

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

1. Appeal/Decree/TA/5176/2002/Kota :

Sarju Rao s/o Patrao (deceased) through LRs:-

1. Ashok Rao s/o Sarju Rao.
2. Chandrakant s/o Sarju Rao.
3. Smt. Sindhu d/o Sarju Rao.
All rs/o Gaiwadi Kalkadevi Road, Mumbai.
4. Smt. Baby s/o Sarju Rao and w/o Pandurang r/o
Naigaon, Maharashtra.
5. Smt. Sunanda d/o Sarju Rao w/o Shashikant r/o
Sarav Pune.

.....Appellants.

VERSUS

1. Amritlal s/o Parmanand Khati r/o Ramganjmandi Tehsil
Ramganjmandi Distt. Kota.
2. State of Rajasthan through Tehsildar Ramganjmandi Distt.
Kota.

.....Respondents.

Argued by :-

Shri Khadag Singh, counsel for the Appellants.

Shri Ashok Agarwal, counsel for the Respondent no.1.

Shri V.P. Singh, Govt. Advocate for the State of Rajasthan.

2. Appeal/Decree/TA/5160/2004/Ganganagar :

Rami w/o Hariram (deceased) through LRs:-

1. Manoharlal
 2. Rajender
 3. Sahabram
- } sons of late Shri Hari Ram

Suthar by caste r/o Mirjewala Tehsil and Distt. Sri
Ganganagar (Raj.)

.....Appellants.

VERSUS

1. Vidhya Devi w/o Lt. Krishanlal Caste Suthar r/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)
2. Khetaram
3. Rameshwarlal
4. Mahabeer Prasad
ss/o Lt. Krishanlal Minor through their mother and Natural Guardian Vidhya Devi w/o Lt. Krishanlal rs/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)
5. Rampratap
6. Phusaram
7. Om Prakash
8. Chetram
9. Ram Narayan
ss/o Arjanram Caste Suthar rs/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)
10. State of Rajasthan.

.....Respondents.

Argued by :-

Shri S.S. Meena, counsel for the Appellants.

Shri Manish Pandiya, counsel for the Respondent.

Shri V.P. Singh, Govt. Advocate for the State of Rajasthan

3. Appeal/Decree/TA/5161/2004/Ganganagar :

Rami w/o Hariram (deceased) through LRs:-

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| <ol style="list-style-type: none"> 1. Manoharlal 2. Rajender 3. Sahabram | } | sons of late Shri Hari Ram |
|---|---|----------------------------|

Suthar by caste r/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)

.....Appellants.

VERSUS

1. Rampratap
2. Phusaram
3. Om Prakash
4. Chetram
5. Ram Narayan

- ss/o Arjanram Caste Suthar rs/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)
6. Vidhya Devi w/o Lt. Krishanlal Caste Suthar r/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)
 7. Khetaram
 8. Rameshwarlal
 9. Mahabeer Prasad
ss/o Lt. Krishanlal Minor through their mother and Natural Guardian Vidhya Devi w/o Lt. Krishanlal rs/o Mirjewala Tehsil and Distt. Sri Ganganagar (Raj.)
 10. State of Rajasthan.

.....Respondents.

Argued by :-

Shri S.S. Meena, counsel for the Appellants.

Shri Manish Pandeya, counsel for the Respondent.

Shri V.P. Singh, Govt. Advocate for the State of Rajasthan

4. Appeal/Decree/TA/2780/2009/Kota :

Ratna adopted son of Mathura Lal, s/o Chatra Caste Bairva r/o Village Bambuliya Khurd Tehsil Piplda Distt. Kota.

.....Appellant.

VERSUS

1. Ramnath s/o Mathura Lal.
2. Heera Lal s/o Chatra
Bairva by caste rs/o Village Bambuliya Khurd Tehsil Piplda Distt. Kota.
3. State of Rajasthan through Tehsildar Piplda Distt. Kota.

.....Respondents.

Argued by :-

Shri Ghanshyam Singh Lakhawat, counsel for the Appellant.

Shri Ashok Agarwal, counsel for the Respondent.

Shri Anil Sharma, counsel for the Respondent.

Shri V.P. Singh, Govt. Advocate for the Respondent.

Amicus Curiae :-

Shri O.L. Dave, Advocate

Shri Dunichand Didharia, Advocate

Shri P.S.Dashora, Advocate

Shri V.S. Rathore, Advocate
Shri Hemant Sogani, Advocate
Shri Jagdish Prasad Mathur, Advocate
Shri Hagami Lal Chaudhary, Advocate
Shri Brahmanand Sharma, Advocate
Shri S.P. Singh, Advocate
Shri Amrit Pal, Advocate
Shri Pushpender Naruka, Advocate
Shri Yogender Singh, Advocate
Shri Bhiyaram Chaudhary, Advocate
Shri Pradeep Vishnoi, Advocate
Shri R.P. Sharma, Advocate
Shri Rohit Soni, Advocate
Shri Vaibhav Pareek, Advocate

FULL BENCH

Shri V. Srinivas, Chairman

Shri Modu Dan Detha, Member

Shri Mohan Lal Nehra, Member

Shri Chiranji Lal Dayma, Member

Shri Rajinder Kumar, Member

J U D G M E N T

Dated : 30.8.2018

Per Shri Rajinder Kumar, Member :

Legal questions under consideration :-

1. This Full Bench was constituted to decide three Questions of Law, which had arisen in the course of final hearing of these second appeals. The said three questions are as under :-

- (i) Is the Full Bench decision reported at 2011 RRD page 508 applicable in cases where *khatedari* rights have been conferred under the Larger Bench decision in 1991 RRD page 1 but proceedings in appellate courts are pending ?
- (ii) If so, can settled *khatedari* rights conferred in pursuance of 1991 RRD page 1 under Section 63 (iv) in cases where a *khatedar* tenant has been deprived of his possession and his rights to recover possession barred by limitation be deprived by the 2011 RRD page 508 judgment ?
- (iii) What is the applicability of Section 183 RT Act in cases of permissive possession? When does a trespasser in permissive possession of any land turn into a trespasser liable for ejection u/s 183 Rajasthan Tenancy Act, 1955 ?
2. We have heard learned counsels for the parties at length. Looking to the importance of aforesaid Questions of Law, as many as seventeen Advocates of this esteemed Bar appeared as *amicus-curiae* and assisted this Full Bench by furnishing information, their expertise and valuable insights that have bearing on the issues involved herein.

