

न्यायालय उपखण्ड अधिकारी, खाजूवाला जिला बीकानेर

पीठासीन अधिकारी :- संदीप कुमार आर.ए.एस.

राजस्व प्रार्थना पत्र संख्या :- 250/2007

1. सरूपसिंह पुत्र श्री पंजाबसिंह जाति राजपूत निवासी चक 18 बी.डी. तहसील खाजूवाला जिला बीकानेर।

..... प्रार्थी

बनाम

- 1 हरिसिंह पुत्र श्री कैप्टन भीखमसिंह जाति राजपूत निवासी धारजरोट तहसील ज्वाली जिला कांगड़ा, हिमाचलप्रदे ।।
- 2 सावित्री देवी पुत्री श्री कैप्टन भीखमसिंह जाति राजपूत निवासी धारजरोट तहसील ज्वाली जिला कांगड़ा, हिमाचलप्रदे ।।
- 3 निर्मला देवी पुत्री श्री कैप्टन भीखमसिंह जाति राजपूत निवासी धारजरोट तहसील ज्वाली जिला कांगड़ा, हिमाचलप्रदे ।।

.... अप्रार्थीगण

उपस्थित अभिभाषकगण :-

- 1 श्री रामकुमार तेतरवाल विद्वान अधिवक्ता प्रार्थी की ओर से।
- 2 अप्रार्थीगण एकपक्षीय कार्यवाही।

प्रार्थना पत्र अन्तर्गत धारा 13 (क) राजस्थान उपनिवेतन अधिनियम 1954

आदे ।

दिनांक :- 20.03.2020

यह प्रार्थना पत्र प्रार्थी की ओर से अधिवक्ता ने अन्तर्गत राजस्थान उपनिवेतन अधिनियम, 1954 की धारा 13 (क) में प्रस्तुत किया है। प्रार्थना पत्र से संबंधित संक्षिप्त तथ्य इस प्रकार से है कि प्रार्थी ने दिनांक 07.02.1995 को अप्रार्थीगण की माता से श्रीमती कुब्जादेवी बेवा कैप्टन भीखमसिंह जाति राजपूत से वाके चक 18 बी.डी. का मु० नं० 96/49 में 25 बीघा भूमि जरिये इकरारनामा से खरीद की थी। उसी समय तमाम प्रतिफल की राशि स्व. श्रीमती कुब्जादेवी को अदा कर दी गई थी एवं उसी दिन अप्रार्थीगण की माता ने उक्त भूमि का कब्जा सुपुर्द कर दिया था तब से प्रार्थी का आज तक कब्जा का त चला आ रहा है। विक्रेता के वारिसगण अप्रार्थीगण सं० 1 अब उक्त भूमि का बेचान क्रेता प्रार्थी के पक्ष में करवाने से आनाकानी कर रहे हैं। प्रार्थी ने अप्रार्थीगण को आवंटित भूमि वाके चक 18 बी.डी. के मु० नं० 96/49 में 25 बीघा भूमि को निर्धारित भास्ती जमा करवाकर क्रेता प्रार्थी के हक में नियमन करने का आदे । प्रदान करने की इस्तदुवा की है।

प्रकरण दर्ज रजिस्टर कर अप्रार्थीगण को जरिये रजि०ए०डी० तलब किया गया जिसपर अप्रार्थीगण बावजूद तलबी उपस्थित नहीं होने के कारण दिनांक 27.12.2011 को समाचार पत्र में नोटिस प्रकाशन के आदेश की पालना में दिनांक 24.01.2012 को समाचार पत्र पंजाब के एसी जो दैनिक रूप से पालमपुर से प्रकाशित होता है की प्रति दिनांक 06.01.2012 प्रस्तुत की गई। जिसमें इ तहार प्रकाशित किया हुआ है एवं पृष्ठ भुक्कार कांगड़ा केसरी दिनांक 06.01.2012 अतिरिक्त अंक ii पर मुद्रित है प्रस्तुत किया। प्रार्थी जरिये अधिवक्ता दिनांक 07.10.2019 के प्रार्थना पत्र पर पत्रावली रिस्टोर की गई एवं दिनांक 22.11.2019 को अप्रार्थीगण बावजूद तलबी उपस्थित नहीं आने पर एकपक्षीय कार्यवाही की गई। प्रार्थी की प्रार्थना पर तारीख पे 17.03.2020 को बहस एकतरफा सुनी गई।

प्रार्थी द्वारा प्रस्तुत प्रार्थना-पत्र, भाष्य पत्र एवं प्रस्तुत इकरारनामा, खातेदारी सनद आदि दस्तावेजात तथा रिपोर्ट तहसीलदार एवं फर्द मौका पटवार हल्का का गम्भीरापूर्वक अध्ययन करने एवं अधिवक्ता प्रार्थी की बहस पर मनन करने पर न्यायालय इस निष्कर्ष पर पहुँचा है कि राजस्थान उपनिवेश अधिनियम, 1954 की धारा 13 (क) के प्रावधान इस प्रकार हैं:- 13A.

