



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 287/2021

Balu Ram S/o Shri Goru Ram, Aged About 77 Years, B/c Jat, R/o Village Sandan, Tehsil Sujangarh, District Churu (Rajasthan)

----Appellant

Versus

1. Board Of Revenue, Ajmer, Through Its Registrar.
2. Tehsildar (Revenue), Sujangarh, District Churu.
3. Manju Kanwar W/o Narendra Singh, B/c Rajput, R/o Khudi Tehsil Sujangarh, District Churu (Raj.)
4. Udaibhan Singh S/o Narendra Singh, B/c Rajput, R/o Khudi Tehsil Sujangarh, District Churu (Raj.)
5. Ranjit Singh S/o Narendra Singh, B/c Rajput, R/o Khudi Tehsil Sujangarh, District Churu (Raj.)
6. Shakti D/o Narendra Singh, B/c Rajput, R/o Khudi Tehsil Sujangarh, District Churu (Raj.)

----Respondents

For Appellant(s)	:	Mr. Moti Singh
For Respondent(s)	:	Mr. Narendra Singh Rajpurohit, AAG assisted by Mr. Sher Singh Rathore Ms. Aditi Sharma

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA**

Judgment

BY THE COURT: (PER HON'BLE MR. JUSTICE VINIT KUMAR MATHUR)

1.	Date of conclusion of argument	04.02.2026
2.	Date on which the judgment was reserved	04.02.2026
3.	Whether the full judgment or only operative part is pronounced	Full Judgment
4.	Date of Pronouncement	13.02.2026

1. The present appeal has been filed against the order dated 06.04.2021 passed by the learned Single Bench, whereby the



writ petition being S.B. Civil Writ Petition No.3539/2014 preferred by the appellant-petitioner has been dismissed.

2. Brief facts of present special appeal is that the dispute pertains to land originally recorded in Jamabandi of Samwat 2002 as "Johad Refayaam" comprising of Khasra No.257 admeasuring 17 Bighas situated at village Khudi, Tehsil Sujangarh, Churu. During subsequent revenue entries, the land was shown as "**Refayaam**" in Samwat 2010. After settlement operations in Samwat 2028, the old khasara Number was re-numbered as New Khasra Nos.553, 561 and 562, admeasuring 5 Bigha, 1.5 Bigha and 10 Bigha respectively, total measuring 16.5 Bighas, and was recorded in the name of one Narendra Singh S/o Devi Singh, Jagirdar of village Khudi, Tehsil Sujangarh.
3. Narendra Singh, thereafter, executed a registered sale deed in favour of the appellant-petitioner Balu Ram. In the year 2006, the Tehsildar, Sujangarh filed a reference application invoking the provisions of Section 82 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as "the Act") before the learned Additional Collector, Churu contending that the land being a "Johad Refayaam", the khatedari entry in favour of Narendra Singh and consequential sale in favour of the petitioner were illegal, and the land ought to be recorded as Johad.
4. The Additional Collector, Churu, proceeded ex parte against the appellant and vide order dated **30.03.2007** accepted the reference application preferred by Tehsildar and forwarded it to the Board of Revenue. The Board of Revenue, Ajmer, after



registering Reference No. LR/4234/2007 and hearing the both the parties, vide order dated **13.02.2014** directed for cancellation of the appellant-petitioner's khatedari rights and ordered that the land in question be recorded as "Gair Mumkin Johad".

5. Aggrieved thereby, the petitioner preferred Writ Petition being SBCWP No.3539/2014 before this Court challenging both the aforesaid orders. The learned Single Judge, after considering the pleadings and submissions of the parties, dismissed the writ petition vide order dated **06.04.2021**, holding that the orders passed by the revenue authorities did not suffer from any illegality and the land in question is undisputedly a "**Johad Refayaam**" land, which is barred to be allotted or owned by anyone.
6. Hence, the present Special Appeal has been filed against the order dated **06.04.2021** passed by the learned Single Judge, whereby Writ Petition No.3539/2014 filed by the appellant-petitioner Balu Ram was dismissed, affirming the orders dated 30.03.2007 passed by the learned Additional Collector, Churu and 13.02.2014 passed by the Board of Revenue, Ajmer.

