IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

1. D.B.Civil Special Appeal No.185/2001
Tara & ors. V/s State of Rajasthan & anr.

2. D.B.Civil Writ Petition No.266/1996
Mahant Damodar Dass & ors.V/s State of Rajasthan

3. D.B.Civil Writ Petition No.2309/1996
Samela & ors. V/s State of Rajasthan & ors.

4. D.B.Civil Special Appeal No.444/2004
State of Rajasthan & anr. V/s Board of Revenue & ors.

5. D.B.Civil Writ Contempt Petition No.323/2007
Mahant Damodar Dass Chaila V/s Jagdish Prasad Garg, RTS
Prabhudas & anr.

6. D.B.Civil Special Appeal No.1048/2007
Shri Shanti Nath Ji Sthan Deh V/s The State of Raj. & ors.

7. D.B.Civil Special Appeal No.947/2012
Ram Karan & ors. V/s State of Raj. & ors.

8. D.B.Civil Special Appeal No.948/2012
Kishan Lal & Ors. V/s State of Raj. & ors.

9. D.B.Civil Special Appeal No.949/2012
Ram Narain & Ors. V/s State of Raj. & ors.

10. D.B.Civil Special Appeal No.950/2012
Thandi & Anr. V/s Board of Revenue, Ajmer & ors.

11. D.B.Civil Special Appeal No.951/2012
Ladu & Ors. V/s State of Raj. & ors.

12. D.B.Civil Special Appeal No.952/2012
Mangi Lal & Ors. V/s State of Raj. & ors.

13. D.B.Civil Special Appeal No.953/2012
Mst.Kesar & Ors. V/s Board of Revenue, Ajmer & ors.

14. D.B.Civil Special Appeal No.954/2012
Ram Swaroop & Ors. V/s State of Raj. & ors.

15. D.B.Civil Special Appeal No.955/2012
Chhitar & Ors. V/s State of Raj. & ors.

16. D.B.Civil Writ Petition No.12253/2012
Nangi & Ors. V/s Board of Revenue & ors.

17. D.B.Civil Writ Petition No.12254/2012
Badam & Ors. V/s Moorti Shri Bade Mathureshji Vira & ors.

18. D.B.Civil Writ Petition No.12255/2012
Rajendra Kumar V/s Board of Revenue, Ajmer & ors.

19. D.B.Civil Writ Petition No.12256/2012
Tara Devi & Ors. V/s Board of Revenue, Ajmer & ors.

20. D.B.Civil Writ Petition No.12257/2012
Murti Mandir, Bade Mathuresh Ji V/s State of Raj. & ors.

21. D.B.Civil Writ Petition No.12258/2012
Bajranga V/s Mandir Shri Charbhuja Maharaj & ors.

22. D.B.Civil Writ Petition No.12259/2012
Mst.Munni & Ors. V/s Board of Revenue, Ajmer & ors.

23. D.B.Civil Writ Petition No.12260/2012
Mandir Murti Shriji Maharaj Virajman V/s State of Raj. & ors.

24. D.B.Civil Writ Petition No.12261/2012
Gopal & ors. V/s State of Raj. & ors.

25. D.B.Civil Writ Petition No.12262/2012
Madan Lal V/s Board of Revenue, Ajmer & ors.

26. D.B.Civil Writ Petition No.12264/2012
Ramesh Chand Tiwari & anr. V/s State of Raj. & ors.

27. D.B.Civil Writ Petition No.12265/2012
Mandir Thakur Govind Devji Maharaj V/s Board of Revenue Ajmer & ors.

28. D.B.Civil Writ Petition No.12266/2012
Ram Pratap & ors. V/s Thakurji Shri Sitaramji & ors.

29. D.B.Civil Writ Petition No.12267/2012
Gangadhar V/s Board of Revenue, Ajmer & ors.

30. D.B.Civil Writ Petition No.12268/2012
Ramoli & ors. V/s State of Raj. & ors.

31. D.B.Civil Writ Petition No.12269/2012
Mst.Soni Bai ors. V/s State of Raj. & ors.

32. D.B.Civil Writ Petition No.12270/2012
Suraj Mal & ors. V/s Board of Revenue,Ajmer & ors.

33. D.B.Civil Writ Petition No.12273/2012

34. D.B.Civil Writ Petition No.12274/2012
Gulab Chand V/s State of Raj. & ors.

35. D.B.Civil Writ Petition No.2374/2013
Kila Nagrik Vikas Sansthan, Chittorgarh V/s State of Raj.& ors.

36. D.B.Civil Writ Petition No.1210/2014
Batsa Raj @ Bachh Raj V/s Moorti Shri Gopal Ji V.M.S.Mangrole & ors.

Date of Order::-
15th.7.2015

PRESENT

HON'BLE CHIEF JUSTICE MR.SUNIL AMBWANI
HON'BLE MR.JUSTICE GOPAL KRISHAN VYAS
HON'BLE MR.JUSTICE P.K.LOHRA

Mr.J.L.Purohit,Sr.Advocate with)
Mr.Rajeev Purohit)
Mr.N.R.Budania)
Mr.R.S.Mehta)
Mr.T.S.Champawat)
Mr.Paramveer Singh)-for the appellants/
Mr.Moti Singh) petitioners.
Mr.C.R.Jakhar)
Mr.V.N.Kalla)

