section 6. the restriction imposed by that provision of law could not be available to restrain the Deshwals or the Kharwals from manufacturing salt as it is not the case of the Government that anyone of the Kharwals or Deshwals individually owned an area of more than 10 acres. The policy of the Government of India as enunciated in the year 1948 when the enactment was extended to the State of Rajasthan in the year 1950 would automatically apply to the case of these manufacturers of salt. In such circumstances, I do not find any weight in the argument advanced by

learned Solicitor-General that the petitioners could not manufacture salt without the permission of the Government.

34. It was next contended that since 1960 the Government of Rajasthan has been granted licence under the Act of 1944 for the manufacture and sale of salt in the Salt Sources of Pachpadra and Didwana and, therefore, no individual owner of a pan could produce salt in contravention of the provisions of the licence. Learned Solicitor-General could not point out any term in the licence granted to the State Government whereby the Kharwals or the Deshwals were restricted from producing salt from the pans owned by them. It is true that these Kharwals and Deshwals, after producing salt get it tested for its purity by the officers of the Government of India and sell their entire produce to the licensee, but it is not clear as to under what provision of the law the Kharwals and the Deshwals are under obligation to sell their produce only to the Government of Rajasthan which holds licence for the entire State of Rajasthan. It appears that since 1879 when the monopoly rights were given in the State of Jodhpur to the British Government for manufacture, purchase and sale of salt these manufacturers have been selling their salt to the British Government and under that understanding or practice they have been selling salt to the Government and the Government fixes the price of the salt before it purchases the same from these manufacturers. Learned counsel appearing on behalf of the petitioners have stated at the Bar that their clients will have no grievance if the sample of their salt is taken by the Government officials for testing purpose and they are still prepared to sell their produce to the State Government provided the Government offers to them a fair price for their salt. The dispute seems to have arisen because these small scale salt producers feel that they are not paid properly for the salt that they sell to the Government.

35. Learned Solicitor General could not point out any provision of law under which the price of the salt is fixed by the State Government. He, however, contended that the price of salt is fixed by the Government under the Essential Commodities Act but he could not point out any notification which might have been issued by the State Government under that Act fixing the price of the salt at which the Government can purchase it from the manufacturers. As discussed above the salt produced by the Deshwals and the Kharwals is the property of these

manufacturers and unless there is a provision of law to dispose of that salt only by selling it to the Government, they cannot be compelled to sell their product to the Government and that too on a price arbitrarily fixed by the Government. Under these circumstances, the grievance of the petitioners appears to be genuine that the Government cannot adopt any coercive method to compel them to sell their salt to the Government at the price fixed by the Government without taking into consideration all the factors which should go to fix the price. In this age where rule of law governs the rights of the citizen, the Government even if it is following a particular practice of purchasing salt from these small scale manufacturers cannot now compel them to part with their property against their wishes. If the Government is to keep the monopoly rights regarding the manufacture, purchase and sale then proper law must be enacted by the legislature before the manufacturers of salt on small scale can be compelled to part with their property.

36. As regards the quality control, the petitioners have no grouse if the sample of their salt is tested by the competent authority. They are even today prepared to give their samples for proper testing of the quality of their salt to the authorities concerned, though even for such testing no rules have been framed by the Government which may cast an obligation on the manufacturers to supply sample to the authorities for such purpose.

37. Learned Solicitor-General while relying on the Rajasthan Land Revenue (Saline Areas Allotment) Rules, 1962, contended that Pachpadra and Didwana areas fall within the 'reserve area' as defined in the said Rules and, therefore, whatever salt is produced in this area shall be deemed to have been produced by or under the control of the Government of Rajasthan or the Central Government. He could not however point out as to how this area has come within the term 'reserved area.' No notification to this effect has ever been published under the said Rules by the Government of Rajasthan to declare these two areas as 'reserved areas'. Even if they are reserved areas, how the rights of the petitioners were affected thereby has not been explained by learned Solicitor-General. I do not think that there is any force in this argument that Salt Sources at Pachpadra and Didwana being reserved areas put a ban on the manufacture of salt by the petitioners. It may also be mentioned here that these Rules do not contain any provision whereby the

sale of salt manufactured by the allottees of the saline areas is controlled by the State Government. It is not the case of the respondents that any area was allotted to the petitioners under these rules in Didwana and Pachpadra Salt Sources. In such circumstances, the application of these Rules to the case of the petitioners is very much doubted.

38. For the reasons discussed above, the salt produced by the petitioners is their property and as such they have a right to dispose it of in any manner they like unless a ban has been put on this right under any valid law enacted by the Central Legislature. In these circumstances, I am left with no alternative but to accept these writ petitions and issue direction to the respondents not to implement the threat contained in documents Exs. P/10 and P/14 in the case of Jamal and Abdul Rehman. A direction is also issued to the respondents in the case of Champalal restraining them from interfering with the right of the petitioner regarding the manufacture and sale of salt produced by him from the pan owned by him.

39. The writ petitions are accordingly allowed. Petitioners shall get their costs from the respondents.