Submissions on behalf of learned counsel for appellant-petitioner

7. Learned counsel for the appellant- petitioner submitted that the appellant-petitioner is a bonafide purchaser and khatedar cultivating the land of Khasra Nos. 553 admeasuring (5 Bigha), 561 (1 Bigha 5 Biswa) and 562 (10 Bigha), total admeasuring 16 Bigha 5 Biswa, situated at village Khudi, Tehsil Sujangarh,



District Churu, having purchased the said land through a registered sale deed dated 14.06.1976 from the recorded khatedar Shri Narendra Singh s/o Thakur Devi Singh for valid consideration. He further submitted that the khatedari rights of the appellant-petitioner flowed from a lawful settlement operation conducted in Samwat 2028 (in year 1968) wherein the land in question was recorded as "Banjar/Barani land" and the name of Narendra singh was recorded as khatedar in the revenue record, who was competent enough to transfer the same. Upon execution of the registered sale deed, mutation No.69 was duly sanctioned and the appellant has remained in continuous, peaceful cultivatory possession of the land in question for more than three decades.

8. Learned counsel for appellant-petitioner further submitted that the entire proceedings initiated under Section 82 of the Rajasthan Land Revenue Act, 1956 are vitiated on facts as well as in law. The reference proceedings initiated by the Tehsildar in the year 2006-07 was founded on an erroneous assumption that the entire old Khasra No.257 admeasuring 17 Bighas was recorded as "Johad Refayaam", whereas a bare perusal of the Jamabandi of Samwat 2002 and subsequent Jamabandis clearly demonstrate that only 16 Biswa of land of said khasra was recorded as "Gair Mumkin Johad land" and the remaining land, measuring approximately 16.4 Bighas, was recorded as Banjar land in the name of the private khatedar. During settlement, the said 16 Biswa Johad land was separately carved out and recorded as new Khasra No.560 as Government land/public



utility, which continues to exist as such even today. Thus, the findings of the revenue authorities that the entire land purchased by the appellant was "Johad Refayaam" or restricted land are patently perverse and contrary to the revenue record.

9. Learned counsel for the appellant-petitioner submitted that the Additional Collector, Churu acted in gross violation of the principles of natural justice by passing an ex parte order dated 30.03.2007 without issuing any notice or affording an opportunity of hearing to the appellant, despite the fact that his name stood recorded as khatedar in the revenue record for decades. The Board of Revenue, instead of curing this foundational illegality, mechanically affirmed the reference and cancelled the appellant's khatedari rights by treating the entire land as "Gair Mumkin Johad land", without appreciating the Missal Bandobast, Jamabandi entries and the classification of land under Rule 39 of the Rajasthan Land Revenue (Survey, Record and Settlement) Rules, 1957, which clearly distinguish between "Banjar (Barren uncultivated land)" and "Gair Mumkin (non-agricultural land)".
10. Learned counsel also emphasized that the exercise of reference jurisdiction after an inordinate and unexplained delay of more than 31 years from the date of mutation and more than 40 years from the date of settlement is wholly without jurisdiction. He submitted that the law is well settled that powers under Section 82 of the Act cannot be invoked after an unreasonable lapse of time, particularly when, the khatedar is in settled power & possession and there is no allegation of fraud,



collusion or fabrication. In the present case, the respondents have neither pleaded nor proved any fraud on the part of the appellant or his predecessor-in-title.

