

State of Rajasthan and anr. Vs. Prajapati Garh Nirman Samiti Ltd. and 4 ors.

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Court : Rajasthan

Decided On : Sep-29-1986

Reported in : 1987WLN(UC)103

Judge : Suresh Chandra Agrawal and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Civil Special Appeals Nos. 3 to 5 of 1978, 79 of 1981 and 354 of 1984

Appellant : State of Rajasthan and anr.

Respondent : Prajapati Garh Nirman Samiti Ltd. and 4 ors.

Judgement :

Suresh Chandra Agarwal, J.

1. These Special Appeals raise common questions relating to the acquisition of the estate of Shri Gaj Singh, the former Ruler of the erstwhile State of Jodhpur under the provisions of the Rajasthan Land Owners and Acquisition of Landowners Estates Act, 1963 (hereinafter referred to as 'the Act'). Special Appeals Nos. 3, 4 and 5 of 1978 have been filed by the State of Rajasthan against the judgment of M.L. Jain, J. dated 22nd September, 1977 whereby S.B. Civil Writ Petition No. 1901 of 1975, Prajapati Grah Nirman Samiti Ltd., Jodhpur v. The State of Rajasthan and another, S.B. Civil Writ Petition No. 1904 of 1975, Adhunik Grah Nirman Samiti Ltd., Jodhpur v. The State of Rajasthan and another, and S.B. Civil Writ Petition No. 1924 of 1975, Jai Marwar Co. Pvt. Ltd., and another v. State of Rajasthan and another, were allowed. Special Appeal No. 79 of 1981 has been filed by the trustees of the Major Maharaj Hari Singh Benefit of Defence Services Personnel Charitable Trust against the judgment of K.D. Sharma C.J. dated 26th March, 1981 whereby S.B. Civil Petition No. 1987 of 1975 filed by the said appellants was dismissed. Special Appeal No. 354 of 1984 has been filed by the State of Rajasthan against the judgment of P K. Banerjee CJ dated 20th December, 1985 whereby S.B. Civil Writ Petition No. 1972 of 1975 filed by Maharaja Gaj Singh, former Ruler of erstwhile State of Jodhpur was allowed. Special Appeal No. 354 of 1984 relates to the lands in Khasra Nos. 421, 424 and 426 adjoining Umaid Bhawan Palace at Jodhpur and Balsamand garden at Jodhpur and Bijolai tank and building at Jodhpur, Special Appeals Nos. 3,4 and 5 of 1978 relate to the land in Khasra No. 421 adjoining Umaid Bhawan Palace at Jodhpur and Special Appeal No. 79 of 1981 relates to land in Khasra No. 426 adjoining Umaid Bhawan Palace at Jodhpur.

2. After India attained independence on 15th August, 1947, the rulers of the princely states of Banswara, Bikaner, Bundi, Dungarpur, Jaipur, Jaisalmer, Jhalawar, Jodhpur, Kishangarh, Kota, Mewar, Partabgarh, Shahpura and Tonk entered into a Covenant whereby it was agreed that the territories of the said fourteen States should be integrated into one State in the name of United State of Rajasthan. The said Covenant was signed by Maharaja Shri Hanwant Singh who was the ruler of the State of Jodhpur at that time and in pursuance of the said Coveaant the United State of Rajasthan came into existence and it was inaugurated on 30th March, 1949. In Article XII of the said Covenant, provision was made with regard to the private properties of the ruler of the Covenanting States. In Clause (1) of the said article it was prescribed that the ruler of each covenanting State shall be entitled to the full ownership, use and enjoyment of all private properties (as

distinct from State properties), belonging to him on the date of his making over the administration of the State. In accordance with the aforesaid clause in the Covenant, a list of private properties of the ruler of the former State of Jodhpur was prepared and it was approved by the Government of India on 24th March, 1949. In the said list of private properties the immovable properties were divided into three categories. Category A consists of properties which were to be regarded as the family property of the Maharaja of Jodhpur and which will not be transferred. Category B consists of properties which were to be regarded as family property of the Maharaja of Jodhpur which will be disposable by him if he and his heir agree to do so. Category C consists of property which is the absolute property of the Maharaja of Jodhpur with full rights of disposal. Amongst the properties falling in category A was included Balsamand Garden including the Palaces and other buildings in it. In category C were included Umaid Bhawan Palace as per plan attached including the Chhittar Tank and the Bijolai Tank and buildings. Maharaja Hanwant Singh died in 1952 and after his death he was succeeded by his son Shri Gaj Singh who was minor at that time. During the minority of Shri Gaj Singh an administrator was appointed for the purpose of administration of the estate of the minor Maharaja.

3. In 1964 the Rajasthan State Legislative Assembly enacted the Act which received the assent of the President of India on 6th April, 1964 and was published in the Rajasthan Gazette dated April 13, 1964. The Act was enacted to provide for the acquisition of the estates of land owners, viz; the rulers of the Covenanted States. Under Section 7 of the Act provision was made for issuing of a notification by the State Government appointing a date for the vesting in, the State Government of the estates of all landowners situated any where in Rajasthan. In exercise of the powers conferred on it under Section 7 of the Act, the State Government issued a notification dated 11th August, 1964 (published in the Rajasthan Gazette dated 13th August, 1964) whereby the State Government appointed 1st September, 1964 as the date of vesting in it of all the States of all the landowners situated any where in Rajasthan. The former rulers of various Covenanted States including Maharaja Shri Gaj Singh, filed writ petitions in this Court wherein the validity of the various provisions of the Act was challenged. The said writ petitions were decided by a learned Single Judge (V.P. Tyagi J., as he then was) by his judgment dated 16th December, 1969 Schedule to the Act, were declared to be invalid. The State Government as well as the Rulers, feeling aggrieved by the said judgment of Tyagi J., filed special appeals in this Court. While the said Special appeals were pending, the Governor of Rajasthan promulgated the Rajasthan Land Reforms and Acquisition of Landowners Estates (Amendment) Ordinance, 1975 (Ordinance No. 6 of 1974) on 28th January, 1975. The said Ordinance was later on replaced by the Rajasthan Land Reforms and Acquisition of Landowners Estates (Amendment) Act, 1975 (here in after referred to as 'the Amendment Act) which received the assent of the President on 26th March, 1975. By the Amendment Act, Chapters IV and VI of the Act as well as the Schedule to the Act were substituted. In addition, an amendment was made in the long title of the Act and the definition of 'land' contained in Section 2(f) of the Act was also substituted. All these amendments which were introduced by the Amendment Act were given retrospective effect from the date of the enactment of the Act.

