

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

D.B. Spl. Appl. Writ No. 361/2022

Rajasthan Housing Board, Through Dy. Housing Commissioner
And Resident Engineer, Rajasthan Housing Board, Jodhpur.

----Appellant

Versus

1. Hema Ram S/o Tulsi Ram, By Caste Mali, R/o Kheme Ka Kua, Jodhpur.
2. State Of Rajasthan, Through The Tehsildar, Jodhpur.

----Respondents

Connected With

D.B. Spl. Appl. Writ No. 426/2022

Rajasthan Housing Board, Through Dy. Housing Commissioner
And Resident Engineer, Rajasthan Housing Board, Jodhpur.

----Appellant

Versus

1. Legal Representatives Of Deceased Plaintiff Mani Ram, Through
2. Gensha Ram S/o Mani Ram, (Name Deleted)
3. Legal Representatives Of Deceased Roopa Devi, Through
4. Smt. Radha Devi D/o Roopa Devi, W/o Chhotuji, Resident Of Village Chokha Tehsil And District Jodhpur.
5. Smt. Bichhu Devi D/o Roopa Devi, W/o Aaidan, Resident Of Village Chokha Tehsil And District Jodhpur.
6. Smt. Devi D/o Roopa Devi, W/o Premji, Resident Of Village Chokha Tehsil And District Jodhpur.
7. Smt. Chukia Devi D/o Roopa Devi, W/o Kishanji, Resident Of Village Chokha Tehsil And District Jodhpur.
8. Smt. Babu Devi D/o Roopa Devi, W/o Ganga Ramji, Resident Of Village Golasani Tehsil And District Jodhpur.
9. (Name Of Respondent No. 1/2/1 To 1/2/5 Substituted By) 1/2/1. Sohan Lal S/o Ganesh Ram, By Caste Mali Resident Of Khema Ka Kua, Jodhpur.
10. 1/2/2. Sher Singh S/o Ganesh Ram, By Caste Mali Resident Of Khema Ka Kua, Jodhpur.
11. Kishan Lal S/o Ganesh Ram, By Caste Mali Resident Of Khema Ka Kua, Tehsil And District Jodhpur.
12. Babu Lal S/o Bhanwar Lal, By Caste Mali Resident Of Khema Ka Kua, Tehsil And District Jodhpur.
13. Chhotu Ram S/o Pokar Ram, By Caste Mali Resident Of Khema Ka Kua, Tehsil And District Jodhpur.
14. Moola Ram S/o Kishna Ram, By Caste Jat Resident Of Masuria.
15. Panna Lal S/o Ratan Lal, By Caste Brahmin Resident Of

Kheme Ka Kua, Jodhpur.

16. Ganesha Ram S/o Mani Ram, By Caste Mali, Resident Of Kheme Ka Kua, Jodhpur.

17. State Of Rajasthan, Through The Tehsildar, Jodhpur.

----Respondents

For Appellant(s) : Mr. Manish Shishodia, Sr. Advocate with Mr. Jaideep Singh Saluja

For Respondent(s) : Mr. J.L. Purohit, Sr. Advocate with Mr. Shashank Joshi, Mr. Sourabh Kant Vyas and Mr. Lalit Parihar

HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL
HON'BLE MR. JUSTICE DINESH MEHTA

Order

08/12/2022

Heard Mr. Manish Shishodia, learned senior counsel appearing for the appellant and Mr. J.L. Purohit, learned senior counsel appearing for respondent.

These special appeals have been preferred against the judgment and order dated 11th March 2022 passed by the learned Single Judge. Though the controversy before the learned Single Judge was with regard to the correctness of the judgments and orders of the three Courts below including that of Board of Revenue and as such, was a petition under Article 227 of the Constitution of India but the learned Single Judge went a step ahead in deciding the petition and declared that the land acquisition proceedings have lapsed by virtue of Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act'), as the physical possession of the land had not been taken.

The submission of learned counsel for the appellant is that the above declaration made by the learned Single Judge is in exercise of power under Article 226 of the Constitution of India and therefore, the appellant has a right to maintain these appeals.

In addition to this, the further submission is that the learned Single Judge has manifestly erred in law in making a distinction between the symbolic and physical possession whereas, the Act makes no such distinction and that taking of possession by executing a *Panchnama* is sufficient for vesting the land in the State.

Since in one of the identical matters a special appeal has already been allowed and the decision thereof has already been affirmed inasmuch as the SLP against it has been dismissed on 28.01.2019, we are inclined to entertain these appeals.

Learned counsel for the respondents may seek necessary instructions in the matter and file response, if so desires.

Mr. Pankaj Sharma, learned Additional Advocate General is directed to appear on behalf of the State. A copy of memo of appeal be supplied to him. He may seek necessary instructions and file response, if he so desires.

List these appeals in the first week of February, 2023.

Until further orders of this Court, the parties are directed to maintain the *status quo* with regard to the nature and possession of the land in dispute.

(DINESH MEHTA),J

(PANKAJ MITHAL),CJ