11. Learned counsel for the appellant-petitioner also submitted that the land in khasra No.257 was neither recorded as "Gair Mumkin Johad land" at the time of settlement, nor it was a part of the government land.
12. Learned counsel for the appellant-petitioner further submitted that the learned Board of Revenue has also relied upon the Jamabandi of Samwat 2011, whereas a bare perusal of the record, it is clear that land of khasra No.267 was a part of "Gair Mumkin Johad land", while the land of khasra No.257 was divided into new khasras i.e. khasra No.553, 560, 561 and 562, and thus, khasra No.257 was not a part of "Gair Mumkin johad land".
13. Learned counsel for the appellant-petitioner submitted that the impugned order dated 06.04.2021, as well as the orders passed by the Board of Revenue dated 13.02.2014 and the Additional Collector, dated 30.03.2007 are unsustainable in law and deserve to be quashed, with restoration of the appellant's khatedari rights over the land in question.
14. Learned counsel for the appellant-petitioner relied upon the judgment rendered by a Division bench of this Court at Jaipur Bench in **Anandi Lal v. State of Rajasthan reported in (RLW 1996 (1) Rajasthan 396)** and submitted that the legal position is well settled that the power of reference under Section 82 of the Rajasthan Land Revenue Act cannot be



exercised after an unreasonably long lapse of time, particularly where the person concerned is in settled possession of the land and has acquired valid khatedari rights, and that a mutation cannot be cancelled in such circumstances.

15. Learned counsel further placed reliance upon the judgment of this Court at Jaipur Bench in ***Babu Singh v. Board of Revenue, Ajmer (2009 (2) RLW RJ 969)***, wherein it has been categorically held that where reference proceedings are initiated after an inordinate delay of about 35 years from the conferment of khatedari rights and the land has been improved and cultivated by the khatedar, neither title nor possession can be disturbed on the basis of such belated reference.
16. Reliance was also placed on the judgment rendered by Division Bench of this Hon'ble court in the case of ***State of Rajasthan v. Teja (RRD 2005 365)***, wherein this Court held that once a person has acquired khatedari rights and has continued in possession of the land for a considerable period, such rights cannot be called in question after an unreasonable delay in the absence of a positive and specific allegation of fraud or collusion between the public officer and the private party.
17. Learned counsel further relied upon the judgment rendered by Court at Jaipur Bench in ***Somati Devi v. State of Rajasthan (RRD 2005 669)***, wherein it has been held that after acquisition of khatedari rights by a person, and in absence of any allegation or proof of fraud, such rights cannot be cancelled by invoking the reference jurisdiction after an inordinate delay of about 35 years.



18. Reference was also made to the judgment rendered by Division Bench of this Hon'ble court in ***Bharat Ram v. Board of Revenue, Ajmer (2006 (1) RLW RJ 66)***, wherein this Hon'ble Court reiterated that interference in reference proceedings after an unreasonable delay is permissible only in cases where the original order or entry is shown to have been obtained by playing fraud.
19. Lastly, learned counsel drew attention to the recent judgment of the Division Bench of this Court in ***State of Rajasthan Vs. Subhan Khan (SAW No.12/2005 decided on 13.08.2024)***, wherein it has been held that where an order is not obtained by fraud or misrepresentation, no interference is warranted, and that even where no specific limitation is prescribed under the statute, the power must be exercised within a reasonable period, except in cases involving fraud.

Submissions on behalf of learned counsel for respondents-state

20. *Per contra*, learned Additional Advocate General appearing on behalf of the respondents drew the attention of the Court to Section 16 of the Rajasthan Tenancy Act, 1955, which reads as under:

"16. Land in which Khatedari rights shall not accrue-Notwithstanding anything in this Act or in any other law or enactment for the time being in force in any part of the State Khatedari rights shall not accrue in

- i. pasture land;
- ii. land used for casual or occasional cultivation in the bed of river or tank;
- iii. land covered by water and used for the purpose of growing Singhara or other like produce;



- iv. land under shifting or unstable cultivation;
- v. land comprised in gardens owned and maintained by the State Governments;
- vi. land acquired or held for a public purpose or a work of public utility;
- vii. land which, at the commencement of this Act or at any time thereafter, is set apart for military encamping grounds;
- viii. land situated within the limits of cantonment;
- ix. land included within railway or canal boundaries;
- x. land within the boundaries of any Government forest;
- xi. municipal trenching grounds;
- xii. land held or acquired by educational institutions for purposes of instruction in agriculture or for play- ground; and
- xiii. land within the boundaries of a Government agricultural or grass farm;
- xiv. land which has been set apart or is, in the opinion of the Collector, necessary for flow of water thereon in to any reservoir or tanka for drinking water for a village or for surrounding villages:

Provided that the State Government may, by notification in the Official Gazette declare that any land which is under shifting or unstable cultivation, shall cease to be a land for such cultivation and thereupon such land shall be available for the grant of Khatedari rights and the State Government may by a like notification, declare that any land which was not at the commencement of this Act under shifting or unstable cultivation shall at any time after such commencement be under such cultivation from such date as may be specified in the notification and thereupon such land shall be available for such cultivation.”

21. Learned Additional Advocate General appearing on behalf of the respondents submitted that the land in question was recorded as “**Johad Refayaam**”, being a catchment area of a water body, over which no tenancy or khatedari rights could legally accrue. He further submitted that the appellant-petitioner,



under the garb of allotment and subsequent mutation entries, has encroached upon land recorded as "**Johad Refayaam**", which is meant for common use and conservation purposes.

22. Learned Additional Advocate General further submitted that the issue relating to protection of common lands and water bodies is no longer *res integra*. Reliance was placed upon the judgment of the Hon'ble Supreme Court in **Jagpal Singh & Ors. v. State of Punjab & Ors. (SLP No.3109/2011)** decided on 28.01.2011, wherein directions were issued to all the States to frame schemes for eviction of illegal and unauthorised occupants from lands meant for common use of villagers, including ponds, johads, tanks and other water bodies, and to restore such lands to their original use.
23. Learned Additional Advocate General further submitted that the land in dispute was consistently recorded as "**Johad Refayaam**" in the revenue records. He also placed reliance upon the judgment rendered by a Division Bench of this Hon'ble Court in **Abdul Rahman v. Board of Revenue & Ors. (D.B. Civil Writ Petition (PIL) No.1536/2003)**, decided on 21.07.2008, wherein specific directions were issued to the State Government for removal of encroachments from catchment areas of water bodies and for restoration of such natural resources.
24. Learned Additional Advocate General further relied upon the judgment passed by this Court at Jaipur Bench in **Suo Motu v. State of Rajasthan (S.B. Civil Writ Petition No.11153/2011)**, decided on 29.05.2012, wherein categorical



directions were issued restraining allotment of land falling in catchment areas of water reservoirs such as johads, nalas, tanks, rivers and ponds, with a further direction to take appropriate action for cancellation of allotments made in violation of Section 16 of the Rajasthan Tenancy Act, 1955.

25. Further reliance was placed upon the judgment of this Hon'ble Court in ***Gulab Kothari v. State of Rajasthan, reported in (2017) 2 RLW 1178***, wherein the Court, while emphasising the need for conservation and preservation of natural resources, directed the State authorities to remove encroachments over water bodies and catchment areas and to cancel allotments made in contravention of Section 16 of the Act of 1955. The relevant paragraph of the said judgment is as under:-

"205. In the result, having regard to the aforesaid conclusions arrived at, we issue the following directions:

(xxxi) The State Authorities shall take effective steps for conservation and preservation of natural resources i.e. hills, forests, rivers, other water bodies and catchment area. Further, the State Authorities shall undertake a drive to remove all encroachments made over the natural resources noticed hereinabove and the unauthorized activities operating thereon and shall restore such natural resources by taking appropriate action including the cancellation of allotment made in defiance of provisions of Section 16 of the Act of 1955."