4. Before the enactment of the Amendment Act, Maharaja Gaj Singh the former ruler of erstwhile State of Jodhpur, had executed three sale-deeds in relation to land in Khasra No. 491 adjoining Umaid Bhawan Palace at Jodhpur. Sale-deed dated 4th November, 1971 was executed by him in favour of Prajapati Grah Nirman Sahakari Samiti Limited (respondent in Special Appeal No. 3 of 1978) in respect of 35, 242.02 Sq. yds. for Rs. 4,00,000/-, Sale-deed dated 4th November, 1971 was executed by him in favour of Adhunik Grah Nirman Samiti Ltd. (respondent in Special Appeal No. 4 of 1978) in respect of 35,200 Sq. yds. of land for Rs. 3, 65,000/-. Sale deed dated 5th November, 1971 was executed by him in favour of Jai Marwar Company Private Limited (respondent in Special Appeal No. 5 of 1978) in respect of 1,81,818 Sq. Yds. of land for Rs. 9,60,000/-. Maharaja Gaj Singh also executed a settlement deed dated 25th March, 1972 by which 17,90,000 Sq. Yds. of land in Khasra No. 426 adjoining the Umaid Bhawan Palace at Jodhpur was given in Trust for the purpose of Major Maharaja Hari Singh Benefit of Defence Services Personnel Charitable Trust.

5. After the enactment of the Amendment Act, the Collector of Jodhpur issued a notice dated 5th April, 1975 to Shri Gaj Singh whereby he was asked to hand over possession of the land which was vested in the State. Shri

Gaj Singh filed a writ petition (SBCW No. 875 of 1975) in this Court wherein he challenged the validity of the provisions of the Act as well as the said notice dated 5th April, 1975. In the said writ petition an interim order was passed by this Court on 7th May, 1975. The said interim order was modified by order dated 30th September, 1975 and it was confined in its application to the agricultural lands forming part of Sardar Samand estate of of Shri Gaj Singh and it was not operative in respect of other properties of Shri Gaj Singh. Thereafter the Collector, Jodhpur issued a fresh notice dated 17th October, 1975 to Shri Gaj Singh whereby he was required to handover possession of the properties other than those covered by the interim order of this Court dated 30th September, 1975 in writ petition No. 875 of 1975. Feeling aggrieved by the aforesaid notice dated 17th October, 1975, Maharaja Gaj Singh filed civil writ petition No. 1872 of 1975. In the said writ petition, as originally filed, the petitioner Shri Gaj Singh had prayed that an appropriate writ, order of direction be issued directing the Collector, Jodhpur (non-petitioner No. 2 in the said writ petition) to refer the matter to the Compensation Commission in accordance with Section 10(2) of the Act and it was also prayed that an appropriate writ, order or direction be issued restraining the non-petitioners from taking possession of the land in question which is shown in plan (Annexure 2 to the writ petition) as part and parcel of the Umaid Bhawan Palace Estate. The said writ petition was put up for admission before C.M. Lodha J., as he then was on 3rd December, 1975 and on that date the learned counsel for Shri Gaj Singh sought time to move an application before the Collector, Jodhpur requesting him specifically that the dispute raised by the said petitioner as to the nature of the property may be referred to the Compensation Commissioner under Section 10(2) of the Act and obtain orders on the said application. On the said request of the learned counsel for the petitioner, the matter was adjourned. Thereafter Shri Gaj Singh moved an application before the Collector, Jodhpur for referring the dispute raised by the petitioner as to the nature of the properties to the Compensation Commissioner under Section 10(2) of the Act. The said application of Shri Gaj Singh was considered by the Collector, Jodhpur and was rejected by him by his order dated 10th December, 1975 on the ground that he did not consider reference to the Compensation Commissioner necessary. Thereafter Shri Gaj Singh amended the writ petition and in the amended writ petition, he has prayed that the notice of the Collector, Jodhpur, dated 17th October, 1975, in so far as it relates to the lands of the said petitioner in question and the order dated 10th December, 1975 passed by the Collector, Jodhpur may be quashed and it be declared that the properties in question of the petitioner are exempt from operation of the Act under Section 2(f) and Section 10(1) of the Act. In the writ petition as amended, it is further prayed that an appropriate writ, order or direction may be issued directing the Collector, Jodhpur to refer the matter regarding the nature of land in question to the Compensation Commissioner in accordance with Section 10(2) of the Act.

6. Notices under Section 9-A of the Act were also given by the Collector, Jodhpur on 19th November, 1975 to the Prajapati Grab Nirman Sahkari Samiti Limited, the Adhunik Grah Nirman Sahkari Samiti, Limited and the Jai Marwar Co. Private Limited requiring them to deliver possession of the lands in Khasra No 421 purchased by them from Shri Gaj Singh and feeling aggrieved by the said notices, the said purchasers filed separate writ petitions Nos. 1901/75, 1904/75 and 1924/75 respectively, wherein they prayed for quashing of the said notices dated 19th November, 1975.

7. Since steps were being taken to take possession of the land of Khasra No. 426 which had been settled by Shri Gaj Singh with Major Maharaja Hari Singh Benefit of Defence Services Personnel Charitable Trust, the trustees of the said trust also filed Writ Petition No. 1987 of 1975 wherein the prayers in the same terms as contained in Writ Petitions No. 1872 of 1972 as amended filed by Shri Gaj Singh, were made.

8. All these writ petitions were contested by the State.

9. Writ petitions Nos. 1901/75, 1904/75 and 1924/75 filed by the purchasers of land in Khasra No. 421 were disposed of by M.L. Jain J., by a common order dated 22nd September, 1977, which has been reported in 1977 WLN (UC) 426. In the said order the learned Judge has held that the land in question falling in Khasra No. 421 is not agricultural land, but forms part of the Abadi land and is not covered by the provisions of the Act. The learned Judge has also held that the said land was part of the Umaid Bhawan Palace Estate in as much as it was included in the site plan of Umaid Bhawan Palace attached to the list of private properties of the former

Maharaja of Jodhpur and, therefore, the land falls outside the definition of 'estate' and is not liable to acquisition and is not vested in the State Government and that the transfers made by Shri Gaj Singh in favour of the purchasers who had filed the said writ petitions were not invalid and the State Government was not entitled to take possession of the said land. Feeling aggrieved by the aforesaid order of Hon 'ble M.L. Jain J., the State Government has filed Special Appeals No. 3, 4 and 5 of 1975.

