

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

In the matter of :-

APPEAL DECREE/TA/11052/2002/CHITTORGARH :

Meera Mandir Samiti Chittorgarh through Mohan Singh s/o Lal Singh Shaktawat Mantri Meera Mandir Samiti Chittorgarh at present resident of Lal Bhawan Sardarpura, Udaipur.

... Appellant.

Versus

1. State of Rajasthan through District Collector, Chittorgarh.
2. State of Rajasthan through Tehsildar, Chittorgarh.

.....Respondents.

L.B.

Shri Mukesh Kumar Sharma, Chairman

Shri Modu Dan Detha, Member

Shri Rajinder Kumar, Member

Argued by :

Shri P. S. Dashora , counsel for the Appellant.

Shri P. S. Naruka, Deputy Govt. Advocate for the Respondents.

Shri Hemant Sogani , Advocate

Shri R.P. Sharma, Advocate

Shri J.P. Mathur, Advocate

Shri R.P. Sharma, Advocate

} Amicus Curiae

J U D G M E N T

Dated:

Per Shri Rajinder Kumar, Member

1. A Division Bench of this Board in the instant matter has referred following five questions for determination by the Larger Bench :-

(1) What are the rights of inheritance, gift, transfer of a Khadamdar tenant in the *Kanoon Mal Mewar*?

- (2) What are the rights of Temple (Muafi) lands with Khadamdar under Rajasthan Tenancy Act 1955?
- (3) Does the gift by a Khadamdar tenant in a Muafi land accrue any rights on the person receiving the gift?
- (4) Is there any inconsistency between transfer/gift rights of Khadamdar tenants and Section 46 Rajasthan Tenancy Act?
- (5) Which of the 2 citations 1985 RRD 298 or 2013 RRD 756 will be applicable to khadamdar tenants and inter alia to the Meera Mandir Samiti/*Shri Murlidhar Ji Sthan Deh*?

2. A brief resume of the facts may first be noticed. The plaintiff/appellant, a registered Society, filed a suit under Sections 88 and 188 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') in the court of learned Sub-Divisional Officer, Chittorgarh in respect of the lands bearing new khasra no. 3177 (0.16 hectare) and khasra no. 3178 (0.16 hectare) situated in Chittorgarh. As per the plaint averments, the plaintiff/appellant Society is occupying the suit lands as khatedar tenant, which have now been entered in the revenue record in the name of *Shri Murlidhar Ji Sthan Deh* vide mutation no. 309 and 310 by deleting the entry of the name of 'Khadamdar Meera Mandir Samiti, Chittorgarh Mantri Shri Lal Singh Shaktawat' without affording an opportunity of hearing to the plaintiff/appellant Society. The deletion of the name of the plaintiff/ appellant Society in the revenue record is absolutely arbitrary and against the interest of the plaintiff/appellant Society. It was also averred in the plaint that the entry which was required to be deleted was *Shri Murlidhar Ji Sthan Deh* because as per the existing revenue laws, the khadamdars have attained the status of khatedars. As a matter of fact, a prayer was made to pass a decree declaring the plaintiff/ appellant society as the khatedar of the disputed lands with consequential prayer of permanent injunction restraining the defendants/respondents from interfering into the peaceful possession of the plaintiff/appellant Society over the suit lands. The defendants/respondents initially appeared through their counsel. However, on the subsequent dates, none appeared on their behalf and thus, *exparte* evidence of the plaintiff/appellant Society was recorded by

the trial court. After hearing the arguments, the learned trial court dismissed the suit vide judgment and decree dated 24.09.2001. Assailing the said judgment and decree, the plaintiff/appellant Society unsuccessfully filed first appeal in the court of learned Revenue Appellate Authority, Chittorgarh. Hence, the second appeal was filed in this Board. The Division Bench of this Board after hearing the parties referred the aforesaid five questions to the Larger Bench vide order dated 26.06.2018.