26. Learned Additional Advocate General also relied upon the judgment in ***Kantilal v. State of Rajasthan & Anr., reported in 2019 (1) C) (Civ.) (Raj.) 153***, to contend that not only water bodies, but also their boundaries and catchment areas



are required to be protected, and that mere nomenclature in the revenue record would not dilute the character of the land forming part of a water body or its catchment. The relevant paragraph of the said judgment is as under:

"16. Under the law if the tank. nadi or talab is required to be protected, then obviously, its boundary and catchment area are also required to be protected and thus, nothing turns on the question that according to the private respondents earlier in the revenue record the land alleged to have been regularised in their favour, comprising Khasra No.407 was shown in the revenue record as 'Talab Ki Pal' and not 'gair mumkin nadi' as such. As a matter of fact in the order dated 31.7.85 passed by the Tehsildar, Aburoad, regularising possession of father of the private respondents over the land measuring 755 sq. Yard comprising Khasra No.529, it is specifically observed that land sought to be regularised forms part of 'gair mumkin nadi.'"

27. Learned Additional Advocate General further submitted that the land comprised in Khasra Nos.553 (5 Bigha), 561 (1 Bigha 5 Biswa) and 562 (10 Bigha), earlier recorded as Khasra No.257 admeasuring 17 Bighas, was **Johad Refayaam**. According to learned AAG, during settlement proceedings, new khasra numbers were assigned, but the nature of the land as **Johad Refayaam** remained unchanged. He further submitted that no valid allotment order exists on record to show lawful conferment of khatedari rights over such land, nor could such land have been allotted under the provisions of the Rajasthan Tenancy Act.



28. Learned Additional Advocate General thus submitted that neither the private respondents nor the appellant-petitioner were eligible or entitled for allotment or regularisation of the land in question, as land recorded as "**Johad Refayaam**" is statutorily protected and cannot be transferred or regularised in favour of any individual.
29. Lastly, learned Additional Advocate General submitted that the action taken by the revenue authorities is lawful, justified and well within their jurisdiction, and that the impugned orders do not call for any interference by this Court and the Learned single bench has rightly not interfered with the orders passed by revenue authorities.
30. We have considered the submissions made at the Bar and gone through the relevant record of the case and impugned judgment dated 06.04.2021
31. From a conjoint reading of the survey records of Samvat 2002 and the land records of Samvat 2011-2012, it clearly emerges that the land comprised in the erstwhile of Khasra No.257, admeasuring 17 bighas, situated in Rohi Khudi, Tehsil Sujangarh, stood recorded as "**Johad Refayaam**", i.e., a public utility water source, as on 15.08.1947. The said entry unmistakably denotes that the land was reserved for public use as a water body. The revenue record further reflects that out of the total area, 16 biswas was recorded as uncultivable land forming part of the pond itself, whereas the remaining 16 bighas and 4 biswas was shown as barren land surrounding the said water body. The classification itself clearly establishes the



existence of a johad over a defined portion of the land, together with its associated area forming part of the water system.

32. The material placed on record further reveals that the husband/father of Performa respondents Nos.3 to 6, in active collusion with officials of the Land Management and Revenue Department, succeeded in getting the land comprised in old Khasra No.257—later renumbered as Khasra Nos.553, 560, 561 and 562—recorded in his name, despite the land being recorded as a public water source. As per area calculations, the original Khasra No.257 measuring 17 bighas was subsequently split into the aforesaid new khasra numbers, including Khasra No.560, which represented the johad portion.

33. It is further borne out from the record that the husband/father of respondents Nos.3 to 6 executed a sale deed dated 14.06.1976 in favour of appellant-petitioner - Baluram, transferring 16 bighas and 5 biswas of land out of the said khasra. This transaction was later validated through Mutation entry No.69 dated 12.11.1981. In the subsequent Jamabandi of Samvat 2063, appellant-petitioner came to be recorded as khatedar of the disputed land, and on 07.06.2005, he even mortgaged the said land with the State Bank of Bikaner and Jaipur, Salasar Branch.

34. However, the record unequivocally establishes that from Samvat 2002 till Samvat 2012, the land under the original Khasra No.257 retained its character as public land in the nature of a "**Johad Refayaam**" meant for public use, benefit and welfare. Such land squarely falls within the category of



restricted land under Section 16 of the Rajasthan Tenancy Act, 1955, over which no khatedari or tenancy rights can legally accrue. Despite this statutory embargo, during the settlement operations of Samvat 2028, the Land Management Department, in collusion with the private individuals concerned, illegally recorded the land in the name of Narendra Singh, and thereafter permitted its transfer in favour of appellant-petitioner.

