

**Vimla Devi Vs. State of Raj. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/921666](http://sooperkanoon.com/921666)

**Court :** Rajasthan Jodhpur

**Decided On :** Oct-11-2011

**Appellant :** Vimla Devi

**Respondent :** State of Raj. and ors.

**Judgement :**

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IN THE HIGH COURT OF JUDICATURE FOR RAJSTHAN AT JODHPUR .. :: O R  
D E R :: (1) Narpat Lal The State of Rajasthan & Ors. S.B. CIVIL WRIT PETITION  
NO. 10144/2010.

Vs.

(2) Sangeeta Gehlot

The State of Rajasthan & Ors. S.B. CIVIL WRIT PETITION NO. 10143/2010.

Vs.

(3) Vimla Devi

The State of Rajasthan & Ors. S.B. CIVIL WRIT PETITION NO. 10145/2010.

Vs.

Date of Order

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11th

October 2011.

HON'BLE MR. JUSTICE DINESH MAHESHWARI Mr. Varun Goyal, for the petitioners. Mr. Sandeep Bhandawat, G.C., for the respondents. <??>> BY THE COURT: These three writ petitions, involving similar as also interrelated facts and proceeding on similar grounds in relation to the common nature grievance, have been considered together; and are taken up for disposal by this common order. Put in a nutshell, the grievance of the petitioners in

these writ petitions on similar facts is that each of them had been allegedly raising construction for his/her small-scale industrial unit on less than 2500 square metres of the area on the piece of agricultural land purchased; and the respondents

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were illegally prohibiting such construction. The genesis of the facts giving rise to these writ petitions has been that a piece of agricultural land admeasuring 1.88 hectares, as comprised in khasra No. 758 at village Dhandhedi, Tehsil Sojat, District Pali, was recorded in the name of one Shri Anil Chordia. According to the petitioners, the said Shri Anil Chordia sold a part of such land, admeasuring 0.94 hectares, in favour of Shri Chutra Ram Gehlot by a sale deed dated 08.06.2010; and sold the remaining 0.94 hectares of the land of said khasra No. 758 by another sale deed of the even date i.e., 08.06.2010, in favour of Smt. Vimla Devi wife of Chutra Ram Gehlot. Smt. Vimla Devi is the petitioner in CWP No. 10145/2010. The petitioner of CWP No. 10143/2010, Sangeeta Gehlot, is said to have purchased 0.24 hectares of land from the said Shri Chutra Ram Gehlot by a sale deed dated 09.08.2010 out of the said piece of land purchased by him from Shri Anil Chordia. Similarly, the petitioner of CWP No. 10144/2010, Narpat Lal Gehlot, who is brother of said Shri Chutra Ram Gehlot,

allegedly purchased another piece of 0.24 hectares of land by a sale deed dated 19.08.2010 from the said Shri Chutra Ram Gehlot out of the said piece of land

purchased from Shri Anil Chordia. Thus, according to the petitioners, out of 1.88 hectares of the land comprised in the said khasra No. 758, as was recorded in the name of Shri Anil Chordia, different pieces of

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land came to be purchased by them. The petitioner of CWP No. 10145/2010 is said to be the direct purchaser from Shri Anil Chordia whereas the other petitioners are said to be the purchasers of smaller pieces of land from Shri Chutra Ram Gehlot, who was the transferee from Shri Anil Chordia. The petitioners have averred that they had been carrying on business at Sojat City, District Pali in the different firm names, essentially dealing in all types of Heena Herbal products. It is also averred that the petitioners had been carrying on business in the rented industrial plots and had purchased the pieces of land in question with a view to establish respective small-scale industries relating to Heena products; and that they have applied for the licenses from the District Industries Centre and from the Agricultural Produce Marketing Committee, Sojat. The petitioners have asserted that they had initiated construction work on the land purchased by them on an area less than 2500 square metres for which, they were not required to take any conversion order. The petitioners have alleged that the respondent No. 4, the Patwari, Mandla, informed the respondent No. 3, the Tehsildar, Sojat that Shri Chutra Ram was raising construction on the said land of Khasra No. 758 for a huge industrial unit without seeking conversion; and the respondent No.3, without verifying the facts, issued the orders for preparation of site report and for restraining Shri Chutra Ram from raising any construction. The petitioners have averred that when the

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concerned Patwari alongwith Land Record Inspector inspected the site pursuant to such directions and directed Shri Chutra Ram Gehlot not to raise any construction, they submitted all the documents to the Tehsildar concerned on 11.10.2010 and requested him to allow them to continue with the construction work; and they resumed the work on the verbal assurance of the Tehsildar but again, on 25.10.2010, on the verbal the respondent No. 4 ordered

directions of the Tehsildar,

stoppage of the construction work. With the above narration of facts, the petitioners have filed these writ petitions stating the common grievance that each of them had been raising construction for his/her smallscale industrial unit on an area less than 2500 square metres for which no conversion order was required; and the respondents were illegally prohibiting them from raising such construction. It is submitted that the action of the respondents is violative of the constitutional rights of the petitioners; that no opportunity of hearing was afforded to the petitioners; and that the respondents have proceeded without verification of the facts as to who was raising construction and at what land? The petitioners have particularly referred to Rule 6 of the Rajasthan Land Revenue (Conversion of Agricultural Land for Non-Agricultural purposes in Rural Areas) Rules, 2007 ['the Rules of 2007'] and have taken the ground that by virtue of said Rule 6, they are not required to ask for conversion of the land when raising construction on an area less than 2500