10. Writ Petition No. 1987/1975 filed by the trustees of Major Maharaja Hari Singh was disposed of by K.D Sharma C.J. by order dated 26th March, 1981. In the said order the learned Judge held that the land comprised in Khasra No. 426 is shown as agricultural land in the revenue records and merely because it was not cultivated by the land owner or by person on his behalf, it could not be said that it did not fall within the purview of the definition of 'land' contained in Section 2(f) of the Act. The learned Judge also held that the said land could not be retained by Shri Gaj Singh under Section 10(l)(a) of the Act. The learned Judge was also of the view that no question arises whether the property in dispute is or is not of the nature referred to in Sub-section (1) of section 10 of the Act and, therefore, reference to the Compensation Commissioner was not necessary under Sub-section (2) of Section 10 of the Act. The learned Judge, therefore, dismissed the said writ petition. The judgment of M.L. Jain J. referred to above, has not been noticed by K.D. Sharma C.J. Feeling aggrieved by the said order of learned K.D. Sharma C.J , the petitioners in that writ petition have filed Special Appeal No. 79 of 1981.

11. S.B. Civil Writ Petition No. 1872/75 filed by Shri Gaj Singh was disposed of by P K. Banerjee, C.J. by his order dated 20th December, 1983. In this aforesaid order the learned Judge has referred to the judgment of M.L. Jain, J. and has expressed his agreement with the said judgment and has allowed the writ petition and quashed the notification dated 17th October, 1975 issued by the Collector, Jodhpur. In the said order of P.K. Banerjee, C.J. there is no reference to the judgment of K.D. Sharma, C.J. referred to above. Feeling aggrieved by the aforesaid judgment of P.K. Banerjee, C.J. the State has filed Special Appeal No. 354 of 1984.

12. We have heard the learned Advocate General and the learned Government Advocate in support of the appeals filed by the State and Shri L.R. Mehta, K.N. Joshi, M.C. Bhandari, Shri Aruneshwar Gupta on behalf of the petitioners in the writ petitions who are respondents in Special Appeals Nos 3, 4 and 5 of 1978 and 354 of 1984 and appellants in Special Appeal No. 79 of 1981.

13. Before we proceed to deal with the questions which arise for consideration in these appeals, we may deal with the application dated 19th September, 1985 submitted by the learned Advocate General on behalf of the State in Special Appeal No. 354 of 1984. In the said application it has been prayed that, (i) permission may be granted to amend the written statement in the writ petition suitably for explaining the admissions contained therein, (ii) the Union of India may be impleaded as party to the writ petition, and (iii) the State may be given reasonable time to produce the relevant record relating to the so-called Plan dated 12th November, 1959. Along with the said application, copies of two documents have been filed as Annexures 1 and 2. A reply of the said application has been submitted by the respondent Shri Gaj Singh and along with the said reply certain documents (Annexures A to J) have been filed. With regard to the first prayer for granting permission to amend the written statement in the writ petition, it may be stated that after the said application dated 19th September, 1985 was filed, the case was adjourned by order dated 20th September, 1985 and thereafter it was taken up for hearing on 21st July, 1986. Although more than 10 months were at the disposal of the State Government after the filing of the application dated 19th September, 1985, no steps were taken to move an application for amending the written statements in the writ petition and even when the matter was taken up for hearing, the learned Advocate General was not in a position to move such an application and only wanted more time to file such an application. In view of the fact that sufficient time was available to the State to move the necessary application for amendment of the written statement, we did not feel inclined to adjourn the matter further for the purpose of filing the application for amending the written statement. Similarly with regard to the prayer No. (iii) for permission for giving time to the State to produce relevant record relating to the so-called Plan dated 12th November, 1959, it may be stated that no such record was produced by the appellants after filing the application dated 19th September, 1985 till 21st July, 1986 when the case was taken

up for hearing and after arguments in the case had commenced, the learned Advocate General sought adjournment to produce the records to show that the site plan which has been filed by Shri Gaj Singh with the writ petition is not the site plan which was attached to the inventory and the site plan which was attached with the inventory was some other site plan. The learned Advocate General was, however, not in a position to say as to whether there existed any other site plan which was attached to the inventory and all that he stated was that they will examine the record and if there is any such site plan they will produce it. We did not feel inclined to adjourn the case for production of the relevant documents including the said site plan because the State already had ten months' at its disposal after the case was adjourned on 20th September, 1985 till it was taken up for hearing on 21st July, 1986 to submit the said documents. Further more, we find that in para 1 of the application which has been submitted on behalf of the State it is stated that no plan was attached at the time the inventory was made and in para 2 of the said application it is stated that subsequently the site plan was drawn which has been produced by the petitioners in the writ petitions. In other words according to the averments contained in the application, the site plan which has been produced by the petitioner Shri Gaj Singh was the site plan which was attached to the inventory and there was no other site plan which was attached with the inventory of private properties of the ex-ruler of Jodhpur. As regards prayer (ii) for impleading the Union of India as a party in the appeal, the learned Advocate General was not able to show how the Union of India is a necessary or a proper party in these proceedings. All that has been stated in the application is that the writ petition is essentially with regard to the dispute relating to private properties and only the Government of India was competent to decide to admit or not to admit any settlement or the site plan alleged to be the settlement. In our opinion on the basis of the aforesaid averments contained in application, it cannot be said that the Union of India is a necessary or a proper party to the writ petition. For the reasons aforesaid we have not accepted the application dated 19th September, 1986 submitted on behalf of the State and the same is, therefore, rejected.

14. It may be stated that amongst the appeals under consideration the main appeal is Special Appeal No. 354 of 1984 arising out of writ petition No. 1872 of 1975 filed by Shri Gaj Singh because it covers all the properties which are the subject-matter of dispute in these appeals. Special Appeals Nos. 3,4 and 5 of 1978 relate to land in Khasra No. 421 and Special Appeal No. 79 of 1981 relate to the land in Khasra No. 426 and these lands are amongst the properties which are the subject-matter of dispute in Special Appeal No. 354 of 1984.

15. At this stage we deal with the contention of the learned Government Advocate in relation to Special Appeals Nos 3,4 and 5 of 1978 and 79 of 1981. The learned Government Advocate has submitted that the petitioner in writ petitions giving rise to these appeals are transferees of the land in Khasra Nos. 421 and 426 and that the said transfers had taken place in the years 1971 and 1972. The submission of the learned Government Advocate is that the said transfers are void and ineffective in view of the provisions contained in Section 3 (9) of the Rajasthan Urban Property (Restrictions of Transfers) Act, 1978 which provided as under:

3(2) If on or after the 16th day of August, 1971 any person, has transferred any urban property owned by such person, such transfer shall be deemed to be transfer made to defeat the provisions of this Act and the property so transferred shall, for the purpose of this Act, be deemed to be owned by such person.

