

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

I. Revision/TA/630/2006/Kota.

State of Rajasthan through Tehsildar, Ladpura Distt. Kota.

-----Revisionist.

VERSUS

1. Shrikant Pandit s/o Shri Jaiwant Rao Pandit, Caste Brahman, r/o Shripura Kota Tehsil Ladpura Distt. Kota.
 2. Girishkant Pandit s/o Shri Jaiwant Rao Pandit, Caste Brahman, r/o Shripura Kota Tehsil Ladpura Distt. Kota.
 3. Mangesh Rao s/o Shri Manik Rao.
 4. Smt. Indumati wd/o Manik Rao.
 5. Smt. Mangla
 6. Smt. Nirmla
 7. Smt. Uttara
 8. Smt. Shobhna
- } ds/o Manik Rao
- All Brahman by caste, rs/o Sarola House, Shripura Kota, Tehsil Ladpura, Distt. Kota.
9. Kunwarjeet Singh s/o Shri Bhagat Singh, r/of Ballabnagar, Kota Tehsil Ladpura, Distt. Kota.
 10. Dinesh Kumar s/o Shalta Prasad r/o Dadabadi, Kota.
 11. Rakesh Kumar s/o Shri Shalta Prasad, r/o Talvadi, Kota Tehsil Ladpura Distt. Kota.
 12. Rajrani w/o Manglaram (deceased), through legal representatives :-
 - 12/1. Sharda
 - 12/2. Premkanta
 - 12/3. Sunita
 - 12/4. Anita
- } ds/o Rajrani
- All Khanna by caste, rs/o Building Gurudwara Road, Kota Junction, Kota.
- 12/5. Beena D/o Rajrani, R/o C-2, Hiran Magri, Sector-14, Udaipur.
 - 12/6. Shashi D/o Rajrani, R/o Ushaganj Colony, Nabh Vakil Ke Paas, Banasa (M.P.).
 - 12/7. Madhu Khanna D/o Rajrani, R/o Longia Road, Lakha Bawri Ke Paas, Ajmer.

-----Respondents.

II. Revision/TA/631/2006/Kota.

State of Rajasthan through Tehsildar, Ladpura Distt. Kota.

-----Revisionist.

VERSUS

1. Murti Mataji Balakund and Murti Sh. Ramchandra Ji Virajman Kota Minor through Sh. Maha Laxmi Trust through Trusti Girishkant Pandit s/o Jaiwantram Ji Pandit r/o Shripura, Kota Tehsil Ladpura Distt. Kota.
 2. Mangesh Rao s/o Shri Manik Rao.
 3. Smt. Indumati wd/o Manik Rao.
 4. Smt. Mangla
 5. Smt. Nirmla
 6. Smt. Uttara
 7. Smt. Shobhna
- } ds/o Manik Rao.
- All Brahman by caste, rs/o Sarola House, Shripura Kota, Tehsil Ladpura, Distt. Kota.
8. Kunwarjeet Singh s/o Shri Bhagat Singh, r/of Ballabhnagar, Tehsil Ladpura, Distt. Kota.
 9. Dinesh Kumar s/o Shalta Prasad r/o Dadabadi, Kota.
 10. Rakesh Kumar s/o Shalta Prasad r/o Talvandi, Kota.

-----Respondents.

III. Revision/TA/632/2006/Kota.

State of Rajasthan through Tehsildar, Ladpura Distt. Kota.

-----Revisionist.

VERSUS

1. Pandit Mangesh Rao s/o Manik Rao.
 2. Smt. Indumati wd/o Manik Rao.
 3. Smt. Mangla
 4. Smt. Uttara
 5. Smt. Nirmla
 6. Smt. Shobhna
- } ds/o Manik Rao.
- All Brahman by caste, rs/o Sarola House, Kota Tehsil Ladpura, Distt. Kota.
7. Kunwarjeet Singh s/o Shri Bhagat Singh, r/o Ballabhnagar, Kota Tehsil Ladpura, Distt. Kota.
 8. Dinesh Kumar s/o Shalta Prasad r/o Dadabadi, Kota Tehsil Ladpura, Distt. Kota.
 9. Rakesh Kumar s/o Shalta Prasad r/o Talvandi, Kota Tehsil Ladpura, Distt. Kota.