Facts :-

3. Before dealing with the arguments advanced and our findings thereupon, it is *apposite* here to briefly narrate facts of the aforesaid Division Bench Appeals :-
- (i) Appeal/Decree/TA/5176/2002/Kota :
4. In this case, the learned Trial Court of SDO Ramganj Mandi, District Kota passed a decree of declaration of *Khatedari* rights

in favour of the plaintiff on the ground that he has become *khatedar* of the suit land by way of long, continuous, hostile and adverse possession. The name of the plaintiff-trespasser was also ordered to be incorporated in the Revenue Record by deleting the name of the original *khatedar*. The learned trial Court in arriving at the aforesaid conclusions placed reliance upon the law laid down in 1991 RRD 1 'Bagga versus Surender Singh' (hereinafter referred to as 'Bagga's case'). The first appeal of the original defendant-*khatedar* having been dismissed by the learned Revenue Appellate Authority, Kota, the second appeal was filed in this Board.

(ii) Appeal/Decree/TA/5160/2004/Ganganagar :

(iii) Appeal/Decree/TA/5161/2004/Ganganagar :

5. Two cross-suits no.214/94 and 138/96 [new number 200/2000] came to be filed in the Trial Court of SDO Sriganagar in respect of the same land. First suit was filed by Smt. Rami Devi and others and the second one was filed by Rampratap and others. Both the suits were decided by the trial court vide common judgment dated 21.04.2003. The suit filed by Smt. Rami Devi and others was dismissed, whereas the suit filed by Rampratap and others was decreed on the ground that they had become *khatedars* of the suit land by way of adverse possession. In these two cases also, reliance was placed by the trial court upon Bagga's case. The first appeals filed by Smt. Rami Devi and others were dismissed by the learned Revenue Appellate Authority, Sriganagar vide judgment dated

16.10.2004. Hence, second appeals were preferred by them in this Board.

(iv) Appeal/Decree/TA/2780/2009/Kota :

6. The plaintiff Ramnath filed a suit for possession claiming himself to be the recorded *khatedar* of the suit land. The defendant contested the suit by filing counter-claim stating therein that the plaintiff has got his name entered in the revenue record in a secret manner, therefore, a prayer was made for substitution of his name in the revenue record by deleting the name of plaintiff. A further prayer for permanent injunction seeking to restrain the plaintiff from interfering into his peaceful possession over the suit land was also made. The trial Court vide judgment and decree dated 29.06.2007 dismissed the plaintiff's suit and decreed the counter-claim of the defendant in its entirety observing that the defendant has become *khatedar* of the suit land by adverse possession. In reaching the above conclusions, the trial Court placed reliance upon Bagga's case. Feeling aggrieved, the plaintiff approached the learned Revenue Appellate Authority, Kota by preferring first appeal, which was accepted on 24.02.2009 and the ejectment order was passed against defendant no.1. Hence, he preferred second appeal in this Board.

Arguments advanced are as under :

7. Shri Khadag Singh, Advocate has submitted that all the pending appeals and suits are required to be decided according to the ratio of case reported in 2011 RRD 508 'Jagdish and others Versus Sitaram and another' [hereinafter

referred as Sitaram's case]. The judgments passed by the subordinate courts placing reliance on Bagga's case are required to be interfered with, as the said case did not lay down the correct legal position. The *khatedari* rights of trespassers must be revoked in those cases in which the appeals are pending. The cases in which the judgments of subordinate courts have attained finality are not required to be reopened.

8. Shri P.S. Dashora, Advocate has argued that the Rajasthan Tenancy Act, 1955 is a special statute. It only governs those matters for which provisions are made therein. The *khatedari* rights can be acquired only under specific provisions made in the Act. The *khatedar* tenants have been given only hereditary and transferable rights. The proprietary rights nevertheless vest in the State Government. Relying upon a judgment of the Hon'ble Supreme Court in AIR 1963 S.C. 1077 'Patna Improvement Trust Versus Lakshmi Devi', the learned counsel has argued that the above Act directs the acquisition of *khatedari* rights in a particular way, therefore, it shall be deemed that it has prohibited its acquisition in any other way. Section 63 (iv) of the above Act provides that *khatedari* gets extinguished when a *khatedar* is deprived of possession over the agricultural land and his right to recover the same is barred by limitation. There is no provision in the Act for conferment of *khatedari* rights upon a trespasser of the said land. It is one thing to say that a *khatedar* who was in possession of the land at the time of dispossession had lost his rights but it is another thing to say that trespasser had become a tenant of the said land at the end of the prescribed period. The omission cannot

be supplied by the courts, as the function of the courts is to interpret the laws and not to enact the laws. In this regard, the learned counsel has placed reliance on 1964 RLW 510 'Mst. Dhani Versus State.' He has also submitted that under section 88 of the Act, a right has been given to a person claiming himself to be a tenant or co-tenant to sue for declaration that he is a tenant or that he has share in such joint tenancy. This provision does not prescribe that a trespasser would also be entitled to the declaration of his rights upon the lands trespassed by him. He has further argued that the judgment in Bagga's case was passed on the strength of a judgment of the Hon'ble Madhya Pradesh High Court and the subsequent Full Bench of the Hon'ble Madhya Pradesh High Court has taken a contrary view in case reported in AIR 2001 M.P. 268 'State of Madhya Pradesh Versus Balveer Singh and ors.' Therefore, reliance on Bagga's case would be misconceived. Even otherwise, the law laid down in that case was against the basic provisions of the Rajasthan Tenancy Act, 1955, which postulate the welfare and benefit of the tenants. Thus, the irresistible conclusion is that conferment of *khatedari* rights by illegal means of trespass is not permissible. In view of this, the law laid down in Sitaram's case must be made applicable to the pending appeals, despite the fact that *khatedari* rights have been conferred by the Subordinate courts pursuant to the decision given in Bagga's case. He has also argued that a Larger Bench of the Hon'ble Rajasthan High Court in 2015 (22) RBJ 486 'Tara Versus State of Rajasthan and others' has settled the controversy laying down that no person can acquire right by adverse possession in the lands, which are resumed or are

in the tenancy of the tenants as *khatedars* thereof. In fact, the limitation prescribed in 3rd Schedule of the Rajasthan Tenancy Act, 1955 for filing suit for possession against the trespasser is applicable and thus, the provisions of Section 27 of the Indian Limitation Act, 1963 are not applicable for claiming adverse possession over such lands. Learned counsel has also submitted that in a large number of latest decisions also it has been held that *khatedari* rights cannot be acquired by adverse possession. He has cited 2017 (2) RRT 1139 'Mansur and others Versus State of Rajasthan' decided by Hon'ble Rajasthan High Court and 2018 DNJ (Revenue) 59 'Amra Dangi and others Versus Bhera Meena and others' decided by this Board.