3. We have heard the learned counsels for the parties and the learned *amicus curiae* in detail. Written submissions were also filed by learned counsel for the plaintiff/ appellant Society. In order to appreciate the arguments advanced before us, it would be fruitful to mention here the old khasra numbers of disputed lands alongwith their measurements :-

Old Khasra Number	Area	Old Khasra Number	Area
998	1 Bigha 16 Biswa	1000	11 Biswa
999	2 Bigha 5 Biswa	1001	8 Biswa
1004	4 Biswa	1002	5 Biswa
1005	1 Bigha 15 Biswa	1003	4 Biswa
Total Land	7 Bigha 8 Biswa		

- 4(i). The learned counsel for the plaintiff/appellant Society submitted that in the Jamabandi of the Samvat 2009-2012 pertaining to the period prior to the commencement of the Act of 1955, the disputed lands were recorded in the Revenue Record in the name of *Shri Murlidhar Ji Sthan Deh* Khadamdar Shri Sangram Singh s/o Shri Chatar Singh Mehta Mahajan r/o Udaipur. Thereafter, in the year 1963, the Muafi lands of the Mandirs were resumed and in the Jamabandi of the Samvat 2017 to 2020, the name of *Shri Murlidhar Ji Sthan Deh* was recorded in column no. 4 and the name of Khadamdar Sangram Singh was recorded in column no. 5. These entries were repeated in the Jamabandis of the Samvat 2021 to 2024 and 2025 to 2026. After the death of Sangram Singh, a mutation of his lands was sanctioned in the name of his son Bhupinder Singh. On 24.06.1968, the Khadamdar Bhupinder Singh transferred his

Khadamdari rights over the suit lands bearing khasra no. 1000 to 1003 (1 bigha 8 biswa) in favor of the plaintiff/appellant Society vide registered gift deed. A mutation of this alienation was sanctioned in the name of the plaintiff/appellant Society through its Mantri Lal Singh Shaktawat. This mutation also found place in the Jamabandi of the Samvat 2029-2032. In the subsequent Jamabandi of the Samvat 2032 to 2035, the name of 'Khadamdar Meera Mandir Society through Mantri Lal Singh Shaktawat', is recorded followed by the name of *Shri Murlidhar Ji Sthan Deh*. In the 'Parcha Khatoni' issued by the Settlement Department in the Samvat 2036, this entry was repeated.

4(ii). Learned counsel also canvassed that in the year 1964, the lands bearing khasra no. 998, 999, 1004 and 1005 (measuring 6 bigha) were sold by Khadamdar Sangram Singh to Lal Singh s/o Mukund Singh Shaktawat r/o Udaipur by way of the registered sale deed and mutation no. 471 dated 27.01.1968 was sanctioned in his name. The District Collector, Chittorgarh made a 'reference' of the said transaction to the Revenue Board with a prayer to cancel the above mutation. This 'reference' was accepted by the Revenue Board vide *exparte* judgment dated 24.03.1990. After the death of the vendee Lal Singh Shaktawat, the Revenue Board's judgment dated 24.03.1990 was challenged by his son Devendra Singh by filing Special Appeal no. 1/90 in this Board. The said appeal was accepted by the Board on 4.02.1992 on the ground that Sangram Singh was the Khadamdar and not the deity. This judgment of the Revenue Board was maintained by the Hon'ble Rajasthan High Court in writ petition no. 337/2005. Learned counsel further argued after the sale of the aforesaid 6 bigha land by Shri Lal Singh Shaktawat to various persons, the said land was converted by the competent authority into non-agricultural purposes. Thereafter, the District Collector, Chittorgarh cancelled the conversion order upon receipt of a complaint from Mewari Panchayat. The aforesaid order passed by the District Collector on 28.08.2003 was challenged by the vendees by filing appeal in the court of the learned Additional Divisional Commissioner, Udaipur whereupon the order of the District Collector was set aside on 28.08.2003. A second appeal filed at the instance of the State Government was dismissed by

the Revenue Board vide judgment dated 17.04.2006. Thereafter, the State Government unsuccessfully challenged the Revenue Board's Judgment by filing writ Petition in the Hon'ble Rajasthan High Court. As a matter of fact, the lands in dispute were considered to be the lands of Khadamdar Sangram Singh in his individual capacity. However, on the basis of the State Government circular dated 13.12.1991, the name of Khadamdar was deleted in mutations no. 309 and 310 and in its place, the name of *Shri Murlidhar Ji Sthan Deh* was inserted.

4(iii). Further elaborating his arguments, the learned counsel argued that two contradictory judgments cannot be passed in respect of the same land. Therefore, the questions referred before the Larger Bench do not need any fresh consideration. Besides it, the learned counsel submitted that so far as question no. (1) is concerned, a 'Bapidar' or 'Khadamdar' has been kept in the definition of the 'tenant' under Section 37 of the *Kanoon Mal Mewar*. Likewise, the rights of a Khadamdar have been mentioned under Section 38 of the said Kanoon. As such, the lands held by Khadamdar are transferable and heritable, meaning thereby, the khadamdar could alienate the same by gift deed also. Regarding question no.(2), the learned counsel submitted that the Jagir Resumption Act, 1952 came into force on 18.02.1952 and under Section 9 of this Act, a Khadamdar has been treated as khatedar. In this way, Khadamdars became the khatedars by virtue of Section 15 of the Rajasthan Tenancy Act, 1955.