-----Respondents.

IV. Revision/TA/633/2006/Kota.

State of Rajasthan through Tehsildar, Ladpura Distt. Kota.

-----Revisionist.

VERSUS

1. Pandit Mangesh Rao s/o Manik Rao
 2. Smt. Indumati wd/o Manik Rao
 3. Smt. Mangla Kumari
 4. Smt. Uttara
 5. Smt. Nirmla
 6. Smt. Shobhna
- } ds/o Manik Rao.
- All Brahman by caste, rs/o Sarola House, Kota.
7. Kunwarjeet Singh s/o Shri Bhagat Singh, r/o Ballabhnagar, Kota Tehsil Ladpura, Distt. Kota.
 8. Dinesh Kumar s/o Shalta Prasad r/o Dadabadi, Kota Tehsil Ladpura, Distt. Kota.
 9. Rakesh Kumar s/o Shalta Prasad r/o Talvandi, Kota Tehsil Ladpura, Distt. Kota.

-----Respondents.

V. Revision/TA/634/2006/Kota.

State of Rajasthan through Tehsildar, Ladpura Distt. Kota.

-----Revisionist.

VERSUS

1. Hafiz Khan, Director M/s Bundi Cement Pvt. Ltd. r/o 5 B 18 Vigyan Nagar, Kota.
 2. Smt. Jahida Bano, Director M/s Masum Construction Co. r/o 5 B 18 Vigyan Nagar, Kota.
 3. Javed Khan, Director M/s Masum Finance Pvt. Ltd. r/o 5 B 18 Vigyan Nagar, Kota.
 4. Saeed Khan s/o Valiullah Khan
 5. Mohmmad Miyan s/o Nanhe Khan
 6. Amjad Khan s/o Mohmmad Miyan
- } Caste Musalman, rs/o 5 B 18, Vigyan Nagar, Kota.
7. Shrikant Pandit s/o Jaiwant Rao, Caste Brahman, r/o Shripura, Kota.
 8. Girishkant Pandit s/o Jaiwant Rao Pandit, caste Brahman, r/o Shripura, Kota.

9. Mangesh Rao s/o Manik Rao
 10. Smt. Indumati w/o Manik Rao.
 11. Smt. Mangla
 12. Smt. Nirmla
 13. Smt. Uttara
 14. Smt. Shobhna
- } ds/o Manik Rao.

-----Respondents.

VI. Revision/TA/635/2006/Kota.

State of Rajasthan through Tehsildar, Ladpura Distt. Kota.

-----Revisionist.

VERSUS

1. Radheshyam Pandit s/o Udai @ Umesh Krishnarav Pandit r/o 37 Kamla Nehru Nagar Ujjain.... r/o Balakund Kota.
 2. Mangesh Rao s/o Manik Rao
 3. Smt. Indumati w/o Manik Rao.
 4. Smt. Mangla
 5. Smt. Nirmla
 6. Smt. Uttara
 7. Smt. Shobhna
- } ds/o Manik Rao.
- All Brahman by caste, rs/o Sarola House, Shripura, Kota.
8. Sarika Ahuja w/o Sanjay Ahuja, r/o Kota, at present r/o 7, Negi Road, Dehradun - 248001 (Uttarakhand).
 9. Nilesh Gadiya s/o Ghanshyam Bhai Gadiya, Caste Leva Patel, r/o B-95, Chitralkh Ajay Tinoment Part-5, Bakhal Road, Ahmedabad (Gujarat).
 10. Govindlal Suman s/o Prabhulal Mali, r/o 184, Bajrangnagar, Police Line, Kota.
 11. Praveen Ahuja s/o Madanlal
 12. Uma
 13. Jyoti
 14. Jolu @ Shefali
- } ds/o Madanlal
- All Punjabi by caste, rs/o Nayapura, Kota.
15. Vikas Batla s/o late Kishanlal, Caste Punjabi, r/o K-1, Dadabari, Kota.