9. Shri Hemant Sogani, Advocate at the very outset has argued that the judgment of the Larger Bench rendered in Bagga's case was misleading. Most of the citations referred therein could not be found in the Law Journals. He further argued that Rajasthan's land scenario is governed by following Acts :-

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

(ii) The Rajasthan Land Tenancy Act, 1955.

(iii) The Rajasthan Zamindar and Biswedari Abolition Act, 1959.

After the enforcement of above Acts, the intermediaries have been abolished. Now all the agricultural lands vest in the State Government. The *khatedars* have been given only hereditary and transferable rights, which do not include proprietary rights. A *khatedar* tenant pays rent to the State Government and thus, no person can claim rights by adverse possession

against a tenant. He further argued that the provisions of Section 27 of the Indian Limitation Act, 1963 do not apply to the Rajasthan Tenancy Act, 1955, as this Act itself provides for filing a suit for possession against the trespasser. Even otherwise, Section 27 of the Indian Limitation Act, 1963 is regarding the extinguishment of rights and not regarding the conferment of rights upon a trespasser. Relying upon the judgment of Hon'ble Supreme Court reported in 1994 (5) SCC 562 'Md. Noor and ors Vs Md. Ibrahim and ors', the learned counsel argued that though tenancy rights are heritable and transferable yet they are not sufficient to constitute full ownership in a tenant. He further argued that adverse possession can be claimed against a true owner and not against a tenant. There are specific provisions in the Rajasthan Tenancy Act, 1955 for conferment of *khatedari* rights under sections 12(2), 13, 15, 15 AAA, 15B and 19 and the acquisition of *khatedari* rights by adverse possession is not provided therein. There is no provision in the 3rd Schedule of the Rajasthan Tenancy Act, 1955 enabling a trespasser to file suit on the basis of adverse possession. He further argued that the Rajasthan Tenancy Act, 1955 prohibits sub-letting and trespassing over the agricultural lands, therefore, providing *khatedari* rights by adverse possession would run contrary to the basic tenets of this Act. As the judgment was passed in Bagga's case without considering the relevant legal position, therefore, relief cannot be granted to the trespassers in pending suits and appeals on the strength of law laid down in that judgment. He further argued that the duty of the courts is to declare rights of the litigants on the basis of the prevailing

laws and the courts cannot confer rights upon them. Neither any rights were conferred nor any rights have been taken away by this Board in the Larger Bench and Full Bench decisions respectively. If the Rajasthan Tenancy Act, 1955 is interpreted, the logical conclusion is that conferment of *khatedari* rights by way of adverse possession is expressly and impliedly barred. His further argument is that though this Full Bench has not been constituted to examine the correctness or otherwise of the law laid down by earlier Full Bench of this Board in Sitaram's case (supra) yet this Full Bench is required to look into and examine the points raised before it in that regard. The cases which have already attained finality are not required to be re-opened. But the pending suits and appeals are required to be decided on the basis of law laid down in Sitaram's case.

10. Shri O.L. Dave, Advocate has argued that *khatedari* rights cannot be acquired by adverse possession. The law laid down in Bagga's case was not a good law.
11. S/Shri Jagdish Prasad Mathur and Bhiya Ram Choudhary have supported all the aforesaid arguments.
12. Shri Amrit Pal, Advocate has argued that 'adverse possession' and 'permissive possession' are two sides of the same coin. No *khatedari* rights can be conferred on the basis of adverse possession. Otherwise, there will be instances of evasion of stamp duty. The tenants would indulge in entering collusive arrangements of letting their *khatedari* rights extinguished and conferring the same upon the trespassers by way of adverse

possession. Therefore, the law laid down in Sitaram's case must prevail in the pending suits and appeals.

13. Shri Hagami Lal, Advocate has also endorsed the arguments of Shri Dashora and Shri Hemant Songani Advocates. He has also submitted that in view of the provisions contained in Section 59 to 62 of the Rajasthan Tenancy Act, 1955, a trespasser is not entitled to retain agricultural holdings.
14. Shri Dunichand Didharia, Advocate has argued that the entire controversy can be resolved on a literal interpretation of section 60 of the Rajasthan Tenancy Act, 1955. According to this provision, a tenant who ceases to cultivate and leaves the neighborhood does not lose his interest in the holding, if he leaves in-charge thereof a person responsible for payment of land revenue and gives written notice to the land-holder regarding such arrangement. If the person so left in-charge is a person on whom, in the event of the tenant's death, the tenant's interest would devolve, or who is to manage the holding for the benefit of the person on whom, in the event of the tenant's death, the tenant's interest would devolve, the tenant shall on expiry of a period of seven years lose his interest in his holding unless he, within such period, resumes cultivation thereof and such interest shall devolve on the person on whom the tenant's interest would devolve in the event of his death. If the person so left in-charge is not a person mentioned above, the tenant shall on the expiry of the period for which he could have sub-let, be presumed to have abandoned his holding unless within such period he resumes its cultivation. Section 60 (4) provides that a tenant who

ceases to cultivate and leaves the neighborhood otherwise than in accordance with the provisions of sub-section (1), shall be presumed to have abandoned his holding. According to Shri Didharia, it is clear from these provisions that if a tenant does not take care of his lands and another person trespasses upon the same, it would be a case of abandonment and the land would automatically vest in the State Government. As a matter of fact, the acquisition of *khatedari* rights by way of adverse possession is barred by law in specific terms. Written submissions to buttress the oral arguments were also filed by Shri Didharia, Advocate.

15. Shri Vaibhav Pareek, Advocate has argued that the plea of adverse possession cannot be raised by a tenant against the true owner of the land.
16. Shri Pushpendra Naruka, Advocate has argued that a wrong notion has developed that if *khatedari* rights are not conferred upon trespassers, a situation of lawlessness would arise. On the contrary, the conferment of *khatedari* rights on trespassers would amount to granting licence to the wrong-doers.
17. Shri R.P. Sharma, Advocate has submitted that the law laid down in Bagga's case was bad law. The correct legal position has been laid down in Sitaram's case, which must prevail in pending appeals. In this regard, he has relied upon 1998 DNJ (SC) 41 'General Manager Telecom Versus S. Srinivasan Rao and others.' He has further argued that the State Government must acquire the lands upon which the rights have been illegally acquired by trespassers on the plea of adverse

possession. In this regard, a request may be made to the State Government for doing the needful.