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square metres. It is further contended that in any case, the respondents have no authority to stop the construction work of the petitioners as no such power is provided in the Rules of 2007. It is also suggested in these petitions that the respondents are proceeding in a discriminatory manner inasmuch as other individuals having the land adjacent to that of the petitioners have been permitted to establish their industrial units and the objection is being raised only in regard to the petitioners though the land of the petitioners does not fall in any of the excluded categories provided under Rule 4 of the Rules of 2007. With the aforesaid grounds, the petitioners have prayed for the reliefs of similar nature that the action of the respondents in restraining them from raising construction of the industrial unit may be declared illegal and the directions given in that regard, as contained in the communications dated 07.10.2010 and 08.10.2010, may be quashed; that the action of the respondents in approaching the site of their industrial unit on 25.10.2010 and in forcibly stopping the construction work may also be declared illegal; and that the respondents may be restraining from

interfering with the construction work and the petitioners may be permitted to raise the construction of the respective proposed small-scale industrial unit upto 2500 square metres, as being in accord with the Rules of 2007.

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The respondents have filed the replies contesting the petitions, inter alia, with the submissions that the petitioners have failed to show any legal injury; that the petitions involve several disputed questions of facts that cannot be determined in the writ jurisdiction; and that the petitioners are guilty of concealment of material facts. The respondents have

particularly alleged that the land in question on which the petitioners seek to raise construction, is not their khatedari land. It is further submitted by the respondents that the land in question is the subject matter of the reference pending before the Board of Revenue and hence, they have committed no illegality in restraining the petitioners from raising construction over the same. It is submitted that the land comprised in khasra No. 758 was earlier recorded as Doli land in the name of Mandir Shri Charbhuj Ji in the revenue records of Svt. Years 2010 to 2019 and without any justification, the land was recorded later in the name of the priest of the temple while preparing the Jamabandi of the Svt. Years 2022-2025; and when this fact came to the notice of the revenue authorities, proceedings were taken for making a reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and accordingly, a reference has been made to the Board of Revenue. It is further submitted that the petitioners, being not recorded as khatedar-tenant of the land in question, are not entitled to get any benefit out of the provisions of the Rules of 2007. It is also submitted that the said Rules have been amended by the

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notification dated 14.10.2010 whereby, only a khatedar-tenant could use 5% of the area of his khatedari land for agribusiness activities without seeking conversion. The petitioners have filed rejoinders refuting the averments and the objections of the respondents. It is submitted that the petitions do not involve any disputed

question of facts and nothing has been concealed by the petitioners. It is further submitted that the petitioners are valid title-holders of the land in question and the title documents have already been placed on record. In regard to the reference, it is submitted that the petitioners are not the parties to the said reference proceedings and even going by the submissions of the respondents, the land in question was recorded way back in Svt. Year 2022 in the name of individuals and the original vendor Anil Chordia was a recorded khatedar and, therefore, the objections as raised by the respondents remain untenable. So far the amendment of the Rules of 2007 is concerned, it is submitted that thereby, a new provision in the form of Rule 6-A has been inserted but that does not take away the rights of the petitioners already ensured under Rule 6 ibid. Arguing for the petitioners, the learned counsel has referred to the Rules of 2007 and contended that per Rule 6 thereof, no conversion is requisite upon setting up of a smallscale industrial unit on a khatedari land at an area less than 2500 square metres. The learned counsel argued that each of

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the petitioners had been raising construction on an area less than 2500 square metres and specifically for an industrial unit after making due application for obtaining the licenses from the concerned departments, including the District Industries Centre. The learned counsel contended that when the Rules permit raising of the construction for industrial purposes on an area less than 2500 square metres without seeking

conversion, the respondents have no authority to obstruct the same and their action remains unjustified. In regard to the alleged reference proceedings, the learned counsel submitted that the respondents have failed to show if the reference has been made in relation to this particular land. The learned

counsel also submitted that the other persons in the vicinity are allowed to raise such constructions; that the respondents have acted wholly illegally in issuing the directions to the Patwari concerned for stopping the construction work without opportunity of hearing to the petitioners; and that the construction has illegally been stopped without considering the representations made by the petitioners. A

circular dated to the

17.09.2007 (Annex.9) issued by the Dy. Secretary

Government in its Revenue Department has also been referred to submit that the Collectors have been directed to issue formal conversion orders to facilitate loan proceedings with the financial institutions; and when the emphasis is for encouragement for small-scale industries, the attempts at obstruction by the respondents remain invalid and illegal.