-----Respondents.

S.B.**Shri Rajinder Kumar, Member****Present:-**

Shri Pushpendra Naruka : Deputy Government Advocate for the
Revisionist.

Shri P.S. Dashora
Shri Khadag Singh
Shri Ashok Agrawal
Shri Moolchand Sharma
Shri Yogendra Singh
Shri Shashi Kant Joshi
Shri G.S. Charan

} counsels for the respondents.

J U D G M E N T**Dated : 04.10.2018**

1. This judgment shall dispose off six revision petitions preferred by the State of Rajasthan against the common judgment dated 19.05.2005 of the learned Revenue Appellate Authority, Kota passed in six appeals. The said appeals were preferred at the instance of the State Government and five private parties. By the impugned judgment, the learned Revenue Appellate Authority, Kota, while setting-aside the order dated 21.05.2003 of the Sub-Divisional Officer, Kota remanded the matter to him for passing the order afresh in the light of the observations made in the impugned judgment.
2. The facts giving rise to the present controversy in brief are that the disputed lands admeasuring 742.15 standard acres are situate in four villages of District Kota and four villages of District Jhalawar. The lands of these eight villages are known as the lands of 'Salora Jogir'. In fact, a loan amount of Rs. 18 Lakhs was outstanding against the 'Kota Riyasat' and in its lieu the disputed lands were transferred in the name of creditor Pandit Ram Chander Ji in Samvat 1838. After many years of the death of Pandit Ram Chander Ji, a partition suit of the disputed lands came to be filed by his descendants in the year

1950 in the court of District Judge, Kota. The said suit culminated into Final Decree dated 27-10-1983 pursuant to compromise submitted by the parties to the suit. By the said final decree, land measuring 409.66 standard acres came to the share of Pandit Chanderkant Rao Ji and the remaining land measuring 332.49 standard acres came to the share of the legal representatives Pandit Purushottam Rao Ji. However, in the meantime, the State Government in the year 1971 had initiated Ceiling Proceedings against Pandit Chanderkant Rao alone in respect of the disputed lands under Chapter VIII B of the Rajasthan Tenancy Act, 1955 and the Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963. The reason for initiating the said proceedings against Pandit Chanderkant Rao was that the disputed lands at the relevant time were recorded in his name alone. During pendency of the said proceedings, a number of objections were raised by different persons claiming their rights over the parts of the disputed land on the premise that they had purchased the same pursuant to agreements and sale deeds executed in their favor by the deceased Chanderkant Rao and thus prayers were made to protect their rights. Another objection was also raised that all the descendants of the deceased have not been made party to the proceedings. The learned Sub-Divisional Officer, Kota vide judgment dated 14-07-1972 passed the order for acquisition of 474.12 standard acre land after giving recognition to the sale deeds executed on 18-04-1970 and 12-05-1970 pursuant to the agreement dated 14-04-1968 in respect of the lands of Village of Balakund, Lakhaya, Borkheda, Sogriya and Sarola Kalan. Feeling aggrieved against the said judgment of the Sub-Divisional Officer dated 14-07-1972, an appeal was filed on behalf of Pandit Chanderkant Rao in the court of learned Revenue Appellate Authority, Kota whereupon the first appellate Authority vide judgment dated 3-07-1975 set aside the order of the trial court and remanded the matter to the S.D.O., Kota for deciding the same afresh after affording an opportunity of submitting reply, evidence and hearing to Shri Chanderkant Rao in