18. Shri Yoginder Singh, Advocate has argued that in pending appeals, the law laid down in Sitaram's case must prevail. However, the cases which have attained finality are not required to be re-opened.
19. Shri V.P. Singh, learned Government Advocate has argued that the courts cannot promulgate the law. They have to interpret the existing laws. Since an appeal is a continuation of suit, all the pending appeals are required to be disposed of in accordance with the law laid down in Sitaram's case. The definition of the word "tenant" given in Section 5 (43) excludes a trespasser.
20. Shri Virender Singh, Advocate has argued that the judgments of the courts cannot be read as statutes, as they do not create rights. They merely declare the rights of litigants. Relying upon 2011 (2) RRT 834 'Chatti Konati Rao and others Versus Palle Venkata Subba Rao', the learned counsel has argued that in order to constitute adverse possession, the possession must be expressly or impliedly in denial of title of the true owner in a peaceful, continuous and open manner. A person pleading adverse possession has no equities in his favor, as his intention is to defeat the rights of true owner. Therefore, no protection is required to be given to the trespassers.
21. Shri G.S. Lakhawat, Advocate has also argued that there is no provision in the Rajasthan Tenancy Act, 1955 conferring *khatedari* rights on a trespasser. It is not the duty of the court to enlarge the scope of the legislation or the intention of the

legislature when the language of the provision is plain and unambiguous. The courts must decide what the law is and not what it ought to be. As the law laid down in Bagga's case was passed by the Board exceeding its jurisdiction, no reliance can be placed on it. The pending appeals are required to be dealt with as per the law laid down in Sitaram's case. To buttress his arguments, the learned counsel has placed reliance on AIR 2010 S.C. 2771 'Satheedevi Versus Prasanna', AIR 1992 S.C. 96 'Union of India Versus Deoki Nandan,' and AIR 1965 Rajasthan 70 'Mst. Dhani Versus State and anr'.

22. Shri Brahmanand Sharma, Advocate argued that the law must not support a person who takes possession of the property of the true owner in a clandestine manner. He placed reliance on 2008 (2) RLW 1101 'Hemaji Waghaji Jat Vs Bhikhabhai K. Harijan & ors'.
23. *Per Contra*, Shri Ashok Agarwal, Advocate argued that the law laid down in Bagga's case is a good law on the subject of adverse possession. All the relevant aspects were taken care of while passing the said judgment. On the other hand, the law laid down in Sitaram's case is not good law, as it consists of a number of discrepancies in it. According to the learned counsel, the said judgment was passed by the Full Bench only for the sake of doing something new. One of the discrepancies in the Full Bench judgment is regarding the scope of section 63 and 183 of the Rajasthan Tenancy Act, 1955. Though there are specific provisions in the said Act for conferment of *khatedari* rights upon the tenants yet there is no bar in the Act for acquiring the *khatedari* rights by way of adverse possession.

The law laid down by Hon'ble Rajasthan High Court in Tara Vs State of Rajasthan is regarding deity lands and it has nothing to do with conferment of *khatedari* rights upon trespassers by way of adverse possession. If the *khatedari* is not given to the persons holding settled possession, in whom the *khatedari* rights would vest? This question remains undecided, if the law laid down in Sitaram's case is allowed to prevail. Therefore, the law laid down in Bagga's case must prevail. In support of his submissions, he has relied upon 2003 (1) WLC 349 (civil) 'Sarwan Kumar & ans Versus Madan Lal Aggarwal.'

24. Shri Pradeep Vishnoi, Advocate has argued that the applicability of Section 27 of the Limitation Act, 1963 is not excluded by Section 204 of the Rajasthan Tenancy Act, 1955. This section itself says that it is applicable subject to the provisions of the Limitation Act. Even otherwise, a *khatedar*-tenant under the scheme of the above Act has hereditary as well as transferable rights in the agricultural holdings. At times, when the said lands are acquired by the State Government for various purposes, it is duty bound to pay compensation to the concerned *khatedars*-tenants. Therefore, full ownership over the agricultural land vests in *khatedars*. The State Government has very limited rights of collection of land revenue from them. In this way, there is no bar in conferring *khatedari* rights upon the trespasser, who is in settled possession over the said land. The Rajasthan Tenancy Act, 1955 does not, impliedly or expressly, state that *khatedari* rights will not be conferred upon the trespasser by way of adverse possession. Had the State Government been the full owner of the agricultural lands, there would have been a

specific clause in 3rd Schedule of the Rajasthan Tenancy Act, 1955 enabling the State Government also to file a suit against the trespasser for recovery of possession of the land. He has further argued that if a person in settled possession is denied *khatedari* rights on the basis of adverse possession, how and from whom the land revenue would be recovered? This question has neither been examined in Bagga's case (supra) nor in Sita Ram's case. Therefore, both the above judgments do not lay down correct law and re-look on all the aspects is the need of the hour. He has further argued that a person in possession of the land is not getting *khatedari* rights in pursuance to the judgment passed in Sitaram's case, whereas right to property is the constitutional right of every citizen under Article 311 of the Indian Constitution. As *khatedari* rights are being denied to him, a multiplicity of litigation takes place. A situation of lawlessness has been created due to non-conferment of *khatedari* rights to such persons. On the other hand, it has amounted to windfall for the Advocates. He has also argued that the word "Adverse Possession" is not defined by any statute. The only provisions regarding adverse possession are contained in Limitation Statutes. These provisions extinguish the right to sue, as after the stipulated period of 12 years, the right of *khatedar* to sue extinguishes. In such circumstances, the only recourse which would become available to the State Government is to file a suit for recovery of possession but in the absence of an enabling provision in this regard in the Rajasthan Tenancy Act, 1955, the State Government would not be able to file such a suit as well. The only provision in this regard is contained in section 175 of the

Tenancy Act, 1955 and that too, only in case of violation of section 42 of the said Act. Therefore, to strengthen the administration of justice, there is an urgent need for enactment of specific laws on the subject protecting the rights of persons in settled possession.