Validation of certain transfers and declaration of consent to transfer.] - (1) Notwithstanding anything contained in Section 13, or in any other provisions of this Act or in the rules made or statement of conditions issued thereunder, but subject to Section 42 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), where any transfer or sub-lease has been made or any charge has been created by a tenant in whom khatedari rights have vested by or under this Act in contravention of sub-Section (1) of Section 13 at any time before the commencement of the Rajasthan Colonisation (Amendment) Act, 1983, such transfer, sub-lease or charge may, on an application being made to the Collector in this behalf in such form as may be prescribed and within[1425 days of such commencement i.e. upto 30.6.1987] by the transferor, lessor or as the case may be, the person creating the charge or by the purported transferee, sub-lessee or, as the case may be, charge holder or by any subsequent purported transferee, sub-lessee or, as the case may be, charge holder, be declared, after holding such enquiry as he deems proper, as valid by him subject to any of such persons as aforesaid making payment to the State Government [by way of compounding fee], in the case of irrigated land of an amount of Rs. 20,000/- per 25 bighas and in the case of barani or uncommand land of an amount of Rs. 4,000/- per 25 bighas or of an amount equal to the allotment price of the land prescribed by the State Government in the statement of conditions issued under sub-Section (2) of Section 7 or in any rule made under this Act and in force on such commencement, whichever is less [in four equal installments as follows:-

- (a) in the case of an application made upto 31.12.1984: the first, second, third and fourth installments shall be payable respectively on 31.12.1984, 30.6.1985, 31.12.1985 and 30.6.1986;
- (b) in the case of an application made after 31.12.1984 but before the date of publication in the Official Gazette of the Rajasthan Colonisation Ordinance, 1986 i.e. before 3.1.1987: the first installment shall be payable within fifteen days from the date of such publication and the second, third and fourth installments shall be payable respectively within fifteen days, six months and one year from the date of the order of the Collector; and

(c) in the case of an application made on or after the date of such publication: the first installment shall be payable alongwith the application and the second, third and fourth installments shall be payable within the periods specified for such installments in clause (b): Provided that the State Government may, on being satisfied that it is necessary or expedient to do so, extend by notification the period beyond 30th June 1987, not exceeding [five years and six months], upto the day as deemed fit]:

[Provided further that where] any of the aforesaid persons pays to the State Government the entire compounding fee in one lump sum along with his application and within the period specified in this sub-section, the amount of compounding fee payable by him shall be deemed to be 25% less than that provided therein.

[Provided also that the State Government may, on being satisfied that it is necessary or expedient to do so in the public interest, extend by notification the period beyond 31st December, 1992 upto the day as deemed fit:

Provided also that on the applications received during the period extended under the preceding proviso the transfer, sub-lease or charge shall be declared valid only on the condition that the applicant shall, in addition to the compounding fee payable under this sub-section, be also liable to pay interest at the rate of eighteen per cent per annum on the amount of the compounding fee for the period from 1st January, 1993 to the date of application.]

[(1-A) Where an allottee, in whom khatedari rights have not been vested, even after seven years of allotment, under condition 9 of General Colony Conditions, has transferred the land allotted to him or any right therein, in contravention of sub-Section (1) of Section 13 of this Act, before the commencement of the Rajasthan Colonisation (Amendment) Ordinance, 1988 (Ordinance No.9 of 1988), the Collector, on receiving an application from the allottee and the purported transferee in this behalf, in the prescribed form, within 297 days of the commencement of the Rajasthan Colonisation (Amendment) Ordinance, 1988 (Ordinance No.9 of 1988) or within such period, as may be extended by the Government from time to time, may, subject to the provisions of Section 42 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act No.3 of 1955), declare such transfer valid after holding such enquiry as he deems proper subject to payment of all dues of the State Government by the transferee

and also subject to the payment of a sum of Rs. 50,000/- per 25 bighas to the State Government in case of irrigated or command land and a sum of Rs. 10,000/- per 25 bighas in case of barani or uncommand land in four half yearly equal installments. Such transferee, shall thereafter be entitled to khatedari rights under the Rajasthan Tenancy Act, 1955 (Rajasthan Act No.3 of 1955):

Provided that where any of the aforesaid person pays to the State Government the entire compounding fee in one lump-sum alongwith his application and within the period specified in this sub-section, the amount of compounding fee payable by him shall be deemed to be 25% less than provided therein.