4(iv). As regards question no. (3), the learned counsel submitted that 'Khadamdari' was given by the State Government in respect of the Muafi lands as per the provisions of the *Kanoon Mal Mewar*. Therefore, the donor in the present case was entitled to gift the disputed lands in the capacity of khatedar-tenant. This gift was a gift of the khatedari rights because in the meantime the Jagirdari Resumption Act, 1952 had come into force according to which khadamdar was entitled to get khatedari rights. After the enforcement of the Rajasthan Tenancy Act, 1955 also, such cultivators were included in the definition of the 'tenant'. As regards the question no. (4), the learned counsel submitted that there was no concept of 'minority' in the Jagir Act, even in case of the Murti

Mandir also. This fact stands fortified by Hidayat Tasdik and thus, the Meera Mandir had become khatedar of the disputed lands by virtue of the gift deed. Therefore, the provisions of section 46 of the Rajasthan Tenancy Act, 1955 are not applicable to the present case. As regards the question no. (5), the learned counsel submitted that the cases relied upon by the Division Bench of this Board in 2013 RRD 756 'State of Rajasthan Vs Bheru Das & ors' are not applicable in this case. Learned counsel also argued that as per the provisions contained in the Jagir Resumption Act, 1952, the Muafi and 'Doli' have also been treated as Jagirs and under Section 22 of the said Act, all the Muafi lands have been resumed. His further argument was that in the record of rights, the disputed lands are not recorded as khudkasht, hence, the khatedari rights did not accrue in favor of *Shri Murlidhar Ji Sthan Deh*. Therefore, a prayer was made to answer all these five questions in favor of the plaintiff/ appellant Society accordingly.

4(v). In support of his submissions, the learned counsel relied upon the following citations:-

i). 2017(2) RLW (Rev.) 798 (HC) 'Bhuria Vs. Board of Revenue' :-

In that case, it was held that after resumption of khatedari of the deity, the petitioners, who were cultivating the lands in dispute, acquired khatedari rights.

ii). 1976 RRD 381 'Mst. Chandra Kanwar Vs Uda':-

In that case, it was held by the Hon'ble Rajasthan High Court that Khadamdars became khatedar tenants of the lands upon the commencement of the Act of 1955.

iii). 1984 RRD 940 'Durga Lal Vs Shanker Lal':-

In that case, it was held by the Revenue Board that after the resumption of Muafi, deity cannot get khatedari rights under Sections 10 or 13 of the Act of 1955 because the lands were not cultivated by the deity through its shebait and no suit lands were its khudkasht. It was further held that on resumption, all rights, title and interest of deity stood resumed to the State Government in terms of section 22 of the Act.

iv). 1985 RRD 298 'State Vs Harak Lal':-

In that case, it was held by the Revenue Board that after resumption of Muafi of idol, the State Government became the land holder and the persons entered as tenant in the revenue record became the khatedar tenant of the lands.

v). 1987 RRD 261 'Shri Shiv Ram Vs Shri Mishri':-

In that case, it was held by the Revenue Board that a person who immediately preceding the commencement of the Jagir Act was validly entered in the revenue record as a khatedar pattedar, khadamdar or under any other description would imply that he is a tenant having heritable and full transferable rights in tenancy of Muafi lands of Hindu idol or deity.

vi). 1994 (1) RBJ 77 'State Vs Ram Kunwar':-

In that case, the land was entered in the Muafi of Mandir when the Rajasthan Tenancy Act, 1955 came into force but it was entered in the khatedari of other persons. In such circumstances, it was held by the Revenue Board that the khatedari will not accrue to the Mandir.

vii). 1995 RRD 191 'Mandir Shri Raghunath Vs Shiv Lal & ors':-

In that case, it was held by the Revenue Board that alienation of temple lands by khadamdar poojari is not illegal. Consequently, the 'reference' submitted by the State Government was rejected.

viii). 1996 RRD 535 'Deepa Vs State of Rajasthan & ors':-

In that case, it was held by the Hon'ble Supreme Court that if a person becomes a khatedar tenant, then by virtue of section 9 of the Jagir Act, his right becomes heritable and fully transferable.