25. Shri Rohit Soni, Advocate has supported the arguments advanced by Shri Pradeep Vishnoi, Advocate.
26. Shri S.P. Singh, Advocate has also supported the arguments advanced by Shri Ashok Agarwal and Shri Pradeep Vishnoi Advocates. In addition, he has submitted that there is no provision in the Act for conferment of *khatedari* rights on a person in settled possession after the extinguishment of *khatedari* of original *khatedar* by lapse of time. Therefore, the legislature must fill the gaps by making the desired amendments in the land laws.
27. Shri Manish Pandiya, Advocate has submitted that the laid down in Sitaram's case is not a good law.
28. We have pondered over the rival arguments and perused the record carefully. We have also respectfully studied the law laid down in the above citations.
29. At the outset, it is noticeable that this controversy had arisen on account of the fact that a Larger Bench of this Board in Bagga's case has held that by adverse possession, a trespasser acquires *khatedari* rights, provided that the same is not prohibited by sections 16 and 42 of the Rajasthan Tenancy Act, 1955. A large number of suits and appeals were decided by the trial courts and first appellate courts placing reliance on the

judgment of Larger Bench. In this Board also, considerable number of second appeals are pending against the said judgments and decrees. However, in the meantime, a Full Bench of this Board in 2011 RRD 508 'Jagdish and others Versus Sitaram and other' specifically overruled the judgment of the Larger Bench. Therefore, a question arose as to the applicability of Sitaram's case in the appeals, which had arisen against the judgments and decrees rendered on the basis of law laid down in Bagga's case. Therefore, first of all, it would be necessary here to discuss the findings of the aforesaid Larger Bench and Full Bench of this Board regarding the law of adverse possession.

Findings of the Larger Bench in Bagga's case :

30. On 15th October, 1990, a Larger Bench of this Board in above case held as under :-

"A suit can be filed under Section 84 Rajasthan Tenancy Act for the declaration of Khatedari Rights on the basis of adverse possession. The view taken in 1990 RRD 212 is erroneous. The view taken in 1977 RRD 479 and 1985 RRD 567 is also not entirely correct. The correct law is that by adverse possession the trespasser acquires khatedari rights provided that the acquisition of khatedari rights is not specifically prohibited by law, e.g., Section 42 and Section 16 of the Rajasthan Tenancy Act."

Reasoning :-

31. Following reasons were assigned by the Larger Bench in arriving at the said conclusions :

- (i) After conferment of '*Khatedari*' upon a tenant, he gets right to retain possession over the land and cultivate the same subject to certain conditions. If any of the conditions are violated, the land may be resumed by the State Government. In nutshell, the State Government remains land-owner, even after conferment of *khatedari* rights upon a tenant.
- (ii) Though the Rajasthan Tenancy Act, 1955 is a special law yet the provisions of the Indian Limitation Act, 1963 would apply to the Revenue Tenancy matters. Section 214 (3) of the Rajasthan Tenancy Act, 1955 shows that the general law of limitation is applicable to proceedings under the tenancy law subject to provisions contained in sub-Section (1) and (2) of Section 214.
- (iii) As a matter of fact, the applicability of Section 27 of the Limitation Act, 1963 is not excluded and *khatedari* rights may be acquired by adverse possession against the *khatedar* but not against the State Government. Thus, the State Government will not be bound by such a decree.

The learned Larger Bench in its aforesaid judgment quoted with approval a paragraph from the book "Law of Adverse Possession" written by the eminent author Shri M. Krishna Swamy. For the sake of clarity, the said paragraph is being reproduced here, as it has been quoted in the judgment of the Larger Bench itself:-

"Adverse possession against the tenant is not generally adverse against the landlord during the continuance of the lease. The reason is that so long as the tenancy continues, the landlord has no immediate right of possession, and, therefore, can have no right to sue for possession. It is true that he can, during the continuance of the tenancy, bring a suit for declaration, but the granting of a decree for declaration is, in the discretion of the court, and the landlord is not bound to bring a suit for such a declaration, unless a right to sue for possession of the land accrues to him. There may be cases where the lessee's right to actual possession against the trespasser would be barred, while the right of the lessor would remain unaffected as long as the lease continues. So long as the lease continues, time does not run in favour of a third person who has dispossessed the lessee, for the lessor has no immediate right of possession. The fact that a stranger ousts the lessee and obtains possession during the pendency of the lease does not accelerate the lessor's right to possession, in other words, the stranger's possession may be adverse to the lessee without being adverse to the lessor, the rule being that a tenant cannot bind the reversioner either by his positive act or by neglect, and accordingly, even if the lessee is dispossessed, time does not run in the trespasser's favour except from the expiration of the term. The possession of a trespasser, during the continuance of a lease does not become adverse against the lessor who is in possession by receipt of rent from his lessee, and so long as such rent is not intercepted by a trespasser, the lessor cannot be said to have been dispossessed. It is the lessee's duty to recover possession from the trespasser."

The learned Larger Bench was of the considered opinion that controversy raised before it was squarely covered by the above opinion of learned author Shri M. Krishna Swamy. However, the context in which the said opinion was rendered by the esteemed author is not mentioned in the judgment of the Larger Bench. No doubt that the "Digests and Commentaries" of the esteemed authors do occupy very important place in understanding the legal prepositions. However, generally they contain a synthesis of the various legal works and thus, the context in which an opinion has been rendered by an author must be known before making reliance upon the same. In addition to it, the learned Larger Bench also relied upon a judgment of the Hon'ble Madhya Pradesh High Court reported in AIR 1980 M.P. 183 'Kashiram Vs Nathu', wherein it was held that a person may acquire rights of a "Bhuswami" by adverse possession qua that "Bhuswami" but whether he acquires any right in that land qua the State Government would depend upon the question whether the acquisition of the right by adverse possession is lawful or not. In view of these reasons, the Larger Bench repelled the contention that tenancy rights can only be acquired under Section 13, 15 and 19 of the Rajasthan Tenancy Act, 1955 and in no any other manner. However, in a subsequent judgment given by Full Bench of Hon'ble Madhya Pradesh High Court reported in AIR 2001 M.P. 268 'State of M.P. Vs. Balveer Singh', it was held that no mode other than the modes provided for conferment, acquisition or accrual of "Bhuswami" right in the special statute can be created or presumed to exist so as to

entitle even a trespasser to become a tenant by way of adverse possession. In view of above, both the factors upon which the Larger Bench decision was based fall on the ground. It is also pertinent that the Larger Bench did not consider in its judgment that under the Rajasthan Tenancy Act, 1955, there are only specific modes of acquiring the *khatedari* rights, which are contained in Sections 13, 15, 15AAA and 19 and the conferment of *khatedari* rights by way of adverse possession is not provided in any of the said provisions. This fact was also not considered by the Larger Bench that the Rajasthan Tenancy Act, 1955 is a Special Act and the provisions contained in Section 27 of the Limitation Act, 1963 do not apply for claiming adverse possession on agricultural holdings. Therefore, this judgment was passed by the Larger Bench by ignoring the legal provisions of the Rajasthan Tenancy Act, 1955.