16. The submission of the learned Government Advocate is that the transfers in favour of the petitioners in the writ petitions giving rise to these appeals had been made after 16th August, 1971 and that the said transfers should be ignored and, therefore, the said petitioners had no locus standi to file the writ petitions to challenge the impugned notices. In our view this contention cannot be accepted because the effect of Section 3(2) is only to declare that the transfers made after 16th August, 1971 shall be deemed to be transfers made to defeat the provisions of the Act and the property so transferred was for the purpose of that Act to be deemed to be owned by such person. In other words the said transfers are to be ignored only for the purpose of the said Act which was enacted as a prelude to the proposed law imposing ceiling on urban property with a view to prevent contravention of the provisions of the Rajasthan Urban Property (Ceiling) Bill, 1972 which had been passed by the Rajasthan State Legislature and was pending before the President for his assent and provided for imposition of ceiling on urban property. In this context it may also be mentioned that in Section

3 of the same Act, the Legislature had imposed restriction on transfers made after commencement of the said Act and it provided that such transfers which were made after commencement of the Act, were null and void. In other words the Legislature, itself, drew a distinction between transfers which were made between 16th August, 1971 and the date of the commencement of the Act which were covered by Section 3(2) of the said Act and transfers which were made after the commencement of the said Act which were covered by Section 5 of the said Act. The transfers which were made after the commencement of the said Act were declared as null and void under Section 5 of the said Act. The same consequence of nullity was not attached to transfers which were made after 16th August, 1971 and before the date of the commencement of the Act. In these circumstances it is not possible to hold that the transfers in favour of the petitioners in writ petitions giving rise to Special Appeals Nos. 3,4 and 5 of 1978 and 79 of 1981 were null and void. It may also be mentioned that the Rajasthan Urban Property (Restrictions of Transfers) Act, 1973 was subsequently repealed by the Rajasthan Urban Property (Restrictions on Transfers) Repealing Act, 1978 which received the assent of the Government on 13th November, 1978 and was published in the Rajasthan Gazette dated 16th November, 1978. In view of the repeal of 1973 Act, the cloud which had been cast on the title of the petitioners in the writ petitions giving rise to these appeals by Section 3(2) of the 1973 Act, was removed and, therefore, we are unable to accept the contention of the learned Government Advocate that the petitioners in the writ petitions Nos. 1901/75, 1904/75, 1924/75 and 1987/75 had no locus standi to file the said writ petitions challenging the validity of the notice.

17. Coming to the Special Appeal No, 364 of 1984, it may be stated that the properties which are subject-matter of dispute in the said appeal, are as under:

(i) Lands bearing Khasra Nos. 421, 424 and 426 which are claimed to be part of Umaid Bhawan Palace at Jodhpur:

(ii) Bal Samand gardens including the palaces and other buildings in it, and

(iii) Bijolai tank and buildings.

18. In Khasra Nos. 424 the Chhitar tank is located and in the order dated 10th December, 1975 passed by the Collector, Jodhpur it is stated that no action has been taken to acquire the land in Khasra No. 424. In view of the aforesaid statement in the order passed by Collector, Jodhpur, we do not consider it necessary to deal with the aforesaid property and we will confine ourselves to the rest of the properties only. The case of petitioner Shri Gaj Singh is that these properties are exempt from acquisition under the Act. With regard to land in Khasra Nos. 421 and 426 the case of the said petitioner is that the said lands are not agricultural lands and moreover they form part and parcel of the Umaid Bhawan Palace and, therefore, they are excluded from the definition of 'land' as contained in Section 2(f) of the Act and the same could not be acquired. The case of the petitioner is further that in any event the dispute as to whether the properties in dispute can be acquired and are vested in the State or they are exempt from acquisition, should have been referred to by the Collector to the Compensation Commissioner under Section 10(2) of the Act. In other words the two questions which arise for consideration in these appeals are:

(i) whether the lands in Khasra Nos. 421 and 426 fall within the purview of the definition of 'land' as contained in Section 2(f) of the Act; and,

(ii) whether the question relating to the properties which are subject-matter of Civil Writ Petition No. 1872 of 1975 being outside the purview of acquisition under the Act should have been referred by the Collector, Jodhpur for determination to the Compensation Commissioner under Section 10(2) of the Act.

19. For a proper appreciation of the contentions that have been urged by the learned counsel for parties, it is necessary to take note of the relevant provisions of the Act as amended by the amendment Act. In the preamble of the Act it is stated that it has been enacted to provide for the acquisition of the estate of landowners and for other measures of agrarian reforms, removal of intermediaries, allotment of land to

landless persons and development of agriculture. The expression 'estate' has been defined in Section 2(b) to mean, 'land or right title or interest in land held by a landowner. Land is defined in Section 2(f), Landowner is defined in Section 2(g) to mean 'the Ruler of a covenanting State in Rajasthan holding an estate under and in accordance with the settlement of his personal or private properties made in pursuance of the Covenant and finally approved by the Central Government.' Inventory has been defined in Section 2(d) is to mean, 'the inventory of the private properties of the Ruler prepared in pursuance, of Article XII of the Covenant and finally approved by the Government of India.

20. Chapter II (Sections 3 to 5) of the Act relates to assessment of land owners' estate to land revenue. Section 8 which falls in Chapter III: relating to Khatedari rights of tenant in land owners estates, makes provision for conferment of Khatedari rights in the estates of the land owners. Chapter IV (Sections 7 to 11-A) deals with acquisition of estates. In Section 7 provision has been made for issuance of a notification by the State Government for appointing a date for the acquisition of landowners' estates in the State and for their vesting in the State Government. In Section 7-A it has been provided that no transfer of an estate liable to acquisition under the Act made by the land owner on or after the date of commencement of the Act, and before the date of vesting, whether by way of sale, mortgage, gift, exchange, lease, assignment, surrender, bequest creation of trust or otherwise, shall be recognised for any purpose of this Act and the estate or part so transferred shall be deemed to continue to vest in the landowner. In the said section, it is also provided that all transfers of an estate liable to acquisition under the Act or part thereof of the nature referred to in Clause (i) made by the landowner on or after the date of vesting shall be null and void. It has been further provided in Section 7-A that any agreement made by the landowner with any other person on or after the commencement of the Act for transfers of his estate liable to acquisition under the Act or part thereof or for relieving, whether in whole or in part, a tenant from liability for payment of rent of any land comprised in his estate shall be null and void. Section 8 makes provision for the consequences of vesting of estate. In Section 9 an obligation has been imposed on the landowners to deliver to the Collector, or any officer authorised in this behalf by the Collector, all records relating to the administration and management of the estate. In Section 9-A an obligation has been imposed on the landowner and every other person claiming through him in his estate, to deliver the possession of the estate acquired under Section 7 to the Collector immediately after the publication of the Rajasthan Land Reforms and Acquisition of Landowner's Estates (Amendment) Ordinance, 1975 in the official gazette and if he fails to do so, the Collector has been empowered to recover the possession from the landowner and such other person in the prescribed manner. Section 10(1) excludes certain properties from acquisition and provides that the same shall continue to belong to, or be held by such landowner or other person, subject, in the case of tanks, to the terms and conditions, if any, mentioned in the Covenant. Sub-section (2) of Section 10 makes provision for reference to the Compensation Commissioner any question as to whether any property is of the nature referred to in Sub-section (1) of Section 10. Section 11 makes provision for refund by the landowner to the Collector of sums to which landowner is not entitled. Section 11A provides for the mode of utilization of acquired estates and provides that the Government, after reserving such extent of the land comprised in the estates acquired by or vesting in it under Section 7, as may be necessary for purpose directed towards the promotion of agriculture or the welfare of the agricultural population to be settled on such lands, allot the remaining lands to landless persons, agriculturists and agricultural labourers in such manner and on such terms and subject to such conditions and restrictions, as may be prescribed. Chapter V (sections 12 and 13) makes provision for liability for compensation. The principles governing determination of compensation payable to landowners are contained in the Schedule to the Act.

