

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Reference No. 2581/2012/TA/Barmer :**

State of Rajasthan, through Tehsildar Gudamalani District Barmer.  
... Petitioner.

**Versus**

Navaram S/o Shri Devaram, by caste Kalbi, R/o Village Bhakarpura,  
Tehsil Gudamalani District Barmer.  
... Non-Petitioner.

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**S.B.**

Dr. Rakesh Kumar Sharma, Member

**Present :**

Shri Rajendra Prasad Meena : Dy.Govt.Advocate for the State.

None present : on behalf of non-petitioner.

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Dated : 14.9.2023

**J U D G M E N T**

This reference has been made to the Board of Revenue by District Collector, Barmer under sections 82 and 9 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act') by his order dated 01.02.2012.

2. Brief facts of the case are that the land bearing Arajki khasra No. 209 area 803 bigha 3 biswa situated in Village Sindhawsa Chauhan Tehsil Gudamalani District Barmer was entered and recorded as 'Gair Mumkin Nadi' in revenue records. By lapse of time, part of this land i.e. khasra no. 209/6 area 30 bigha was allotted to non-petitioner Navaram S/o Shri Devaram vide order dated 01.6.1968 and mutation 54 dated 12.5.1970 was effected thereto. Thereafter, khatedari mutation 169 dated 17.9.1976 was opened in favour of the non-petitioner thereupon changing the nature of the land as 'Barani-2'.

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Accordingly, the name of non-petitioner was entered as khatedar in Jamabandi of Samvat 2064 to 2067. Considering this entry of land in the name of non-petitioner as illegal being violative of section 16 of Rajasthan Tenancy Act, 1955, the present reference has been made by the District Collector, Barmer after affording an opportunity of hearing to the non-petitioner to enter the said land again as 'Gair Mumkin Nadi' in the records.

3. I have heard the arguments of learned Dy.Govt.Advocate and perused the record.

4. Besides reiterating the facts mentioned in the reference application, the learned Dy.Govt.Advocate has submitted that in the case of 'Abdul Rahman Vs. State of Rajasthan' in D.B. Civil Writ Petition No.1536/2003 pronounced on 02.8.2004, Hon'ble Rajasthan High Court also has directed to restore the position of land relating to nadi, nala & water bodies as exists on 15<sup>th</sup> August, 1947. As per section 16 of Rajasthan Tenancy Act, 1955 khatedari on such land cannot be given and as per section 4(1) of Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 such land can't be allotted. Therefore, the reference be allowed and revenue records be corrected accordingly.

5. I have given my thoughtful consideration to the contentions made by learned Dy.Govt.Advocate and scanned the matter carefully.

6. From perusal of the record, it appears that the land bearing Araji khasra No. 209 area 803 bigha 3 biswa situated in Village Sindhawsa Chauhan Tehsil Gudamalani District Barmer was entered and recorded as 'Gair Mumkin Nadi' in revenue records. By efflux of time, as per Jamabandi of Samvat 2064 to 2067, part of this land bearing khasra no. 209/6 area 30 bigha has been recorded in the name of non-petitioner as khatedar and relevant mutations no. 54 and 169 were opened. As per section 16 of the Rajasthan Tenancy Act, 1955, khatedari rights shall not accrue on the land in the bed of river or tank or land which is necessary for flow of water or land held for a public

purpose and as per section 4(1) of Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 such land can't be allotted.

7. Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No.1536/2003 'Abdul Rahman Vs. State of Rajasthan' also has directed that all the lands shown as drainage channels like nala, river, tributaries etc. as on 15<sup>th</sup> August, 1947 should be declared as Govt. land and any conversions made after 15.8.1947 should be declared illegal. In the present case also, as per revenue records, the disputed land was shown as drainage channel like gair mumkin nadi; thereafter Jamabandi of Samvat 2064 to 2067 reveals that khatedari rights of the disputed land were given to non-petitioner without any justification & ignoring the provisions of section 16 of the Act. In compliance of the judgment dated 02.8.2004 passed by the Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No.1536/2003 'Abdul Rahman Vs. State of Rajasthan', public drainage, catchment areas have to be kept free from encroachment to save water reservoirs. Even the Rajasthan Tenancy Act of 1955 does not permit acquiring private rights over nadi, nala and water bodies. Therefore, in this state of facts and settled legal position, the reference made by District Collector, Barmer deserves to be accepted.

8. Consequently, the reference is accepted and the disputed land bearing present khasra no. 209/6 area 30 bigha is ordered to be restored as 'Sewai Chak' land classified as 'Gair Mumkin Nadi' with deletion of the name of non-petitioner as khatedar from the revenue records. The mutation no. 54 dated 12.5.1970 and mutation 169 dated 17.9.1976 made in favour of non-petitioner are hereby cancelled. The reference is disposed of accordingly.

Pronounced in open court.

**(Dr. Rakesh Kumar Sharma)**  
Member

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