accordance with law. The said order of the learned Revenue Appellate Authority, Kota was challenged by the vendees of the suit land Kanwarjeet and others by filing revision petition in the Revenue Board, Ajmer. Their main grievance was that the learned trial court has given recognition to the sale transactions entered in their favor and the same has been illegally set aside by the first appellate court. However, the said revision was dismissed by the Board on 07-01-1994. After remand of case to the trial court, an application was preferred in the trial court stating therein that the disputed lands had been partitioned between the khatedar Pandit Chanderkant Rao and the legal representations of Pandit Purushottam Rao, therefore, a prayer was made to issue notices to all the share-holders of the land and to give them an opportunity of hearing. It was also brought to the notice of the trial court that a substantial portion of dispute land situated in Villages Sogariya and Sarola Kalan had been entered in the revenue record in name of Murti Mandir and therefore, prayer was made to exclude that land also from the acquisition proceedings. Separate shares for female descendants of Pandit Purushottam Rao were also claimed stating that they are co-tenants of the disputed lands. The learned trial court after hearing the counsels for the Government, assesseees and the objectors concluded the proceedings vide judgment dated 21-05-2003. Feeling aggrieved, one appeal on behalf of the State Government and five appeals on behalf of the vendees and assesseees were preferred and the learned Revenue Appellate Authority vide the impugned judgment remanded the matter to the trial court as aforesaid. The State Government was still not satisfied with the judgment of the learned Revenue Appellate Authority. Hence, these revision petitions.

3. I have heard the arguments.
4. On behalf of the State Government, it was argued that there was a little delay in filing these revision petitions within the period of

limitation. An application has been filed to condone the said delay in all the files. The State Government has arguable case on merits, thus, the delay may be condoned. It was also argued that the judgment of the learned Revenue Appellate Authority is liable to interference on the following grounds :-

- (i) Hafiz Khan allegedly purchased portion of suit land on 31-03-1971, i.e, much after the stipulated date of 31-12-1969 by way of agreement only. Thus, no rights accrued in his favor. In this view of the matter, the transfer of land in his favor was not required to be recognised. Even otherwise, a vendee had no right to prefer an appeal against the order of Sub-Divisional Officer.
- (ii) The learned Sub-Divisional Officer had not recognised the rights of certain other vendees and the learned Revenue Appellate Authority set aside the findings of the Sub-Divisional Officer in a cursory manner.
- (iii) On the stipulated date of 01.04.1966, this land was in the khatedari of Pandit Chanderkant Rao. The said land had not been transferred in the khatedari of Murti Mandir before 31-12-1969 and thus, Murti Mandir had no right to prefer an appeal against the order of the learned Revenue Appellate Authority. The so called trust was not in existence on 1-04-1966. No illegality was committed by the trial court in not giving any recognition to the trust which was created to frustrate the provisions of the Ceiling Law. On this ground also, the judgment of the first appellate court remanding the matter to the trial court is perverse.
- (iv) A number of opportunities were given to Mangesh Rao and others to lead evidence in support of their claim and they did not produce any oral or documentary evidence. Therefore, the learned Sub-Divisional Officer was right in placing reliance on the copy of the plaint filed in the partition suit in the year 1950 in determining units of both the families. In that year, Girish was only one and half years old and thus on the stipulated date of 1-4-1966 he was minor. Therefore, his land was rightly included

with his father's share and no separate share for him was determined by the trial court. No additional evidence was produced in the appellate court to prove that Girish was not dependent upon his father. Therefore, the findings of learned Revenue Appellate Authority, Kota on this aspect are palpably wrong that Girish had become major on 1-04-1966.

(v) The Sub-Divisional Officer committed an illegality in determining nine units of the family of Pandit Chanderkant Rao and six units of the family of Pandit Purushottam Rao without making proper inquiry as per the provisions contained in section 30 (v) of the Rajasthan Tenancy Act, 1955. This fact was brought to the notice of learned Revenue Appellate Authority, Kota by preferring appeal and the said appeal was decided in a cursory manner ignoring the relevant provisions.

(vi) The fact that the land was acquired by the Housing Board and Urban Improvement Trust (UIT) after the stipulated date of 1.04.1966 is proved on record. Even then, recognition has been given to the said acquisition in contravention of legal provisions.

(vii) There is no evidence on record to establish that Umesh Rao is the adopted son of Pandit Krishna Rao Ji. Therefore, he had no right to challenge the order of Sub-Divisional Officer. Thus, the learned RAA erred in accepting the appeal filed by him.

Therefore, a prayer has been made to set aside the impugned judgment of the learned Revenue Appellate Authority.