ix). 2000 RRD 570 'Shri Lakad Shyam Ji Murti Vs Lrs of Totaram' :-

In that case, the disputed land was muafi land of the temple cultivated by the plaintiffs/respondents as pujari khadamdar equivalent to khatedar tenant as per section 38 of the *Kanoon Mal Mewar*. In such circumstances it was held by the Revenue Board that the plaintiffs/respondents have acquired heritable and transferable rights.

x). 2015 (22) RBJ 486 'Tara & ors Vs State of Rajasthan & ors':-

In that case, it was held by the Hon'ble High Court that the land held in Jagir by Hindu idol (deity) as Dolidar or Muafidar

cultivated by a person other than the Shebait/Pujari of the deity personally or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, shall vest in the State, after the Jagirs Act of 1952. The Hindu idol (deity), even if it is treated to be a perpetual minor, could not continue to hold such land. Such land cannot be treated to be in its personal cultivation. A tenant of such land cultivating the land acquired the rights of khatedar of the State. Such land under the tenancy of a person other than Shebait/Purjari of Hindu Idol (deity) became khatedari land of such tenant. The name of Hindu Idol (deity) from such land had to be expunged from the revenue records with Shebait/Pujuri having no right to claim the land as Khatedar. Consequently, they had no right to transfer such lands, and all such transfers have to be treated as null and void, in contravention of the Jagirs Act 1952, and the land under such transfers to be resumed by the State.

xi). 2016 (23) RBJ 292 'Shivnath Vs State of Rajasthan':-

In that case, it was held by the Revenue Board that whatever rights were available to the tenant under *Kanoon Mal Mewar* cannot be denied after coming into force of the Rajasthan Tenancy Act, 1955.

4(vi). The learned counsel also relied upon a circular dated 24.05.2001 issued by the State Government wherein it has been stated that the lands entered in the name of Patedars, khadamdars and such like names at the commencement of the Rajasthan Land Reforms and Jagir Resumption Act, 1952 would continue to be held by them as their khatedars. He further submitted that a letter was also issued by the Revenue Board on 6.10.2010 directing the subordinate courts to decide the cases strictly in terms of the aforesaid circular of the State Government.

5. Learned *amicus curiae* S/Sh. Hemant Sogani and J.P. Mathur supported the arguments of Shri P.S. Dashora, Advocate.

6(i). Learned Deputy Government Advocate vehemently opposed the above submissions. According to him, the judgments of this Board treating

Sangram Singh as khadamdar were rendered in summary proceedings and thus the same do not carry binding force. He also argued that the disputed lands belong to the Murti Mandir, which has not been arraigned as party defendant to the suit. It was one of the main reasons which persuaded the courts below to dismiss the suit of the plaintiff/appellant Society.

6(ii). Learned Deputy Government Advocate also submitted that there is a variance between the pleading and the proof of the plaintiff/ appellant Society. In the plaint, it has not been explained as to how the plaintiff/ appellant Society came to hold the disputed lands. In his oath statement, Mohan Singh Shaktawat PW-1 has stated that the disputed lands were purchased by the plaintiff/ appellant Society from the deceased Sangarm Singh whereas the photo copy of document Ex.-1 reveals that the same is a gift deed. In this way, there is a material contradiction in the verbal and documentary evidence of the plaintiff/ appellant Society. In addition to it, the donor was not competent to make a gift of the disputed lands. The original gift deed has also not seen light of the day and only a photo copy of the said document was got exhibited by the plaintiff/ appellant Society. None of the witnesses to the deed were also examined by the plaintiff/ appellant Society. There is no evidence to prove that the disputed lands were donated by the donor and the same were accepted by the donee. In the absence of such an evidence, a gift deed cannot be said to have been proved by its beneficiary.

6(iii). Learned Deputy Government Advocate further submitted that the deceased Sangram Singh was not the landholder at the relevant time. The name of *Shri Murlidhar Ji Sthan Deh* is entered in columns no. 4 and 5 of the Jamabandis of the Samvat 2009-2012 and 2013-2016 as landholder and the name of Sangram Singh as khadamdar has been recorded in the capacity of manager of the deity only. He further submitted that in the Jamabandi of Samvat 2017-2020, the disputed lands have been referred to be the Muafi lands of *Shri Murlidhar Ji Sthan Deh*. Therefore, the plaintiff/ appellant Society, which has stepped into the shoes of the son of Sangram Singh, cannot claim khatedari rights