Findings of the Full Bench in Sitaram's case :

32. As noticed earlier, the Revenue Courts of the State followed the dictum of Bagga's case in a considerable number of cases, thereby, conferring *khatedari* rights upon the trespassers by way of adverse possession, until the validity of the said judgment came to be examined by a Full Bench of this Board in 2011 RRD 508 'Jagdish and ors Vs Sitaram and another.' The earlier Full Bench of this Board in Sitaram's case (supra) also consisted of a total number of five Members, including the Chairman. After examining the matter at length, which included the scope of the provisions conferring *khatedari*

rights mentioned in the Rajasthan Tenancy Act, 1955, the Full Bench held as under :

- (i) The Larger Bench in its judgment in Bagga's case has not laid down a correct law because the Rajasthan Tenancy Act does not have any provision to confer tenancy rights to the adverse possessor.
- (ii) The extinguishment of tenancy rights does not create *khatedari* in the trespasser on the basis of adverse possession.
- (iii) The Board of Revenue does not have legislative power to lay down a new law for grant of *khatedari* rights.
- iv) The judgment of Larger Bench rendered in Bagga Vs. Surendra Singh reported in 1991 RRD Page 1 is not a good law and thus, the same deserves to be set aside.

33. It is revealed from above that after overruling of the law laid down in Bagga's case, the doctrine of *stare decisis* comes into play. The courts cite to *stare decisis* when an issue has previously been brought before the court and ruling already issued. This doctrine of *stare decisis* operates both horizontally and vertically. A horizontal *stare decisis* is one where a court adheres to its own precedent. A vertical *stare decisis* is one when a court applies a precedent from a higher court. The importance of *stare decisis* was summarised by Hon'ble Supreme Court in AIR 1975 SC 907, 'Mamleshwar Prasad Vs Kanahaiya Lal' in the following terms :

"Certainty of the law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases."

Therefore, the revenue courts and this Board are bound by the law laid down in Sitaram's case.

34. It is pertinent that the above view of the Full Bench of this Board that the principle of law relating to adverse possession is not applicable to the *khatedari* lands finds favor with a Full Bench judgment of the Hon'ble Rajasthan High Court in 2015 (22) RBJ 487 'Tara Vs State of Rajasthan', where in it was held as under:-

"35. The Rajasthan Tenancy Act, 1955 provides the limitation for bringing an action for dispossession and thus, the principle of law relating to adverse possession and the action to be brought within the period specified in Section 27 of the Limitation Act will not apply to the khatedars under the Rajasthan Tenancy Act, 1955.

36. We, therefore, decide the question No. (iv) in favor of the State and hold that no person can acquire right by adverse possession in the lands which were resumed or are in the tenancy of the tenants as khatedars. The Limitation applicable under the Rajasthan Tenancy Act, 1955 for filing suit for possession against the trespasser will be applicable. The Rajasthan Tenancy Act, 1955 being a Special Act, will prevail and the provisions of Section 27 of the Limitation Act will not apply for claiming adverse possession on such lands."

Thereafter also, in a catena of cases, the Hon'ble Rajasthan High Court has held that suit on the basis of adverse possession is not maintainable in respect of the agricultural holdings as there is no provision in the Rajasthan Tenancy Act, 1955 for conferring *khatedari* rights by way of adverse possession. To quote a few of such decisions, reliance can be placed on 2017 (2) RRT 1139 'Mansur and others Vs State'; and 2018 (1) RRT 175 'Chittar and others Vs Smt. Bhanwari Devi and ors.' In 2017(3) DNJ (Raj.) 1340 'Shriya Vs Gram Panchayat Ranoli, the Hon'ble Rajasthan High Court has held that a suit cannot be maintained on the basis of adverse possession. Merely having adverse possession does not entitle the plaintiff to claim ownership over the property. The plea of adverse possession can be taken as a measure of defense and can only be used as a shield and not as a sword.

35. There is equally a considerable force in the argument that though tenancy rights are heritable and transferable yet they are not sufficient to constitute full ownership in a tenant. In this context, the following observations of Hon'ble Supreme Court in Mohd. Noor's case (supra) are relevant:-

"4. To determine this it is necessary to examine the nature of khatedari rights and if a transfer of such right amounts to transfer of ownership. A khatedar tenant is one of the tenants mentioned in clause (a) of Section 14 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Tenancy Act') and clause (c) defines the circumstances in which a person may become a khatedar tenant. Such a tenant has a right to bequeath his interest under Section 59 of the Tenancy Act and transfer his interest under

Section 41 of the same Act on conditions specified in Section 42 and 43. His interest is heritable under Section 40 as well. Is that sufficient in law to make him owner of the property? Is the transfer made by a khatedar tenant a transfer of ownership? A khatedar tenant, admittedly is a person by whom rent is payable under Section 43 of the Tenancy Act. The effect of it in law is that such a person cannot be deemed to be an absolute or unlimited owner....

5.Heritability and transferability are no doubt some of the many and may be most important ingredients of ownership. But they by themselves cannot be considered as sufficient for clothing a person with absolute ownership. Their absence may establish lack of ownership but their presence by itself is not sufficient to establish it. The ownership concept does not accord with the status of a person who is paying the rent.

It is true that after abolition of Zamindari in various States the tiller of the soil has become owner of the land. But it cannot be disputed that the proprietorship of the land vests in the State to whom the rent is payable. It is not uncommon that a person in possession of an agricultural holding even as an owner cannot put his land to any use he desires. For instance, if the land has to be converted from agricultural use to non-agricultural use then the tenure holder is required to obtain permission of the State Government or the appropriate authority appointed by it. All these indicate that even though a khatedar tenant is an owner for all practical purposes but his ownership is limited."

The above observation of the Hon'ble Supreme Court are also complete answers to the arguments raised before us that after enactment of the various land laws post-independence, the true owner of agricultural holdings is the State Government and the *khatedars* have limited ownership therein. As a matter of fact, the relinquishment of possession by a tenant does not enure to the benefit of a trespasser against the true owner so as to accept his claim for adverse possession. [2011 (1) RRT 575 'Chatti Konati Rao and anr Vs Palle Venkata Subba Rao']

36. From the discussion that precedes, it follows that *khatedari* rights cannot be acquired through adverse possession under the scheme of the Rajasthan Tenancy Act, 1955.
37. Now, we will take up the legal questions posed before us for our decision.

Re.: Question No. (i)

38. To put it very clear, here we have to decide which of the two decisions [1991 RRD 1 or 2011 RRD 508] would apply to the pending appeals, where '*khatedari*' has been conferred by the subordinate courts on the basis of adverse possession.
39. This question can be decided in following three different ways and the outcome would be the same :-
- (i) Appeal is a continuation of suit :
40. It is fairly well settled principle of law that a right of appeal is a substantive right and is creature of a statute. Sections 222 to 228 of the Rajasthan Tenancy Act, 1955 provide for filing of appeals. Section 222 is the main controlling provision on the

right of appeal in relation to any decree or order passed by the revenue courts of the State. It clearly bars the filing of appeal, if not provided by the Act.