5. Learned counsels for the respondents have vehemently opposed the above submissions. Shri P.S. Dashora Advocate has argued that the learned trial court observed that Girish had become major on 1-04-1966 and still it gave a finding that he is dependant on his father. As the land in dispute was the ancestral land of the parties, the burden of proving dependency was upon the State Government. However, the State Government did not discharge the said burden. The learned Sub-Divisional Officer also erred in not treating the land of the Village

Balakund and Sogariya as the land of Murti Mandir whereas in Appeal no. 223/93/Appeal/TA/Kota titled as 'Ramchandra Vs Munni Devi and ors, the Revenue Board has given a specific finding that the said land is the khatedari land of Murti Ramchandra. Even in the partition suit, the learned District Judge, Kota has excluded the disputed lands of Village Balakund and Sogariya as the same belong to Murti Mandir. In pursuance to the decree of civil court, a trust was constituted for management of the said lands of Murti Mandir. As a matter of fact, the Ceiling law is not applicable to such land and the same does not belong to the family of khatedars. After the acquisition of the land by the Housing Board and Urban Improvement Trust, the same was exempt from acquisition. The learned Sub-Divisional Officer also committed illegality in not allotting separate shares to the female members of the khatedars. The minor female members were denied separate units observing that they are dependent on their father and major female members were denied separate units observing that they are dependent on their husbands. The approach of the learned Sub-Divisional Officer was not in conformity with the legal prepositions and therefore, the learned Revenue Appellate Authority, Kota remanded the matter back to the trial court to determine the units of the members of the khatedar strictly in accordance with law. In support of the above arguments, learned counsel has relied upon the following citations :-

- (i) 2008 RBJ 164 'LRs of Himmat Singh & ors Vs State of Rajasthan' :
In this case, the Revenue Appellate Authority, Udaipur remanded the matter to the SDO for deciding the Ceiling case afresh in accordance with law. The Board of Revenue made interference in the said order observing that a new issue has been raised by the petitioners. The order of Board of Revenue was set aside by the Hon'ble High Court and the order of remand was upheld.
- (ii) 1983 RLR 915 'Gopal Singh Vs State of Rajasthan & ors' :- In this case it was held by the Board of Revenue that shares of

independent sons of the khatedars should be excluded while determining ceiling area surplus to the khatedar.

- (iii) 1989 RRD 127 'Ram Pratap & or Vs State of Rajasthan':- In this case, it was held by the Hon'ble Rajasthan High Court that minor sons of a khatedar, who had received property on partition of ancestral land could not be held to be members of the family of khatedar unless definite finding was there that they were dependent upon khatedar.
- (iv) 1992 RRD 107 'Rao Narayan Singh Vs State of Rajasthan & or'.
- (v) 1997 RRD 198 'Bhagirath Vs State'.
- (vi) 1990 RRD 288 'Gyan Singh Vs State of Rajasthan'.

In these cases, it was held by the Board of Revenue that the word 'Family' used in section 30 (B) of Chapter III B of the Rajasthan Tenancy Act, 1955 (Old Ceiling Law) includes all children, irrespective of age, who are dependent on assessee. Adult daughter cannot be excluded unless there is a finding that she was not dependent on assessee. Minority or majority of a child is not relevant for his inclusion or exclusion from the family of assessee. The decisive factor is whether or not the child is economically dependent on the assessee.

- (vii) 1992 RRD 450 'Bhairu Singh Vs. State of Rajasthan' :- In this case, it was held by the Board of Revenue that ceiling limit on ancestral land should be worked out after considering the notional shares of the sons and the widowed mother, if any.
- (viii) 1976 RRD 188 'Idol of Shri Gopal Maharaj Vs. State'.
- (ix) 1990 RRD 285 'Ram Nath Vs. State of Rajasthan'.

In these cases, it was held by the Board of Revenue that the lands held by religious trust of Public Nature are exempted from ceiling proceedings.

- (x) 2004 (2) DNJ (Raj.) 839 'State of Rajasthan Vs. Smt. Hawa Kanwar':- In this case, it was held by the Hon'ble Rajasthan High Court that where land is held by more than one person as co-tenant or co-sharer, the share of each of them shall be deemed

to be separate holding whether division has not actually taken place.