over the disputed lands in view of the protection provided to the idols by virtue of Section 46 of the Rajasthan Tenancy Act, 1955. He further submitted that the Pujaris or Managers cannot claim khatedari rights on the lands belonging to the Murti Mandir even on Muafi lands. By placing reliance on Section 4 of the *Kavaayad Muafi Riyasat Mewar*, he further argued that the disputed lands were the Devsthan Muafi Lands and thus, the same cannot be treated as the personal lands of Sangram Singh. Rather he was only a Manager of the disputed lands. Further elaborating his arguments, the learned Deputy Government Advocate also laid emphasis on the fact that in view of the provisions of Section 51 of the *Kavaayad Muafi Riyasat Mewar*, the concept of minority was in existence at the relevant time also and the same is applicable to the lands of *Shri Murlidhar Ji Sthan Deh*. He also drew our attention towards the provisions contained in Sections 7, 15, 22, 23 and 35 of the *Kavaayad Muafi Riyasat Mewar* and submitted that the lands of the deity cannot be misappropriated by its Manager.

6(iv). The learned Deputy Government Advocate also argued that in all the citations submitted on behalf of the plaintiff/appellant Society, the provisions of the *Kavaayad Muafi Riyasat Mewar* were not discussed and it was for the first time in the case of 'Bheru Das & ors.', the said provisions were considered and interpreted by the Revenue Board. The learned Deputy Government Advocate also submitted that an application was filed by him before this Larger Bench to frame an additional question regarding the applicability of the provisions of *Kavaayad Muafi Riyasat Mewar* to the facts of the present case but this Larger Bench did not find it appropriate to frame any additional question in that behalf by observing that all the relevant laws including the *Kavaayad Muafi Riyasat Mewar* will be considered at the time of final arguments. A prayer was made by him to answer all the five questions in favour of *Shri Murlidhar Ji Sthan Deh*.

6(v). Shri Rajendra Prasad Sharma, learned *amicus curiae* supported the arguments advanced by learned Deputy Government Advocate.

7(i). In rebuttal, the learned counsel for the plaintiff/appellant Society submitted that the provisions of the *Kavaayad Muafi Riyasat Mewar* are not attracted in this case. On the contrary, it stands established from the previous judgments of the Revenue Board and the Hon'ble High Court that Sangram Singh was the Khadamdar of the disputed lands in his individual capacity and not as a Manager or Pujari or Shebait of the deity, therefore, the same matter cannot be reopened by this Larger Bench in these subsequent proceedings. In support of these contentions, learned counsel relied upon the following citations:-

i). 1996 (2) SCC 34 'The State Of Maharashtra & Anr vs Shri Prabhakar Bhikaji Ingle':-

In that case, it was held by the Hon'ble Supreme Court that once the order passed by a tribunal is confirmed by the Supreme Court, the tribunal cannot review the original order.

ii). AIR 1999 SC 1486 'Abbai Maligai Partnership Firm vs K. Santhakumaran And Ors':-

In that case, it was held by the Hon'ble Supreme Court that the High Court has no power to review the same order which was the subject matter of challenge in the Special Leave Petition.

iii). 1974 RLW 599 (RB) 'Sadhu Nath Vs Sultan Nath':-

In that case, it was held that Revenue Board has no jurisdiction to review the order after dismissal of the Writ Petition by the High Court.

7(ii). He further argued that the case in hand is covered by the ratio laid down by the Division Bench of this Board reported in 2000 RRD 570 'Shri Ladak Shyam Ji Murti Vs. LRs of Tolaram and another.' If another Division Bench of this Board in Bheru Das case was of contrary view, then it ought to have referred the matter to a Larger Bench instead of giving any different findings on the same legal issue. Therefore, the learned counsel submitted that the judgment in Bheru Das case is *per incuriam*. In support of this argument, he relied upon AIR 2012 SC 1485 'Rattiram Vs State.' In that case, it was held that a later decision referred in ignorance of earlier binding decision is *per incuriam* and can be ignored.

8. We have given our thoughtful consideration to the rival submissions and perused the records carefully.

9. Our conclusions are as under:-

Questions No. (1) and (5) :

10. Both these questions are related to each other, therefore, to avoid the repetition of our findings, the same are being taken up together.

11. The erstwhile State of Rajasthan was a Union composed of several Princely States of Rajputana. Later on, these Princely States integrated into the State of Rajasthan. Initially, an Ordinance viz. the Rajasthan Protection of Tenants Ordinance, 1949 was promulgated by the State Government for the purpose of unification of revenue laws. Thereafter, a number of Land Reform Acts were passed by the State Legislature for the purpose of consolidating and amending the previous laws. At present, the land holdings in the State of Rajasthan are mainly governed by the following enactments :-

i). The Rajasthan Land Reforms and Resumption of Jagirs Act, 1952.

ii). The Rajasthan Tenancy Act, 1955.

iii). The Rajasthan Land Revenue Act, 1956.

iv). The Rajasthan Zamindar and Biswedari Abolition Act, 1959.