35. The subsequent sale deed dated 14.06.1976 and the mutation sanctioned on 12.12.1981 are thus clearly vitiated, being founded upon an illegal conferment of rights over land which was statutorily protected and incapable of private ownership or transfer. The approval of mutation after a lapse of nearly five years further reflects the casual and unlawful manner in which public land was allowed to pass into private hands.

36. A perusal of the settlement records of Samvat 2002 and Samvat 2011 leaves no manner of doubt that the land was consistently recorded as a **public water body**. The change effected in Samvat 2028, whereby new Khasra Nos.553, 561 and 562 were recorded in the name of Narendra Singh without any lawful basis, was ex facie illegal. Consequently, the subsequent transfer in favour of present appellant - Baluram and the conferment of tenancy rights through Mutation entry No.69 are nullified in the eyes of law, being in direct contravention of Section 16 of the Rajasthan Tenancy Act, 1955.



Meaning and Legal Description of “Gair Mumkin Johad Refayaam”

The expression “Gair Mumkin Johad Refayaam” has a well-defined meaning in revenue jurisprudence and land records:

- a) “Gair Mumkin” denotes land which is non-cultivable and incapable of agricultural use.
- b) “Johad” refers to a pond or water reservoir, including its bed, embankments and functional area.
- c) “Refayaam” signifies land meant for public use, welfare and common benefit of the village community.

Thus, “Gair Mumkin Johad Refayaam” refers to land recorded as a non-cultivable public water body, including its catchment and appurtenant area, reserved exclusively for public purposes such as water conservation, drinking water and ecological balance and to conserve the fauna and flora of the area concerned. Such land Vests in the State for public use, is protected under Section 16 of the Rajasthan Tenancy Act, 1955, cannot be allotted, regularized, sold or transferred in favour of any private individual, and cannot legally confer khatedari or tenancy rights under any circumstance. Any entry, allotment or transfer made in derogation of this classification is *void-ab-initio* and liable to be cancelled, with restoration of the land to its original public character.

37. Upon a careful reappraisal of the material available on record, this Court holds that the land comprised in erstwhile Khasra No.257, admeasuring 17 bighas, situated at Village Khudi, Tehsil Sujangarh, District Churu, was recorded in the settlement



records of Samvat 2002 and Samvat 2011 as "Johad Refayaam", being a public water body meant for common use and welfare of the villagers. This Court further holds that such land falls within the category of "Gair Mumkin Johad Refayaam", being non-cultivable public utility land, over which no khatedari or tenancy rights could legally accrue in view of the express bar contained in Section 16 of the Rajasthan Tenancy Act, 1955.

38. Having heard learned counsel for the appellants and the respondent - State as well as having perused the findings recorded by the learned Single Judge, this Court finds no infirmity, illegality or perversity in the impugned order dated 06.04.2021 passed by the learned Single Judge affirming the orders passed by the learned Revenue Authorities. The land in question having been conclusively found to be Johad Refayaam, which is a prohibited, and common land, no right, title or interest could accrue in favour of the appellant-petitioner merely on the basis of erroneous revenue entries made in favour of his predecessor-in-title or in his favour or passage of time. Such land is not amenable to allotment, and the bar of limitation cannot operate against protection of a valuable natural resource in light of a conjoint reading of the precedent law laid down in **Jagpal Singh & Ors.** (supra), **Abdul Rahman** (supra), **Suo Moto Vs. State of Rajasthan** (supra), **Gulab Kothari** (supra) and **Kanti Lal** (supra).
39. The learned Single Judge has rightly applied the binding precedents governing the field, and the judgments relied upon



by the appellants do not advance their case. Hence, no interference is warranted in the present appeal.

40. Consequently, the Special Appeal is dismissed. All pending applications, if any, also stand dismissed.

(CHANDRA SHEKHAR SHARMA),J (VINIT KUMAR MATHUR),J

Kartik Dave/C.P. Goyal/-