21. Shri Aruneshwar Gupta appearing for the respondent in Special Appeal No. 3/1978 has urged that the power to acquire the estates under Section 7 can only be exercised after the land revenue for the estate has been determined under Sections 3 to 5 of the Act after following the procedure laid down in rules 3 to 7 of the Rajasthan Land Reforms and Acquisition of Landowners Estates Rules, 1964. In our opinion there is no substance in the said contention. The determination of the rental income from the estate of a landowner under Sections 3 to 5 of the Act is only for the purpose of assessment of land revenue for the said estate. The

acquisition of the estates under Section 7 of the Act is not dependent upon prior assessment of the land revenue payable for the estate. It is open to the State Government to take steps for acquisition of the estates at any time after the coming into force of the Act and there is nothing in Section 7 of the Act which requires the State Government to postpone the process of acquisition till after the assessment of the land revenue payable for the estates under Sections 3 to 5 of the Act. On the other hand we find that Sub-section (1) of Section 7 of the Act provides that 'as soon as may be after the commencement of this Act, the Government may for the purpose of carrying out agrarian reform in accordance with the provisions of this Act, by notification in the Official Gazette, appoint a date for the acquisition of landowners estates in the State and for their vesting in the State Government.' From the aforesaid provision it is evident that the power of acquisition of estates can be exercised as soon as may be after commencement of this Act. In other words the said power could be exercised immediately after the Act came into force. In the present case it was exercised by notification dated 11th August, 1964 a few months after coming into force of the Act on 13th April, 1964. In our opinion the said action of the State in issuing notification dated 11th August, 1964 cannot be challenged on the ground that prior to the issuance of the said notification, the land revenue payable for estates has not been assessed under Sections 3 to 5 of the Act. The contention urged by Shri Gupta cannot, therefore, be accepted.

22. We may now proceed to deal with the principal question which arises for consideration, viz. whether the property in question falls within the purview of the definition of 'land' contained in Clause (f) of Section 2 of the Act and is estate which could be acquired under the provisions of the Act. It has not been disputed before us that Shri Gaj Singh, being the ruler of a covenanting States of Rajasthan, was a landowner, as the said expression is defined in Clause (g) of Section 2 of the Act. 'Land' has been defined in Clause (f) of Section 2 of the Act as under:

'Land' means and land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans and includes:

- (a) tanks, lakes, ponds, river and water channels held for purposes of irrigation,
- (b) surface of hills,
- (c) landing grounds or strips, and
- (d) shikargah,

but does not include forts, palaces, buildings and building plots, specified in the inventory.

23. A perusal of the aforesaid definition shows that it consists of four parts. The first part of the said definition consists of properties which have been defined as land, namely, 'any land held or let for purposes of agriculture or for purposes ancillary thereto. The second part of the definition is explanatory in nature indicating that 'waste land, forest land, land for pastures or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans' would be regarded as land under the Act. The third part of the definition expressly includes certain properties, namely, 'tanks, lakes, ponds, river and water channels held for purposes of irrigation, surface of hills, landing grounds or strips, and Shikargah'. The fourth part of the said definition expressly excludes certain properties, namely, 'forts, palaces, buildings and building plots, specified in the inventory'. The aforesaid definition of land contained in Clause (f) of Section 2 of the Act is an extensive definition whereby the legislature has tried to include within the said definition certain properties which may not otherwise fall with its ambit. At the same time it is exclusive in the sense that certain properties have been expressly excluded from the ambit of the said definition. In order that a property may be regarded as land under Section 2(f) of the Act it is necessary that it should fall within the ambit of first, second or third part of the definition of land referred to above and should be outside the purview of the fourth part of the said definition. While considering the definition of 'land' contained in Clause

(f) of Section 2 of the Act, we cannot lose sight of the fact that the Act has been enacted as a measure to bring about agrarian reform by acquisition of estates of the landowners. The definition of 'land' contained in Clause (f) of Section 2 must, therefore, receive a wide interpretation. In this connection we may also point out that in defining 'land' under Clause (f) of Section 2 of the Act, the legislature has made a departure from the definition of 'land' as contained in Clause (24) of Section 5 of the Rajasthan Tenancy Act, 1955, where in 'land' has been defined as under:

5(24). 'Land' shall mean land which is let or held for agricultural purposes or for purposes subservient thereto or as grove land or for pasturage including land occupied by houses or enclosures situated on a holding, or land covered with water which may be used for the purpose of irrigation or growing Singhara or other similar produce but excluding Abadi land; it shall include benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

24. In that definition 'Abadi land' has been expressly excluded from the definition of land, but in the definition of land as contained in Clause (f) of Section 2 of the Act, there is no such express exclusion. On the other hand, we find that sites of buildings and other structures occupied by cultivators, agricultural labourers and village artisans have been expressly included in the definition. This shows that 'land' as defined in Clause (f) of Section 2 of the Act, is not restricted to agricultural land, but it also includes waste land, forest land, land for pasture as well as sites of buildings and other structures occupied by the cultivators of land, agricultural labourers and village artisans. Tanks, lakes, ponds, river and water channels held for purposes of irrigation as well as surface of hills, landing grounds or strips and shikargah are also included in the definition of land. In other words the land which is not actually being used for agriculture, but is being put to various other types of uses mentioned in the definition is covered by the definition of land. In that view of the matter it is not necessary to show that the land comprised in Khasra Nos. 421 and 426 was used for purposes of agriculture on the date of coming into force of the notification under Section 7 of the Act because even if it be assumed that it was not used for purposes of agriculture, but if it falls within the other categories of land mentioned in the second and third parts of the definition of 'land' as contained in Clause (f) of Section 2 of the Act, it would be covered by the said definition.