Prior to the commencement of the aforesaid enactments, the agricultural holdings were governed by the Tenancy Laws of their respective States. Likewise, the disputed lands situated in the Mewar State were governed by the *Kanoon Mewar Mal* and the *Kavaayad Muafi Riyasat Mewar*. Therefore, the relevant provisions of both these laws of the Princely State of Mewar will be taken into account to determine the questions posed before us.

12. There is no denying the fact that the provisions of the *Kavaayad Muafi Riyasat Mewar* pertaining to the rights of the Khadamdars were not considered in any of the citations submitted on behalf of the plaintiff/appellant Society and it was for the first time that the said provisions

came to be interpreted by the Revenue Board in the case of Bheru Das & ors (supra).

13. Since the present controversy revolves around the rights of the Khadamdar over the lands in dispute, therefore, before we proceed further, it would be beneficial to know the meaning of the word 'Khadamdar' with respect to the agricultural holdings. After interpreting the provisions contained in Section 4, 7, 13, 15, 22, 23, 35, 42 and 53 of the *Kavaayad Muafi Riyasat Mewar*, Sections 7, 37, 38 and 52 of the *Kanoon Mal Mewar*, Sections 9 and 10 of the Rajasthan Jagir Resumption Act, 1952 and Section 15 of the Rajasthan Tenancy Act, 1955, the Division Bench in Bheru Das & ors observed that in general parlance, 'Khadamdar' is a person who cultivates the land of his own or of any other person. Khadamdar is not a Shebait or Pujari of a deity or Mandir Murti. He is simply a person, who cultivates the land and it does not necessarily mean that the Khadamdar is the owner or the tenant of the land belonging to the deity or Mandir Muafi. Further elaborating this concept, the learned Division Bench also observed that Khadamdars have heritable and full transferable rights of the Khadams issued in their name by a competent land revenue officer of Mewar Government after depositing the Nazrana or ordinary lands belonging to individuals. It was further observed that a Khadamdar has no right of inheritance and transfer of lands belonging to the deity or Mandir Murti, which is a perpetual minor and disabled person.
14. It follows from the above that the Khadamdars are of two kinds viz. the Khadamdars who hold the lands in their individual capacity and the Khadamdars managing the affairs of the lands of the deity. Therefore, the fact whether Samgram Singh was holding the disputed lands in his individual capacity or as manager of *Shri Murlidhar Ji Sthan Deh* would largely depend upon appreciation of the material placed on record.
15. The plaintiff/ appellant Society in the instant case has sought the khatedari rights over the lands recorded in the name of *Shri Murlidhar Ji Sthan Deh*. A prayer was, thus, made in the plaint to replace the entry

standing in the name of the said idol in the revenue record with the name of the plaintiff/ appellant Society in the capacity of Khadamdar.

16. It is not the case of the plaintiff/ appellant Society that *Shri Murlidhar Ji Sthan Deh* has no existence in Chittorgarh, where the disputed lands are situated. In the Jamabandis of the period prior to the commencement of the Act of 1955 and of the period subsequent thereto, the name of *Shri Murlidhar Ji Sthan Deh* is recorded in the columns no. 4 and 5 as the landholder and cultivator. It is also mentioned in the record of rights that the disputed lands are the Muafi lands of *Shri Murlidhar Ji Sthan Deh*. Still, the plaintiff/ appellant Society has neither chosen to implead *Shri Murlidhar Ji Sthan Deh* as party defendant to the suit nor it has produced on record the original gift deed. Yet, its effect cannot be considered by this Larger Bench because there is no motion of the learned Division Bench on these aspects of the case. So we will confine ourselves only to the questions posed before us. It will be for the learned Division Bench to consider the effect of the aforesaid aspects at the time of deciding the main Division Bench Appeal.
17. On behalf of the plaintiff/appellant Society, reliance was placed upon a judgment passed by this Board in Special Appeal No. 1/90 decided on 4.02.1992 wherein it was held that the word 'Khadamdar' mentioned in the Jamabandi refers to 'Sangram Singh' and not the deity. The said Special Appeal had arisen out of the judgment passed by this Board in 'reference proceedings', which are summary in nature. In the other proceeding regarding conversion of the disputed lands, which are also summary in nature, the District Collector, Chittorgarh took a contrary view and observed that Sangram Singh cannot be accepted to be the Khadamdar of the disputed lands. This judgment of the District Collector, Chittorgarh passed on 17.04.2006 was challenged in S.B. Civil Writ Petition No. 4177/2008 wherein the Hon'ble Rajasthan High Court held that the District Collector as a revenue court, subordinate to the Board of revenue could not have acted in derogation of the view taken by the Board of revenue. The Hon'ble Rajasthan High Court further

observed that the decision of Revenue Board remains effective till the same is reversed by the higher court.