Explanation. - For the purposes of this sub-section,-

(a) "allottee" means the person to whom land has been allotted on price under the rules made under this Act; and

(b) "dues" in relation to the land allotted, shall include unpaid price of such land and such other dues as are required under law to be paid by the allottee.]

(2) Where on account of transfer, sub-lease or charge having been made by a tenant in whom khatedari rights have vested by or under this Act in contravention of sub-Section (1) of Section 13, the Collector has passed an order for ejectment of the purported transferee, sub-lessee or, as the case may be, the charge holder or of any subsequent purported transferee, sub-lessee or, as the case may be, the charge holder under sub-Section (2) of said section or for resumption of the tenancy of such tenant under clause (ii) of Section 14, but any of such persons or such tenant as aforesaid has not actually been ejected from the land transferred, sub-let or, as the case may be, charged and the tenancy has not actually been resumed before the commencement of the Rajasthan Colonisation (Amendment) Act, 1983, such tenant or any of such persons as aforesaid may, at any time within [1425 days of such commencement i.e. upto 30.6.1987 or within the period extended by the State Government under the first proviso to sub-Section (1)], apply to the Collector for declaring the transfer, sublease or, as the case may be, the charge by such tenant as valid under and in accordance with sub-Section (1) and upon such declaration having been made, any of such persons as aforesaid shall not be liable to be ejected and the tenancy of such tenant shall not liable to be resumed and the order of ejectment or resumption of tenancy as the case may be, passed by the Collector shall be deemed to have been withdrawn.

(3) Notwithstanding any judgment, decree, order, direction or permission of any court, officer or authority, all cases, in which previous consent in writing of the Collector was not obtained under sub-Section (1) of Section 13 by a tenant in whom khatedari rights have vested by or under this Act for transferring or subletting such rights or, as the case may be, charging the same but subsequent consent as aforesaid for such transfer, sub-letting or, as the case may be, charge had been obtained by him from the Collector or from any court, officer or authority or in which clause (i) of Section 14 was applied by any of them to such transaction before the commencement of the Rajasthan Colonisation (Amendment) Act, 1983,

shall be re-opened by the Collector and shall be decided afresh by him in accordance with this section after giving notice to the transferor, lessor, as the case may be, the person creating the charge, the purported transferee, sub-lessee or, as the case may be, the charge holder and to every subsequent purported transferee, sub-lessee or, as the case may be, the charge holder.

(4) Where compounding fee has been paid in accordance with this section, no action shall be taken or proceeded further against the purported transferee, sub-lessee or, as the case may be, charge holder and no penalty shall be imposed on, and no resumption of tenancy shall be made of, the tenant in whom khatedari rights have vested by or under this Act, either under sub-Section (2) of Section 13 or under Section 14, as the case may be, for the breach of the same condition of tenancy and arising due to the same contravention as aforesaid.

(5) Where a tenant mentioned in sub-Section (1) or his purported transferee, sub-lessee or, as the case may be, charge holder or any subsequent purported transferee, sub-lessee or, as the case may be, charge holder has already obtained a declaration under that sub-section or under sub-Section (2) or sub-Section (3) after making payment to the State Government of the amount

of compounding fee under this section as it stood prior to its substitution by the Rajasthan Colonisation (Amendment) Act, 1984, so much amount of the compounding fee paid as is in excess of the amount of such fee specified in the proviso to sub-Section (1) shall be refunded to such tenant or, as the case may be, to any of such persons who made the payment.

(6) Where,-

(a) any tenant in whom khatedari rights in land have vested by or under this Act has, before the commencement of the Rajasthan Colonisation (Amendment) Act, 1983, contracted to transfer for consideration such rights, or