41. The use of the words "an appeal shall be ..." in the above sections reinforces our view that right of appeal is a vested right of the litigant. Strictly speaking, an appeal is one in which the question is, whether the judgment or order of the subordinate court from which the appeal has emanated was lawful on the materials laid before that court. In AIR 1965 S.C. 1585 'State of Kerala versus K.M. Charia Abdulla & Co.', it was held that an appeal is a continuation of the proceedings, as the entire proceedings are before the appellate court and it has the power to review the evidence subject to the prescribed statutory limitations. In AIR 1963 S.C. 698 'Hari Shankar versus Rao Girdhari Lal', it was held that a right of appeal carries with it right of re-hearing on law as well as fact. In SLP No. 236/06 (decided on 15.12.2006) 'Kamla Devi versus Khushal', it was held by the Hon'ble Supreme Court that an appeal, as is well known, is the right of entering a Superior Court invoking aid and interposition to redress an error of the court below. The central idea behind the filing of an appeal revolves around the right as contra-distinguished from the procedure laid down therefor. As a matter of fact, the legality of a judgment or order is also examined in appeal, which is a stage of the suit itself. Therefore, the appellate courts may, with a view to mould the relief, take into consideration subsequent events, including the latest legal position as well.

(ii) By giving retrospective effect to the earlier decision :

42. Apart from it, whenever a decision is overruled by a larger bench, the previous decision is completely wiped out and the courts would have to decide the cases according to law laid down by the latest decision and not by the decision which has been expressly over-ruled. For this legal proposition, there is an authoritative pronouncement of the Hon'ble Supreme Court reported in AIR 1980 S.C. 126 'Ramdas Bhikaji Chaudhary versus Sadanand and others'. Judicial propriety also requires the appellate courts to follow the Full Bench decision. In reaching these conclusions, we can rely upon the *ratio decidendi* of S. Srinivasan Rao's case (supra).
43. In Tara Versus State of Rajasthan and others (supra), a Larger Bench of the Hon'ble Rajasthan High Court has directed the Revenue Authorities in the State to consider and decide the matters pending before them in accordance with the answers given by the Hon'ble High Court to the questions framed. On this premise also, the latest law shall prevail over the pending suits and appeals. In Mst. Dhani Versus State (supra) also, the Hon'ble Rajasthan High Court has held that there is no bar in giving retrospective effect to the decisions of Higher Courts.
44. In view of above, the judgment passed in Sitaram's case would be applicable to the pending appeals.

(iii) On the basis of doctrine of *per-incuriam* :

45. As is evident from the preceding discussion, the judgment in Bagga's case was given by the Larger Bench in ignorance of the terms of the Rajasthan Tenancy Act, 1955. Sir John Salmond in his 'Treatise on Jurisprudence' aptly remarked the circumstances under which a precedent can be treated as '*per incurium*'. One of the said circumstances is if it was rendered in ignorance of a statute or rule having the force of law.
46. To our mind, if a court knew of the existence of a particular provision and yet does not appreciate its relevance to the matter in hand, such a judgment would stand vitiated being *per incuria*. Thus, the judgment given by the Larger Bench in Bagga's case was *per incurium*, as the vital provisions were ignored therein.
47. Therefore, we conclude by saying that in the pending appeals, the appellate courts are required to take into account and give effect to the law laid down by Full Bench of this Board in Sitaram's case, notwithstanding the fact that *khatedari* rights have been conferred by the Subordinate Courts under the Larger Bench decision in Bagga's case.

Re.: Question No. (ii)

48. There is no dispute that normally the courts do not possess power and jurisdiction to re-open the cases, which have attained finality merely because a contrary view in a subsequent judgment has been taken by the Larger Bench or the Full Bench. In Sarwan Kumar's case (*supra*), it was held by Hon'ble Supreme Court that doctrine of prospective overruling

is saved to the cases which have attained finality. Therefore, the cases which have attained finality are not liable to be re-opened, even though a *khatedar* has been deprived of his *khatedari* rights in pursuance to the decision given in Bagga's case and his right to recover possession stands barred by limitation as well, and in such cases, the law laid down in Sitaram's case would not come to rescue such a *khatedar* tenant.

Re.: Question No. (iii)

49. The third question of law may be divided into following two parts :-

- (a) What is the applicability of section 183 Rajasthan Tenancy Act, 1955 in cases of permissive possession?
- (b) When does a person in permissive possession of any land turn into a trespasser liable for ejectment under section 183 Rajasthan Tenancy Act, 1955?

50. The answers to above questions would largely depend upon the definition of the word 'trespasser' given in section 5(44) of the above Act, which is as under:

"44. Trespasser shall mean a person who takes or retains possession of land without authority or who prevents another person from occupying land duly let out to him."

The above definition may be analysed in the manner that a trespasser is :-

(a) a person who takes possession of land without authority. It would mean and convey a wrongful entry upon the land of another.

(b) a person who retains possession without authority. It would mean and convey the entry of a person to be lawful but becoming unlawful after the expiry of contractual period.

(c) a person who prevents another person from occupying land duly let out to him.

Thus, a person in permissive possession of a land will be covered under second category and that too only if he retains the possession without authority. So long as his possession is within authority, he cannot be termed as a trespasser.

51. At this stage, it would be relevant to mention the provisions contained in section 183 of the above Act, which pertain to ejectment of certain trespassers :-

"183. Ejectment of certain trespasser -
(1) Notwithstanding anything to the contrary in any provision of this Act, a trespasser who has taken or retained possession of any land without lawful authority shall be liable to ejectment, subject to the provision contained in sub-section (2), on the suit of the person or persons entitled to eject him and shall be further liable to pay as penalty for each agricultural year, during the whole or any part whereof he has been in such possession, a sum which may extend to fifteen times the annual rent.

(2) In case of land which is held directly from the State Government or to which the State Government, acting through the Tehsildar, is entitled to admit the trespasser as tenant, the

Tehsildar shall proceed in accordance with the provisions of section 91 of the Rajasthan Land Revenue Act, 1956."

52. Thus, it becomes clear that so long as the possession of a person in permissive possession is within authority, the provisions of section 183 of the Rajasthan Tenancy Act would not get attracted for evicting him from that land. In AIR 1971 Orissa 195 Bhabagrahi Misra Vs. Mangovinda Moharana, it was held that when possession commences in a permissive character, it does not become adverse unless by some positive overt act, it is indicated that such possession became adverse either in the hands of the successor or even in the hands of original permissive occupant.