18. It is pertinent that the above judgments have been placed on record by the plaintiff/appellant Society for the first time in the second appeal. There is no pleading or the verbal evidence of the plaintiff/appellant Society to the effect that the matter in dispute is covered by the judgments detailed above. In addition to it, the 'reference proceedings' were decided by the Revenue Board, which was not a competent forum to decide the regular suit. Likewise, the conversion proceedings were decided by the District Collector, Chittorgarh, who was also not competent to decide the regular suit. A judgment passed by the previous court comes under the category of res-judicata only when the court which decided the previous suit was competent to decide the subsequent suit also. On this ground, the judgments rendered in previous summary proceedings would not operate as res-judicata between the parties to this suit. In addition to it, the said judgments were rendered in summary proceedings. Thus, the same cannot operate as final and binding on the parties in this subsequent suit. In this regard, reliance is placed on 'Hanuman Prasad Vs Board of Revenue' AIR 1957 Rajasthan 281. In 2011 (1) RRT 174 'Manak Chand and ors Vs Murti Shri Kunj Bihari Maharaj and ors', it was held by the Revenue Board that the Division Bench is not bound by the order passed in reference proceedings, which are only summary in nature.
19. There is no evidence on record from which it can be inferred that a khadam was issued in the name of the deceased Sangram Singh by any competent Revenue Official. Therefore, we have no hesitation to come to the conclusion that Sangram Singh was not holding these lands in his individual capacity and on the contrary, his name as khadamdar of the deity appears in the Revenue record only as a Manager and not more than that.
20. As regards question no. (5), much reliance was placed upon a Single Bench judgment of the Revenue Board passed in Haraklal's case (supra). In that case, an application was submitted by the respondents before the

concerned Tehsildar that the disputed land is the khatedari land of the deity and during the settlement proceedings, the same has been wrongly entered in their name. Therefore, the respondents themselves made a prayer to restore the position and to enter the name of deity in the revenue record. Before the Additional Collector also, they submitted an application seeking the same relief. Pursuant to these applications, a 'reference' was sent by the Additional Collector in the Revenue Board for setting aside the said entry recorded in the name of the respondents during the settlement proceedings and for entering the name of the deity in the record of rights. The 'reference' was opposed by the respondents on various grounds. A Single Member of the Board of Revenue rejected the 'reference' observing, inter-alia, that :

- (i) The applications were submitted by the respondents before the Tehsildar and the Additional Collector in ignorance of the fact that they were entered in the revenue record as khadamdar tenants of the disputed land and after the resumption of muafi of the temple on 1.07.1963, the State Government had become the landholder and the respondents had become the khatedar tenants.
- (ii) The respondents are the members of the Scheduled Caste and they had little knowledge of the law and thus, on the basis of their wrongful admission their khatedari rights could not get extinguished.
- (iii) The land entered in the 'Khadam' of the respondent since Samvat 1995 could not be held to be cultivated personally by the deity.

Apparently, the learned Single Bench had given the aforesaid findings in the peculiar facts and circumstances of that case and that too in reference proceedings, which are summary in nature. In our considered opinion, the facts of the above cited case do not bear resemblance with the fact of the present case.

21. Even otherwise, the judgment passed by the Division Bench in Bheru Das and ors has binding force over the judgment passed by the Single Bench in Harak Lal's Case.
22. On behalf of the plaintiff/ appellant Society, it was submitted that in 'Shri Lakad Shyam Ji Murti', it was held that if the Pujari khadamdars are having inheritable and transferable rights in the muafi lands of the deity, then they can claim khatedari rights over the said lands. The argument of the learned counsel is that if the later Division Bench of the Board deciding the 'Bheru Das & ors' had some contrary views, then it ought to have referred the matter to a Larger Bench and in its absence, the law laid down in the later decision of the Division Bench is *per incuriam*. We have considered this submission and come to the conclusion that the said submission is devoid of any force. Infact, in the case of Shri Lakad Shyam Ji Murti, the provisions of the *Kavaayad Muafi Riyasat Mewar* were not dealt with by the Division Bench. Therefore, the later Division Bench after interpreting all the relevant laws, including the *Kavaayad Muafi Riyasat Mewar* rightly came to the conclusion if khadam is not issued by a competent Revenue Officer, then the khadamdar will have no right of inheritance and transfer the land belonging to the deity or Mandir Murti. This view of the learned Division Bench in Bheru Das & ors (supra) is based on a correct interpretation of the various provisions of both the laws in force at the relevant time in the Mewar State. In this manner, we endorse the findings of the learned Division Bench in Bheru Das & ors (supra).
23. In view of the discussion that precedes, we come to the conclusion that in the instant case, the law laid down in 1985 RRD 298 'State of Rajasthan Vs Harak Lal' is not applicable and the law laid down by the Division Bench of the Board in 2013 RRD 756 'State of Rajasthan Vs Bheru Das & ors' is fully applicable.