25. In the present case the Khasra Girdawari and Jamabandi of St. 2030 to 2032 (1973-75 A.D.) were produced before M.L. Jain, J. where in the land of Khasra No. 421 has been described as 'Padat'. During the course of arguments before us the learned Advocate General has produced before us the copies of the Khasra of the former State of Jodhpur for S.Y. 1882 wherein the lands in Khasra Nos. 421 and 426 have been described as 'Gair Mustkil'. In respect of land in Khasra No. 421, it is mentioned that the same was 'Barani Charum' and was 'Padat Kadim'. As regards the land in Khasra No. 426, it has been mentioned as 'Barani Charum' and 'Jod'. This would show that according to the entry in the revenue records of the former State of Jodhpur, the land in Khasras Nos. 421 and 426 has been mentioned as agricultural land falling in the category of 'Barani' and that the land in Khasra No. 421 had not been cultivated since long and land in Khasra No. 426 was 'Jod'. The definition of the land as 'Barani' shows that the lands were capable of cultivation. The mere fact that they were not cultivated since long would not bring about a change in the nature of the said lands which were agricultural lands. It may also be mentioned that in the said revenue records in respect of lands in Khasra Nos. 427 and 428, it has been specifically mentioned that the same were Abadi and were 'Gair Mumkin'. This would mean that according to the revenue records of the former Jodhpur State land in Khasra Nos. 421 and 426 were not Abadi at the time of preparation of the said records and was agricultural land at that time. There has been no change in the entry in the subsequent revenue records with regard to these lands. In this connection, it may be mentioned that what has to be seen is as to whether the land in Khasra Nos. 421 and 426 were agricultural lands on the appointed date, i.e., 1st September, 1964 which is the date of vesting as notified in the notification dated 11th August, 1964 issued under the provisions of Section 7 of the Act.

26. The expressions 'Abadi area' or 'Abadi land' have been defined in section 103 of the Rajasthan Land Revenue Act, 1956, to mean the populated area of a village town or city and includes the site of such village, town or city and land reserved and set apart under Section 92 of the said Act for the development of Abadi

there in and land held there in for building purposes whether a building has been constructed there on or not. In Section 90-A of the Rajasthan Land Revenue Act it has been provided that no person holding any land for the purpose of agriculture and no transferee of such land or any part thereof, shall use the same or any part thereof for the construction of buildings thereon or otherwise for any other purposes except with the written permission of the State Government. obtained in the manner here in after laid down and otherwise than in accordance with the terms and conditions of such permission. In exercise of the powers conferred on it under the provisions of the Rajasthan Land Revenue Act, the State Government has framed the Rajasthan Land Revenue (Allotment and Conversion of Agricultural Land for Residential or Commercial purposes in Urban Areas) Rules, 1971, which prescribes the procedure for regularisation of the conversion of agricultural land for use of non-agricultural purpose, namely, construction of residential house or for any commercial purpose.

27. It is not the case of Shri Gaj Singh, and the other petitioners claiming through him, that lands of Khasra Nos. 421 and 426 have been converted as Abadi land after the coming into force of the Rajasthan Land Revenue Act. Their case is that the said lands were Abadi lands on the date of the coming into force of the Rajasthan Land Revenue Act. The question that needs to be considered is whether the lands in Khasra Nos. 421 and 426 had ceased to be the agricultural lands and had become Abadi lands prior to coming into force of the Rajasthan Land Revenue Act. In this connection Shri Mehta has placed reliance on the following documents:

- (i) Notification dated 16th April, 1930 issued by the Development Department of the former State of Jodhpur which was published in the Marwar Gazette dated 22nd April, 1930;
- (ii) Order dated 26th January, 1934 of the Chief Minister, Government of Jodhpur published in the Jodhpur Government Gazette dated February 3, 1934;
- (iii) Notice dated 25th April, 1944 issued by the Minister-in-Waiting Government of Jodhpur;
- (iv) Letter dated 5th January, 1972 addressed by the Asstt. Secretary, Government of Rajasthan, General Administration Department to the Secretary, Urban Improvement Trust, Jodhpur;
- (v) Order dated 26th November, 1974 passed by the Tehsildar, Jodhpur, and
- (vi) Letter issued by the Settlement Officer, Jodhpur to the Urban Improvement Trust, Jodhpur in reply to his letter dated 28th January, 1975.

28. By notification dated 22nd April, 1980 issued by the Finance Member of Council of the former State of Jodhpur, it was notified for general information that the Development Department had been constituted for the purpose of controlling the development of that portion of Jodhpur City and its environs that lie outside the city walls and other locality that may here after be defined. It enumerates the functions of the Development Department. By order dated January 26, 1934 passed by the Chief Minister of the Government of Jodhpur, it was directed that the Development Department shall have control over the disposal of land for building sites and shall operate building regulations over the area within a radius of 3 miles from the Sojati Gate. It has been stated that the lands in Khasra Nos. 421 and 426 fall within the radius of 3 miles from Sojati Gate and were covered by the aforesaid order. In our opinion on the basis of the aforesaid notification dated 22nd April, 1930, and the order dated 26th January, 1934, all that can be said is that the Development Department which had been constituted under the notification dated 22nd April, 1930 had control over the disposal of land for building sites, in respect of the area within which the lands in Khasra Nos. 421 and 426 fall. On the basis of these orders, it is not possible to hold that lands in Khasra Nos, 421 and 426 had ceased to be agricultural lands and had become Abadi land.

29. By notice dated 25th April, 1944 issued by the Minister-in-Waiting, to the Government of Jodhpur, it was directed that in view of the occupation of the Chhittar Palace (Utnaid Bhawan Palace) by Their Highness and

Shri Maharaj Kumar Sahibs it was being notified for general information that from 4th May, 1944 whole of the Chhitar Hill except Ganeshji's Temple and the land attached to it would be out of bounds for every one except those who have special passes to enter the Palace compound and any person entering in the reserved area without a pass will be liable to be prosecuted. Shri Mehta has submitted that the lands in Khasra Nos. 421 and 424 were covered by the said notice and they constituted reserved area in which entry without a pass was prohibited in view of this notice. It may be that by virtue of the aforesaid notice dated 26th April, 1944 the land in Khasra Nos. 421 and 426 were declared to be reserved area in which entry without passes was prohibited. But that notice does not in our opinion, have the effect of changing the user of the lands and converting the said land's into Abadi land. By the said notification the former ruler of the State of Jodhpur reserved these lands for his own use excluding entry of other persons without passes.

30. The letter dated 5th January, 1972 sent by the Asstt. Secretary to the Government of Rajasthan, General Administration Department to the Secretary Urban Improvement Trust, Jodhpur, only contains the tentative opinion expressed by the Assembly that the land of Umaid Bhawan Palace does not appear to be agricultural land. At the same time the Assistant Secretary desired that the matter should be confirmed from the Settlement Department.