53. In 1994 (6) SCC 591 'Thakur Kishan Singh Vs. Arvind Kumar', it was held as under :-

"A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession."

54. In AIR 1996 SC 910 'Mohan Lal Vs. Mirza Abdul Gaffar', it was held as under :-

"...Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest

and that the latter had acquiesced to his illegal possession during the entire period of 12 years i.e. upto completing the period of his title by prescription *nec vi nec clam nec precario*. Since the appellants' claim is founded on section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby, the plea of adverse possession is not available to the appellant."

55. In 2000 WLC (SC) 240 'Roop Singh Vs. Ram Singh', it was observed by the Hon'ble Supreme Court as under :

"Once it is admitted by implication that plaintiff came into possession of the land lawfully under the agreement and continued to remain in possession till the date of the suit, the plea of adverse possession would not be available to the defendant unless it has been asserted and pointed out hostile animus of retaining possession as an owner after getting in possession of the land"

56. In 2016 (1) RRT 205 'Mohan Lal Vs. Chenram & ors.', it was held by this Board that a suit cannot be decreed on the basis of adverse possession, if the plea of permissive possession is taken.
57. It becomes clear from the above judgments that as soon as the person in permissive possession starts asserting his open, adverse and hostile title to the knowledge of the *khatedar* tenant, a cause of action accrues to the *khatedar* tenant to sue the trespasser for ejectment from that land. It is the intention

to claim exclusive title, which makes possession adverse and this *animus possidendi* must be evidenced and effectuated by the manner of occupancy of the said land. Though, no question of adverse possession or of limitation arises when the possession of a person has continued under the lease or other agreement, however, if the person in possession starts asserting an adverse title against the *khatedar* tenant and repudiates the agreement, he loses his right to retain the land.

58. Hence, question no. 3 is answered in the following terms :-

Section 183 of the Rajasthan Tenancy Act is not applicable in the cases of permissive possession. A person in permissive possession of any land turns into a trespasser liable for ejectment under section 183 of the Rajasthan Tenancy Act, 1955 only when he starts asserting his open, adverse and hostile title to the knowledge of the *khatedar* tenant.

A request to the State Government :

59. Having answered the questions of law referred to this Full Bench, it is pertinent here to mention that In 2008 (2) RLW (SC) Civil 1101 'Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai & ors.', the Hon'ble Supreme Court observed that the law of adverse possession is irrational, illogical and wholly disproportionate. It is also extremely harsh for the true owner and a windfall for a dishonest person. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. The Hon'ble Supreme Court further observed that this in substance would mean that this law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully

taken possession of the property of the true owner. In such circumstances, the Hon'ble Supreme Court observed that there is an urgent need of fresh look regarding the law of adverse possession. Therefore, a recommendation was made to the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of that judgment was ordered to be sent to the Secretary, Ministry of Law and Justice for taking appropriate steps in accordance with law. In 2012 (2) RRT 904 'State of Haryana Vs. Mukesh Kumar & ors.', the Hon'ble Supreme Court observed that the concept of adverse possession was born in England in 1275 A.D. and it was subsequently adopted in the United States. We have inherited this law of adverse possession from the British. The Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in law in the larger public interest. The Parliament must consider at least to abolish "bad faith" adverse possession i.e. adverse possession achieved through intentional trespassing.

60. After giving an exhaustive consideration to the matter in hand, we are also constrained to note that in the Rajasthan Tenancy Act, 1955, there is no provision in whom the *khatedari* rights would vest in case the land has been acquired by a person through adverse possession. It is creating a lot of chaos and confusion among the litigants as well as the administrative machinery. This omission in the land laws has also become a cause of multiplicity of litigation. Therefore, we would like to recommend the State of Rajasthan through Chief Secretary for

making suitable changes in the land laws of the State so as to abolish the law of adverse possession in its entirety and in the alternate to make a clarification for vesting of *khatedari* rights of the lands, which have been acquired through adverse possession.

61. The answers to the questions referred for our decision are being thus summarized as under:-

Question No. (i) :-

Is the Full Bench decision reported at 2011 RRD page 508 applicable in cases where *khatedari* rights have been conferred under the Larger Bench decision in 1991 RRD page 1 but proceedings in appellate courts are pending ?

Answer :-

In the pending appeals, the appellate courts are required to take into account and give effect to the law laid down by Full Bench of this Board in Sitaram's case, notwithstanding the fact that *khatedari* rights have been conferred by the Subordinate Courts under the Larger Bench judgment rendered in Bagga's Case.

Question No. (ii) :-

If so, can settled *khatedari* rights conferred in pursuance of 1991 RRD page 1 under Section 63 (iv) in cases where a *khatedar* tenant has been deprived of his possession and his rights to recover possession barred by limitation be deprived by the 2011 RRD page 508 judgment ?

Answer :-

The cases which have attained finality are not liable to be re-opened, even though a *khatedar* has been deprived of his

***khatedari* rights in pursuance to the decision given in Bagga's case and his right to recover possession stands barred by limitation as well, and in such cases, the law laid down in Sitaram's case would not come to rescue such a *khatedar* tenant.**

Question No. (iii) :-

What is the applicability of Section 183 RT Act in cases of permissive possession? When does a trespasser in permissive possession of any land turn into a trespasser liable for ejectment u/s 183 Rajasthan Tenancy Act, 1955?

Answer :-

Section 183 of the Rajasthan Tenancy Act is not applicable in the cases of permissive possession. A person in permissive possession of any land turns into a trespasser liable for ejectment under section 183 of the Rajasthan Tenancy Act, 1955 only when he starts asserting his open, adverse and hostile title to the knowledge of the *khatedar* tenant.

62. In the end, we acknowledge our thanks to the learned counsels for the parties and learned *amicus curiae* for rendering their valuable assistance to this Board in deciding the above questions.
63. The records of the four D.B. appeals be sent back to the concerned Benches to decide the matters expeditiously in the light of the decisions made by us to the aforesaid questions of law.
64. A copy of this judgment be circulated amongst all the Members of this Board and all the Subordinate Revenue Courts in the State for decision of the pending suits and

appeals in accordance with the answers given by us to the above questions of law.

65. The Registry is also directed to send copy of this judgment to the Chief Secretary, Govt. of Rajasthan for doing needful as per our aforesaid observations.

Pronounced.

(Modu Dan Detha)
Member

(V. Srinivas)
Chairman

(Chiranji Lal Dayma)
Member

(Mohan Lal Nehra)
Member

(Rajinder Kumar)
Member

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