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Per contra, the learned Government Counsel submitted that the petitioners are not entitled to raise any construction for having not taken any conversion permission and even otherwise, for being not recorded as the khatedars. The learned counsel also referred to Rule 6-A as added in the Rules of 2007 by way of the notification dated 14.10.2010 and submitted that thereby, a khatedar-tenant is permitted to use only 5% of his khatedari land for agri-business activities and the construction in question, as attempted by the petitioners, is not permissible. The learned counsel further contended that the land in question is subject of reference to the Board of Revenue and for this reason too, raising of construction remains impermissible. The learned counsel for the petitioners submitted in the rejoinder that insertion of Rule 6-A in the Rules of 2007 does not operate against the petitioners because Rule 6 has not been deleted therefrom; and because the petitioners had purchased the land before such amendment. Having given a thoughtful consideration to the rival submissions and having perused the material placed on record, this Court is not persuaded to exercise writ jurisdiction in these matters essentially for the reasons that the petitioners have not been able to make out a direct case of infringement of existing legal rights; and for these petitions involving such nature questions of facts that cannot be determined in the writ jurisdiction.

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Apparent it is that even if the said Shri Anil Chordia was recorded as khatedar in relation to the land of khasra No. 758 admeasuring 1.88 hectares, this land is sought to be put to industrial use after the alleged transactions of different sale deeds in favour of closely related persons. The fact that after such transactions, similar nature constructions were being undertaken over the land of khasra No. 758 with

compartmentalization is borne out from the site report dated 08.10.2010. The report also indicates that the construction work was being essentially undertaken by the said Shri Chutra Ram Gehlot who was bound down not to continue with the same. The representation dated 11.10.2010 referred by the petitioners was also made by said Shri Chutra Ram Gehlot and his wife Smt. Vimla Devi (petitioner in CWP No. 10145/2010), inter alia, stating as under:-

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In a comprehension of the factual scenario and the admitted facts, it appears that raising of construction by Shri Chutra Ram on the land in question is a fact not deniable by the petitioners. In any case, it is not in dispute that the petitioners have not been entered as khatedars in relation to

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the land in question in the revenue records. In the face of such an admitted position, neither the respondents could be faulted at restraining the petitioners from raising construction nor the petitioners could be said to be having a direct case of existing legal right and infringement thereof. Even if the submissions regarding operation of the amended Rule 6-A as made on behalf of the respondents is ignored and the requirements of Rule 6 of the Rules of 2007 are taken into consideration, evident it is that even for the purpose of operation of the Rule 6, on the basis whereof the petitioners claim the right for establishing industrial unit without seeking conversion, existence of khatedari right is necessary; and that remains missing in these cases. Rule 6 of the Rules of 2007 reads as under:-

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When, admittedly, the petitioners are not recorded as khatedars, the provisions contained in Rule 6 ibid. do not enure to their benefit. So far the circular dated 17.09.2007, as referred on behalf of the petitioners, is concerned, it does not help their case in any manner. Therein, the directions are for issuing formal orders for conversion when sought by the khatedar-

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tenants. The petitioners are neither the khatedar-tenants nor have duly applied for conversion. The fact situation of these cases also gives rise to serious questions

as to whether the petitioners and other persons dealing with the land in question have validly got the same divided and further divided and as to whether such fragments could be countenanced without the consent of the land holder? This apart, the respondents have pointed out that the land in question is subject of reference to the Board of Revenue for having originally been recorded as Doli land. These being the proceedings in writ jurisdiction, this Court would not like to pronounce finally on several of the questions aforesaid, particularly those relating to facts but, in the given factual scenario, this Court is not persuaded to grant the discretionary relief in the writ jurisdiction to the petitioners in the nature of a mandate to the respondents that they should permit raising of the construction on the land in question. The petitioners are, otherwise, free to take recourse to the appropriate regular remedies in accordance with law but no case for exercise of extraordinary writ jurisdiction is made out. In view of the aforesaid and subject to the observations foregoing, these writ petitions are dismissed. No costs.

(DINESH MAHESHWARI), J. /Mohan/

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S.B. CIVIL WRIT PETITION NO. 10143/2010. Sangeeta Gehlot v. The State of Rajasthan & Ors. Date of Order ::: 11th October 2011.

HON'BLE MR. JUSTICE DINESH MAHESHWARI Mr. Varun Goyal, for the petitioners. Mr. Sandeep Bhandawat, G.C., for the respondents. <??>??>> The order pronounced today. This writ petition stands dismissed with observations [vide common order made in S.B.Civil Writ Petition No.10144/2010: Narpat Lal v. State of Rajasthan & Ors.].

B.O.

COURT MASTER

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S.B. CIVIL WRIT PETITION NO. 10145/2010. Vimla Devi v. The State of Rajasthan & Ors.

Date of Order

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11th October 2011.

HON'BLE MR. JUSTICE DINESH MAHESHWARI Mr. Varun Goyal, for the petitioners. Mr. Sandeep Bhandawat, G.C., for the respondents. <??>??>>

The order pronounced today. This writ petition stands dismissed with observations [vide common order made in S.B.Civil Writ Petition No.10144/2010: Narpat Lal v. State of Rajasthan & Ors.].

B.O.

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