6. Shri Ashok Agarwal, Advocate has argued that Hafiz Khan and other vendees had purchased the part of suit lands after making payment of consideration amount to the khatedars in a bonafide manner. The learned Sub-Divisional Officer committed an illegality in passing the order of acquisition of the land purchased by Hafiz Khan and others. Even otherwise the land purchased by Hafiz Khan and others is an encumbered land, which was liable to be exempted from acquisition proceedings. Therefore, there is no perversity in the order of the learned Revenue Appellate Authority whereby the matter has been remanded to the trial court for fresh adjudication in accordance with law.

7. Shri Khadag Singh, Advocate has submitted that the learned RAA has rightly remanded the case to trial court as the Sub-Divisional Officer committed an illegality in deciding the ceiling case without collecting evidence regarding the status of family of the khatedars as on 01.4.1966. The entire lands of the villages of Balakund, Borkheda, Sogaliya and Lakhava had not been transferred. Therefore, the learned Sub-Divisional Officer committed an illegality in depriving Pandit Radheshyam to submit an 'option'. Radheshyam is the adopted son of the deceased Udai @ Umesh Krishan Rao. Therefore, he is entitled to get a separate unit for himself. The fact that Radheshyam is adopted son of the deceased Udai @ Umesh Krishan Rao stands proved from the registered Power of Attorney executed by Pandit Udai @ Umesh Krishan Rao on 18.4.1991 in his favour. In addition to it, the deceased had also executed a will dated 24-04-1998 in favor of Radheshayam Pandit. On the basis of that Will, a 'Succession Certificate' was issued by Civil Judge, Indore in favor of Radheshyam Pandit in application No. 10/99. To bring the said documents on record, an application under Order 41 Rule 27 CPC has also been filed by Radheshyam Pandit. Learned counsel has also

arguments, Shri Khadag Singh, Advocate has relied upon 'Smt.

shown in the record of rights as 'gair mumkin abadi' cannot be treated as agricultural lands.

(iii) 1983 Rajasthan Law Reporter 1 'Banwari Lal Vs. State of Rajasthan & ors.' :- In this case, it was held by Hon'ble Rajasthan High Court that a person can be compelled to surrender surplus land out of land retained by a khatedar instead of surrendering land transferred by him.

(iv) 1977 RRD 531 'Lakhmi Chand Vs. State of Rajasthan'.

(v) 1977 RRD 184 'Sukhendra Singh Vs. State'.

(vi) 1976 RRD 256 'Dalkanwar Bai Vs. Ram Singh & ors.'

In these cases, it was held by the Board of Revenue that as far as possible, unencumbered land is to be surrendered. If that land is not sufficient, then land sold to the vendees may be acquired.

10. I have given my thoughtful consideration to the rival submissions and perused the record carefully. I have also respectfully studied the law laid down in above citations.
11. The impugned judgment was passed by the learned Revenue Appellate Authority, Kota on 19.5.2005 and the present revision petitions were preferred by the State Government on 30.01.2006 i.e. after a lapse of 8½ months. In this way, there was a delay of almost 5½ months in preferring these revisions. On behalf of the State Government, an application under Section 5 of the Limitation Act for condoning the said delay has been filed in each of the revision petitions. The said applications are supported by the affidavits of Shri Bhawani Singh, the then Tehsildar, Ladpura District Kota. It is revealed from the applications and affidavits that the delay in preferring the revision petitions occurred in completion of legal formalities and the same was neither inordinate nor intentional. Therefore, in my considered opinion, the State Government has made out a 'sufficient cause' for delay condonation. Therefore, the delay is condoned.