(b) any tenant to whom khatedari rights in land have accrued before such commencement had, before accrual of such rights to him, contracted to transfer for consideration rights vested in him by or under this Act by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, before such commencement, in part performance of the contract taken possession of the land or any part thereof, or the transferee, being already in possession, continued in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has paid the whole or part of the consideration to the transferor, then the transferor or any person claiming under him and the transferee or either of them may make an application in such form as may be prescribed on or before the last day upto which an application can be made under sub-Section (1) to the Collector for declaration that the consent required of the Collector under sub-Section (1) of Section 13 to transfer such rights be deemed to have been granted and if Collector after making such enquiry as deemed fit, is satisfied that the conditions specified in this section and such other conditions as may be prescribed are fulfilled, he shall, subject to the transferor or the transferee making payment to the State Government of the amount calculated as the rate and in the manner specified in sub-Section (1) by way of compounding fee, by order in writing declare that such consent to transfer such rights shall be deemed to have been granted to the transferor or any person claiming under him and upon such declaration being granted, the transferor shall, notwithstanding the fact that consent of the Collector was not obtained by him as required by sub-Section (1) Section 13, be competent to transfer validly the land contracted to be transferred and in the event of the transferor refusing to do so or his whereabouts being not known, the transferee shall be competent to have the contract to transfer specifically enforced in accordance with the provisions of law relating to specific performance of contract for the time being in force.

उपरोक्त धारा 13 (क) कतिपय अन्तरणों का विधिमान्यकरण और अन्तरण के लिए सम्मति की घोषणा के अनुसार विचाराधीन प्रार्थना पत्र में वर्णित भूमि चक 18 बी.डी. (बी) के मु0नं0 96/49 के किला नं0 1 ता 25 कुल 25 बीघा कमाण्ड भूमि का अन्तरण प्रस्तुत इकरारनामा दिनांक 24.06.1995 द्वारा हरिसिंह आयु 66 वर्ष पुत्र श्री कैप्टन भीखमसिंह साकिन धारजरोट तहसील ज्वाली जिला कांगड़ा द्वारा अपनी माता श्रीमती कुब्जा देवी बैवा कैप्टन भीखमसिंह के मुख्तयार मिन जानिव की हैसियत से सरूपसिंह पुत्र श्री पंजाबसिंह साकिन 18 बी.डी. तहसील खाजूवाला को अन्तरण कर कब्जा सुपुर्द कर दिया।

अन्तरिती का कब्जा रिपोर्ट तहसीलदार द्वारा भी प्रमाणित है अतः आवंटिती का तकार द्वारा राजस्थान उपनिवे इन अधिनियम 1954 की धारा 13 (क) का उल्लंघन कर सक्षम अधिकारी की लिखित पूर्व सम्मति के बिना अन्तरण किया तथा बाद में इस तथ्य को छुपाकर

दिनांक 03.07.2004 को खातेदारी सनद हासिल कर राजस्व अभिलेखों में खातेदारी दर्ज करवा ली जो कि राजस्थान उपनिवेश अधिनियम, 1954 एवं राजस्थान उपनिवेश (सामान्य उपनिवेश) भाँते, 1955 का सरासर उल्लंघन है।

अतः प्रार्थी राजस्थान उपनिवेश अधिनियम की धारा 13 (क) की उपधारा 13 क (1), 13 क (1क), 13 क (6) के तहत अन्तरण के लिए संविदाकृत भूमि का विधिमान्यतः अन्तरण करवाने के लिए सक्षम है। अतः तहसीलदार खाजूवाला को आदेित किया जाता है कि वह अन्तरिति द्वारा राज्य सरकार के समस्त दे ाँ का संदाय किये जाने के अध्धीन रहते हुए और राज्य सरकार को सिंचित या कमाण्ड भूमि के मामले में प्रति 25 बीघा 50,000/- रूपये की रकम एवं अन्तरण की तारीख से आज तक भामन फीस की रकम पर अठारह प्रति ात प्रतिवर्ष की दर से ब्याज सहित कुल भामन फीस का चार अर्द्धवार्षिक समान कि तों में संदाय करने अथवा सम्पूर्ण भामन फीस ब्याज सहित का एकमु त राि में संदाय करने पर उसके द्वारा संदेय भामन फीस की रकम को, उसके उपबंधित से 25% कम समझा जायेगा, का संदाय करने पर उक्त अन्तरण को राजस्थान उपनिवेश अधिनियम की धारा 13-क (6) के अध्धीन रहते हुवे विधिमान्य समझा जावे। तदानुसार तहसीलदार खाजूवाला नियमानुसार राजस्व रिकॉर्ड में अमलदरामद करें।

निर्णय आज दिनांक 20.03.2020 को मेरे द्वारा लिखाया जाकर खुले न्यायालय में सुनाया गया। पत्रावली फ़ैसल ामार होकर दाखिल-दफ़तर हो।

(संदीप कुमार),
(आर.ए.एस.)
उपखण्ड अधिकारी,
(खाजूवाला)