31. The order dated 25th November, 1974 was passed by the Tehsildar where by he dismissed the proceedings initiated against one Bahadur under Section 91 of the Rajasthan Tenancy Act in respect of certain lands falling in Khasra No. 421, wherein he had expressed the opinion that the said land was Abadi land. In that order the Tehsildar has placed reliance on the order dated January 26, 1934 where by the Development Department was vested with the control over the land for building sites to operate building regulations over the area within a radius of three miles from the Sojati Gate. We have already dealt with the said order and we have held that on the basis of the said order, it is not possible to hold that the land in question had ceased to be agricultural land and had become Abadi land as a result of the said order. In that view of the matter, we are of the opinion that the order of the Tehsildar dated 25th November 1974

32. The last document on which reliance has been placed by Shri Mehta is the letter issued by the Settlement Officer, Jodhpur to the Executive Engineer, Urban Improvement Trust, Jodhpur in reply to his letter dated 28th January, 1975 wherein the Settlement-Officer has stated that the land of Umaid Bhawan palace had never been assessed to rent and that it has never been cultivated and that it was included by the covenant within the Umaid Bhawan Palace and that this was sufficient to show that it is Abadi land and not agricultural land. In our opinion the said letter sent by the Settlement Officer to the Executive Engineer, Urban Improvement Trust, is only an expression of opinion on the basis of certain inferences and on the basis of the said letter it is not possible to hold that the lands in question had ceased to be agricultural land and had become Abadi land on the date of coming into force of the Rajasthan Land Revenue Act.

33. Having considered the various documents on which reliance has been placed by Shri Mehta, we are of the considered opinion that it cannot be said that the lands, in question in Khasra Nos. 421 and 426 had ceased to be agricultural lands and had become Abadi lands on the date of coming into force of the Rajasthan Land Revenue Act. In the circumstances it must be concluded that the lands covered by Khasra Nos. 421 and 426 are included within the inclusive part of the definition of 'land' as contained in Clause (f) of Section 2 of the Act.

34. The next question which needs to be considered is as to whether the said lands are excluded from the said definition 'land' in Section 2(f) of the Act under the exclusory part of the said definition, which expressly excludes forts, palaces, buildings and building plots specified in the inventory. The submission of Shri Mehta is that the land in Khasra Nos. 421 and 426 form part and parcel of the Umaid Bhawan Palace which has been specified in the inventory of private properties of the former Ruler of Jodhpur prepared in pursuance of Article XII of the Covenant and finally approved by the Government of India. In this connection he has relied upon the entry at S. No. 1(a) in category C of the immovable properties specified in Schedule I to the said inventory which reads as under:

(a) Umaid Bhawan Palace as per plan attached including the Chhitar Tank. Note: Should it be decided to make Jodhpur the capital of the new Rajasthan Union or to locate the Rajasthan University therein, His Highness will agree with pleasure to handover to a Government the Umaid Bhawan Palace minus the furniture, decorative hangings, decorative lightings, pointings and fans on receipts of Rs. 18 lakhs.

35. The submission of Shri Mehta was that in the site plan of Umaid Bhawan Palace which has been attached with the inventory, the area included within the red line has been shown as part of the Umaid Bhawan Palace and lands in Khasra Nos. 421 and 426 are included within the red line in the said site plan and, therefore, they are part and parcel of the Umaid Bhawan Palace. In support of his aforesaid submission Shri Mehta has placed reliance on the letters dated March 24, 1949 from the Government of India, Ministry of States, to Maharaja Shri Hanwant Singh of Jodhpur with regard to settlement of private properties of the former Maharaja of Jodhpur and the subsequent correspondence relating to the approval of the plans of the immovable properties which were declared as private properties of the former Maharaja, including the Umaid Bhawan Palace at Jodhpur. The learned Advocate General has on the other hand submitted that the plan on which reliance has been placed by Shri Mehta was admittedly prepared long after finalisation of the list of private properties and the said plan cannot be said to be the plan attached to the inventory. According to the learned Advocate General the words 'as per plan attached' in entry 1(a) referred to above relating to the Umaid Bhawan Palace, cannot be read, to mean 'as per plan to be attached'. The learned Advocate General has also submitted that the authenticity of the plan on which reliance has been placed by the petitioners in their writ petitions, is not beyond doubt because it has not been established that the person who is said to have attested the said plan on behalf of the Central Government was duly authorised by the Government of India to attest the plan on behalf of the Central Government and, therefore, the said plan cannot be taken into account for determining the area included in the Umaid Bhawan Palace. The learned Advocate General has also contended that there is a compound wall surrounding the Umaid Bhawan Palace and that the lands in Khasra Nos. 421 and 426 fall outside the said compound wall and further more there is a hill in between the Umaid Bhawan Palace and the said lands.

36. While dealing with aforesaid contention of the learned counsel with regard to the exclusory part of the definition of 'land' whereby forts, palaces, buildings and building plots specified in the inventory, have been expressly excluded from the said definition, we cannot lose sight of the provisions contained in Section 10 of the Act which provides that the properties referred to in Clauses (a), (b) and (c) Sub-section (1), viz., open enclosures and private buildings, places of worship and wells situated in such enclosures or house sites in the possession of the landowner, as well as groves and private buildings and wells belonging to or held by the landowner and tank in the personal occupation of the landowner and used solely for irrigation purposes shall continue to belong to or be held by such landowner and shall not be subject to the consequence of acquisition laid down in Section 8 of the Act. Sub-section (2) of Section 10 prescribes that if any question arises whether any property is of the nature referred to in Sub-section (1) it shall be referred to the Compensation Commissioner who may, after holding the prescribed enquiry make such order thereon as he deems fit. Under Section 20 of the Act an appeal lies to the Board of Revenue against the order passed by the Compensation Commissioner in exercise of the power conferred on him under Sub-section (2) of Section 10 of the Act. Section 28 of the Act expressly excludes the jurisdiction of the Civil and revenue courts in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under the Act and this would include the matters which are required to be decided by the Compensation Commissioner under Section 10 (2) of the Act. The object underlying the aforesaid provisions is that the legislature has provided a special forum: i.e. the Compensation Commissioner, for the decision of the question as to whether a particular property is to be excluded from acquisition under Sub-section (1) of Section 10 of the Act. The properties mentioned in the exclusory part of the definition of 'land' in Section 2(f) of the Act are buildings and house sites and buildings and house sites have been excluded from acquisition under Sub-section (1) of Section 10 of the Act. The question as to whether a particular land is part and parcel of a fort, palace or building specified in the inventory, is primarily one of fact to be decided on the basis of evidence. It is difficult to comprehend that in enacting the exclusory part of the definition of 'land' in Section 2(f) of the Act, the

legislature intended that the said question should be decided by a separate forum and not by the Compensation Commissioner. It would be more in consonance with the intention of the legislature that all questions relating to the exclusion of private properties of the landowner including the question as to whether a particular property is covered by the exclusory part of the definition of 'land' in Section 2(f) of the Act and is to be excluded from acquisition, is dealt with by the same forum viz. the Compensation Commissioner under Section 10(2) of the Act. In that view of the matter, the question as to whether a particular property is part and parcel of a fort, palace or building specified in the inventory of the private properties of a former ruler and is to be excluded wholly or partially from acquisition under the Act, is a matter which is required to be determined by the Compensation Commissioner under Section 10(2) of the Act.