Question No. (2) :

24. The legal position in this regard is no more *res integra*, as the same has already been settled by a Larger Bench of the Hon'ble Rajasthan High Court in Tara Vs State of Rajasthan (supra). In view of the said settled position, we hold that a Khadamdar would become khatedar tenant under section 15 of the Act of 1955 only when the disputed lands were under his tenancy prior to the commencement of the Act. A khadamdar of deity would not acquire such a status. Therefore, this question is answered accordingly.
25. Having thus stated the legal proposition, it will be now for the Division Bench to apply the correct law to the facts of the instant case on the basis of evidence produced on record.

Question No. (3) :

26. A Khadamdar could alienate the land by way of gift only if he was holding the same in his individual capacity. The lands belonging to the Muafi of the idol could not be alienated by its Khadamdar because he has no such powers. In such circumstances, no rights would accrue on the person receiving the gift.

Question No. (4) :

27. It is pertinent that Section 46 of the Act of 1955 enumerates nine kinds of disabled persons including the minors, who deserve protection under law. As a matter of fact, no khatedari rights can be acquired in the holdings belonging to the above mentioned disabled persons. The argument raised on behalf of the plaintiff/ appellant Society that there was no concept of minority at the relevant time is liable to be rejected because under both the laws applicable to the State of Mewar, there were provisions which protected the rights of the minor, whether the same were ordinary Muafidars or the deity Muafidars. By relying upon Sections 4, 7, 13, 15, 22, 23, 35, 42 and 53 of the *Kavaayad Muafi Riyasat Mewar* and Sections 37, 38 and 52 of the *Kanoon Mal Mewar*, the learned

Division Bench of this Board in the case of Bheru Das and others (supra) has laid down that the rights of minors, including the idols, have been protected since the time immemorial.

28. In view of the above legal position, this question is answered in terms that a Khadamdar tenant holding lands in individual capacity may alienate the land as per legal provisions, however, khadamdar of the muafi lands of the Murti Mandir/idol has no such rights in view of the provisions contained in Section 46 Rajasthan Tenancy Act, 1955.
29. In view of our aforesaid findings, the five questions referred by the Division Bench are answered in the following terms :-
 - (1) The Khadamdars are of two kinds viz. the Khadamdars who hold the land in their individual capacity and the Khadamdars who manage the affairs of the lands of the deity. The Khadamdars holding the lands in their individual capacity have full rights of inheritance and alienation of the same whereas the Khadamdars of the Hindu idol (deity) do not possess such rights and privileges.
 - (2) The legal position in this regard is no more *res integra*, as the same has already been settled by a Larger Bench of the Hon'ble Rajasthan High Court in Tara Vs State of Rajasthan (supra). In view of the said settled position, we hold that a Khadamdar would become khatedar tenant under section 15 of the Act of 1955 only when the disputed lands were under his tenancy prior to the commencement of the Act. A khadamdar of deity would not acquire such a status.
 - (3) A Khadamdar could alienate the land by way of gift only if he was holding the same in his individual capacity. The lands belonging to the Muafi of the idol could not be alienated by its Khadamdar because he has no such powers. In such circumstances, no rights would accrue on the person receiving the gift.
 - (4) A Khadamdar tenant holding lands in individual capacity may alienate the land as per legal provisions, however, khadamdar of the muafi lands of the Murti Mandir/idol has no such rights in

view of the provisions contained in Section 46 Rajasthan Tenancy Act, 1955.

(5) In the instant case, the law laid down in 2013 RRD 756 'State of Rajasthan Vs Bheru Das & ors' is applicable.

30. The matter may now be placed before the learned Division Bench for deciding the appeal on merits.

Pronounced.

(Rajinder Kumar)
Member

(Modu Dan Detha)
Member

(Mukesh Kumar Sharma)
Chairman

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