12. An application under Order 41 Rule 27 Code of Civil Procedure was filed on behalf of Pandit Radheshyam in Revision Petition No. 635/2006 for taking on record three documents, namely, registered power of attorney dated 18.4.1991, Will dated 26.4.1998 executed by Pandit Udai Kumar alias Umesh Kumar in favour of Pandit Radheshyam and Succession Certificate in respect of the movable properties of Pandit Udai Kumar alias Umesh Kumar issued by Civil Judge, Indore in favour of Pandit Radheshyam on 28.9.1999. All these documents are the certified copies and there is no allegation that the same are forged or fabricated. Though, the said documents have been belatedly filed, yet they are relevant for the purpose of ascertaining the rights of Pandit Radheshyam over the disputed lands, therefore, the said documents are taken on record.
13. Coming to the merits of the controversy, it is noticeable that initially the Ceiling case was decided by the learned Sub Divisional Officer, Kota on 14.7.1972 and at that time, a suit for partition between the two branches of Pandit Ramchandra Lalaji was pending in the court of District Judge, Kota. The aforesaid judgment of S.D.O., Kota was challenged by filing appeal before Revenue Appellate Authority, Kota whereupon the said appellate court vide its judgment dated 03.7.1975 set aside the judgment dated 14.7.1972 and remanded the matter to the trial court for deciding the same afresh after affording to the respondents an opportunity of filing reply and producing evidence. During pendency of the proceedings in the trial court, the partition suit pending in the court of District Judge, Kota was ultimately decided on 22.7.1983 by passing Final Decree therein. In the said Final Decree, both the branches of Pandit Ramchandra Lalaji were held entitled to separate shares out of the disputed lands on the basis of their consent. One of the branch consisting of Pandit Chandrakant Rao was held entitled to 409.66 standard acres land whereas the other branch consisting of the legal representatives of Pandit Purushottam Rao was held entitled to 332.49 standard acres

land. It is pertinent that on the basis of the said Final Decree of the District Court, Kota, the learned trial court of S.D.O., Kota determined the shares of both the branches keeping in mind the status which obtained on 01.4.1966. The branches of Pandit Chandrakant Rao and Pandit Purushottam Rao claimed 15 units and 17 units respectively, but the learned trial court determined 9 units for the branch of Pandit Chandrakant Rao and 6 units for the branch of Pandit Purushottam Rao. In this way, the branch of Pandit Chandrakant Rao was held entitled to 270 standard acres of land and the branch of Pandit Purushottam Rao was held to 180 standard acres land. The learned trial court determined 139.66 standard acres and 152.49 standard acres land as ceiling surplus in the hands of both the branches respectively.

14. It is also pertinent that though the assesseees had claimed separate units for the female members, but the learned trial court gave an observation that the female members usually remain dependent either upon their fathers or upon their husbands and therefore they are not entitled to separate units. The assesseees had also claimed separate units for minor sons, but the learned trial court observed that there is no evidence to prove that the minor sons, for whom separate units had been claimed, are not dependent upon their parents. The learned trial court also observed that the case is being decided in the year 2003 and thus it is impossible to determine the fact of dependency of the minor sons after a lapse of 37 years since the stipulated date of 01.4.1966. In this way, the learned trial court gave a finding that the sons of both the branches, who were major on 01.4.1966 will be considered as self dependent and the sons who were minor on 01.4.1966 will be considered as dependents on their parents. In arriving at the conclusion as to which member was minor and which member was major, the learned trial court placed reliance on the copy of the plaint filed in the partition suit in the year 1950.

15. The aforesaid judgment of the Sub Divisional Officer, Kota was challenged not only by the assesseees and intervenors (objectors) but by the State Government as well by preferring six separate appeals before the learned first appellate court. The main grievances of the assesseees were that they have been allotted lesser units and the female members and minor sons have not been given separate units in spite of the fact that they are not dependent on their parents. Another grievance of the assesseees was that the lands acquired by Murti Mandir should have been excluded while determining the surplus land in their hands. The main grievance of the objectors was that the lands purchased by them either through agreement to sale or registered sale deed was not required to be acquired in ceiling case. The main grievance of the State Government was that both the branches of Pandit Ramchandra Lalaji have been given extra units in contravention of the Old Ceiling Law. The learned Revenue Appellate Authority, Kota after giving a thoughtful consideration to the rival submissions vide impugned judgment dated 19.5.2005, remanded the matter to the learned trial court for redetermining the units of both the branches afresh in the light of the observations given by it. The learned Revenue Appellate Authority gave an observation that the minority or majority of a son is not the criteria of awarding separate units to him. On the contrary, an enquiry ought to have been made whether the said son was dependent on his parents or not. The learned Revenue Appellate Authority also gave an observation that the learned trial court has committed illegality in not awarding any separate unit to Smt. Kesar Bai, the mother of Pandit Chandrakant Rao and an inquiry in this regard ought to have been made regarding her dependency. The learned first appellate court also made an observation that if she was not dependent on his son on 01.4.1966, then she was entitled to separate unit. The learned first appellate court also made an observation that no finding has been given by S.D.O. regarding the status of Pandit Radheshyam. If it is proved that he was adopted son of Pandit Udai Kumar alias