37. At this stage, it becomes necessary to examine the correctness of the order dated 10th December, 1975 passed by the Collector, Jodhpur where by he rejected the application submitted by Shri Gaj Singh for referring the dispute relating to the acquisition of the properties in question to the Compensation Commissioner under Section 10(2) of the Act. In his aforesaid order the Collector has declined to make the reference under Section 10(2) of the Act for the reason that mere raising of a dispute is not sufficient to make it a point for a reference to be made to the Compensation Commissioner and that a reference would become liable if he was satisfied that such a dispute exists. The Collector has expressed the view that dispute exists about the nature of the properties in question, and, therefore, a reference to the Compensation Commissioner was not necessary. In our opinion the aforesaid order of the Collector, Jodhpur cannot be upheld. The provisions contained in Section 10(2) of the Act are similar in terms to the provisions contained in Sub-section (2) of Section 23 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1982. Sub-section (1) of Section 23 of the said Act excludes certain properties of the Jagirdar including the private lands, buildings, wells house sites and enclosures, from acquisition and Sub-section (2) of Section 23 prescribes that if any question arises whether any property is of the nature referred to in Sub-section (1), it shall be referred to the Jagir Commissioner who may, after holding the prescribed enquiry, make such order thereon as he deems fit. The aforesaid provisions contained in Sub-section (2) of Section 23 have been considered by the Supreme Court in Board of Revenue for Rajasthan and Ors. v. Rao Baldeo Singh and Ors. (1). In the said case it has been observed that the language of Section 23 was preemptory in character and the section requires that if any question arises whether any property is of the nature referred to in Sub-section(1) it shall be referred to the Jagir Commissioner who may, after holding the prescribed enquiry, make such order thereon as he deems fit. In Bhagwat Singh v. State of Rajasthan and another (2) a learned Single Judge of this Court has considered the provisions of Section 10(2) of the Act and it has been held that in cases where a question arises as to whether any property is of the nature referred to in Sub section (1), the Collector is bound to refer to the Compensation Commissioner the said question and the Compensation Commissioner alone can determine the said question. In our opinion the question as to whether the lands in Khasra Nos. 421 and 246 form part and parcel of the Umaid Bhawan Palace and are to be excluded wholly or partially from acquisition under the Act and are to be retained by the landowner, is a question which was required to be determined by the Compensation Commissioner and the Collector, Jodhpur, was in error in refusing to refer the same to the Compensation Commissioner on the ground that in his view no such dispute existed in relation to the nature of the said lands. The same is the position with regard to the other properties, namely Balsamand Gardens including palaces and other buildings and Bijolai tank and buildings. The question as to whether the said properties are excluded from acquisition under the Act, is a matter which was required to be determined by the Compensation Commissioner under Section 10(2) of the Act.

38. In our opinion, therefore, it is not necessary to go into the question as to whether the lands in Khasra Nos. 421 and 426 form part and parcel of the Umaid Bhawan Palace and are excluded from acquisition under the Act. The said question has to be determined by the Compensation Commissioner under Section 10(2) of the Act. In the circumstances, we do not propose to examine the question as to whether the plan relied upon by Shri Mehta can be treated as the plan referred to in the inventory of the private properties of the former ruler of Jodhpur and whether on the basis of the said plan the lands in Khasra Nos. 421 and 426 should be treated as part and parcel of Umaid Bhawan Palace and must be excluded wholly or partially from acquisition.

39. In this view of the matter, we are of the opinion that the order passed by M.L. Jain, J. holding that the land in Khasra No. 421 is part of the Umaid Bhawan Palace and is not liable to acquisition and quashing the notices which were impugned by the petitioners in Writ Petitions No. 1901/75, 1904/75 and 1924/75 cannot be upheld and the question as to whether the land in Khasra No. 421 is excluded from acquisition under the Act, is a matter which should be referred to the Compensation Commissioner under Section 10(2) of the Act. For the same reasons we are unable to agree with the judgment of P.K. Banerjee, C.J. in writ petition No. 1872 of 1975 whereby the notice dated 17th October, 1975 has been set aside on the basis of the judgment of M.L. Jain, J. We are also unable to agree with the judgment of K.C. Sharma, C.J. in Writ Petition No 1987/75 in so far as he holds that no reference to the Compensation Commissioner was necessary in relation to land in Khasra No. 426 under Section 10(2) of the Act and that the said land does not form part of the Umaid Bhawan Palace. As indicated earlier, we are of the opinion that the question as to whether land in Khasra No. 426 is part of the Umaid Bhawan Palace and is excluded from acquisition under the Act, will have to be considered by the Compensation Commissioner under Section 10(2) of the Act.

40 For the reasons aforesaid, the order dated 22nd September, 1977 passed by M.L. Jain, J. allowing Writ Petitions No. 1901/75, 1904/75 and 1924/75 and the order dated 20th December, 1983 passed by P.K. Banerjee, C.J. allowing Writ Petition No. 1872/75 and the order dated 26th March, 1981 passed by K.D. Sharma, C.J. dismissing Writ Petition No. 1987 of 1975. are set aside. The order of the Collector, Jodhpur dated 10th December, 1975 is also set aside and he is directed to refer to the Compensation Commissioner under Section 10(2) of the Act, the question as to whether the lands in Khasra Nos. 421 and 426 as well as the Balsamand Gardens and Palaces and Bijolai tank and buildings are excluded from acquisition wholly or partially under the Act. The operations of the notices impugned in the writ petitions giving rise to special appeals Nos. 3, 4 and 5 of 1978, 79 of 1981 and 354 of 1984, in so far as they relate to the properties mentioned above will remain stayed till the matter is decided by the Compensation Commissioner, and status quo as it exists today with regard to possession of the land in dispute would be maintained. It is also directed that no construction shall be made on lands in dispute during this period. The matter has been pending since long. It is, therefore, directed that the Collector, Jodhpur shall pass necessary order for making reference to the Compensation Commissioner under Section 10(2) of the Act in pursuance of this judgment within a period of fifteen days and the Compensation Commissioner shall decide the matter within a period of one year. Special Appeals No. 3/78, 4/78, 5/78 and 354/84 filed by the State as well as Special No. 79/1981 filed by the Trustees of Major Maharaj Hari Singh Benefit of Defence Services Personnel Charitable Trust are partly allowed to the extent indicated above. In the facts and circumstances of the case, the parties are left to bear their own costs.