Umesh Kumar, then he was entitled to a separate unit. The learned R.A.A. also observed that no enquiry has been made regarding the entitlement of Murti Mandir over the portion of land which is in its khatedari and an enquiry in this regard was also desired. The learned first appellate court has also observed that a portion of disputed land has been acquired by Rajasthan Housing Board and Urban Improvement Trust, Kota and residential colonies had already been constructed in that land and no enquiry was made regarding these acquired lands and on the contrary they had been included in the ceiling surplus land of the assesseees. In this way, the learned Revenue Appellate Authority has substituted his own findings with the findings of the learned trial court by giving cogent reasons thereof and no illegality has been committed by it in remanding the matter to the trial court for fresh adjudication in the light of the observations given in the said judgment.

16. These six revision petitions have been preferred only by the State of Rajasthan and none of the private parties has challenged the judgment of the learned Revenue Appellate Authority, Kota. It is pertinent to mention here that the State Government has taken contradictory stands in the appeal filed before learned R.A.A. and the present revision petitions. In the memo of appeal filed before the learned R.A.A., the stand of the State Government was that the order of learned S.D.O. dated 21.5.2003 is illegal and thus a prayer was made to set aside the said order, whereas in the memo of revision petition filed before this Board, the State Government has submitted that the order dated 21.5.2003 of learned S.D.O. was legal and thus a prayer has been made to maintain the said order. No party should be permitted to blow hot and cold at the same breath, even if it is the State Government. It appears that the State Government was not convinced as to whether the order of learned S.D.O. dated 21.5.2003 was legal or illegal. Be that as it may, the learned S.D.O. made certain illegalities in the impugned order dated 21.5.2003 and

the learned Revenue Appellate Authority made interference in the said order and rightly remanded the matter to the trial court for deciding the same afresh as per legal prepositions.

17. In Revision Petition No. 635/2006, an application under Section 151 CPC was submitted by Smt. Sarika Ahuja, respondent no. 8 alleging that a portion of land bearing khasra no. 53 (new khasra no. 88 measuring 0.36 hectare) was purchased by her through registered sale deed dated 23.5.2014 from Shri Daljeet Singh. The said land was earlier purchased by Shri Daljeet Singh from the khatedar Pandit Chandrakant Rao vide registered sale deed dated 04.7.1970 in pursuance of an agreement to sale dated 15.9.1969. The allegation of Smt. Sarika Ahuja is that right from the beginning, this land has been recorded as Abadi land and thus the same is required to be exempted from the ceiling proceedings. In view of the pronouncements of the Hon'ble Rajasthan High Court and this Board in the matters of Amar Singh (supra) and LRs of Bhola Ram (supra), the abadi land cannot be utilised for agricultural purposes and thus, the same cannot be made the subject matter of acquisition proceedings. The learned Dy. Govt. Advocate has also fairly conceded during arguments that Abadi land cannot be subject to acquisition in ceiling proceedings. In view of the above, a direction is issued to the learned S.D.O. to exempt the land purchased by Smt. Sarika Ahuja from acquisition proceedings in accordance with law, if the same is found to be the abadi land.

18. In view of above observations, the revision petitions are liable to be dismissed and are therefore dismissed.

Pronounced.

(Rajinder Kumar)

Member