Dr.P.S.Bhati, Addl.Advocate General with)
Mr.Sajjan Singh)
Mr.Monit Bhatnagar)
Mr.O.P.Boob)-for the respondents.
Mr.B.L.Choudhary)
Mr.D.S.Rajvi)
Mr.RDSS Kharlia)
Mr.Rajesh Choudhary)

ORDER

(Reportable) BY THE COURT (Per Hon'ble Sunil Ambwani, Chief Justice)

1. This Larger Bench was constituted to decide the important

questions of law, which were referred on 26.02.2001, re-framed on 16.05.2001, 01.03.2011 and again on 17.12.2014 as follows:-

> **"**(i) Whether the land held in Jagir, by Hindu Idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, such idol being treated as a perpetual minor, will still be regarded as land held in the personal cultivation of the deity or will such land be regarded as held in the tenancy by the person cultivating such land as tenant of a deity?
>
> (ii) What are the rights of the Hindu Idol (deity) in the lands held by them in the name of its Shebaits/Pujari on the date of resumption of such Jagir, under the provisions of the Rajasthan Land Reforms & Resumption of Jagir Act, 1952?
>
> (iii) Whether such a Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol (deity) in their name after the date of resumption of the Jagir (Muafi) can be alienated by them? If so, what is the effect?
>
> (iv) Whether any person can acquire right by adverse possession in the lands of aforesaid nature against the holder?
>
> (v) Whether any time limit can be fixed for reference u/s 82 of the Rajasthan Land Revenue Act, 1956 and u/s.232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity). If so, to what extent?"

2. A large number of writ petitions are pending in the Rajasthan High Court at Principal Seat, Jodhpur as well as at Bench, Jaipur, awaiting the decision on these questions referred by a learned Single Judge of this Court at Jaipur Bench in S.B.Civil Writ Petition No.3263/1997 **Ramesh Chand Tiwari & anr. V/s State of Rajasthan & ors.** (2000(2) RLR 269) on 21st February, 2000. Learned Single Judge referred to the Division Bench judgment of this

Court in **Ram Lal & anr. V/s Board of Revenue & ors.** (1990(1) RLR 161), in which it was held that the deity/idol is a juristic person, having right to hold the property including the agricultural land and that, the land in question not being khudkasht of the deity and was cultivated by the tenants, as such, after the resumption of jagirs, the land should be treated as khatedari land of the tenants and another judgment of learned Single Judge in **Bal Kishan V/s Board of Revenue and ors.** (2000 (1) RLR 69), in which, relying on the judgment of the Apex Court in **Deepa V/s State of Rajasthan & ors.** ((1996) 1 SCC 612), it was held that the petitioner acquired the tenancy rights over the Muafi land of the deity under the provisions of Sections 9 and 10 of the **Rajasthan Land Reforms & Resumption of Jagirs Act, 1952** (for short, "the Jagirs Act of 1952"). It was noticed that a Division Bench of this Court in the case of **Mangi Lal & ors. V/s State of Rajasthan & ors**. (1997(2) RLR 755) had held that the deity/idol is treated to be a minor or physically disabled person and acquires khatedari rights over the land and such rights cannot be transferred to any other person and that necessary corrections can be made inspite of inordinate delay. In **Temple of Thakurji Village Kansar V/s The State of Rajasthan & ors.** (1998(3) WLC(Raj.) 387) and **Ram Lal & ors. V/s Board of Revenue** (2000(1) RLR 258) as well as in **Naini Bai & ors. V/s State of Rajasthan & ors.** (2000(1) RLR 143), the rights of the deity were upheld by learned Single Judge. The point of delay in making the reference was also considered in the case of **Lad Bai & ors. V/s Board of Revenue** (2000(1) RLR 123).

3. Learned Single Judge noticed that in all the aforesaid

decisions, there is absence of any clarity on the questions of law and felt that in view of the large number of cases pending in the revenue courts at various stages, it would be appropriate that this Court may decide the issues by framing appropriate questions.

4. A Division Bench of this Court in D.B.Civil Special Appeal No.185/2001 **Tara & ors. V/s State of Rajasthan**, vide order dated 26.2.2001, referred the matter to the then Hon'ble Chief Justice to constitute a Larger Bench by tagging all the matters. A Larger Bench of three Hon'ble Judges was constituted by the then Hon'ble Chief Justice, which framed the questions of law on 16.5.2001.

5. With the passage of time, the Larger Benches were re-constituted by the then Hon'ble Chief Justices on various dates. On 1.3.2011, in D.B.Civil Special Appeal No.185/2001 **Tara & ors. V/s State of Rajasthan**, the questions were re-framed. The matters still remained pending and that on 17.12.2014, after hearing the parties, the questions re-framed as above with the help of arguing counsels, were directed to be heard with opportunity given to the arguing parties to file their written submissions. The matter was finally heard on 12th May, 2015.

6. After hearing learned counsels appearing for the parties at length, who have also filed their written submissions, we find that the legal position was fairly well settled by Hon'ble Supreme Court in **Thakur Amar Singhji & ors. V/s State of Rajasthan & ors.** (AIR 1955 S.C. 504), **Budha V/s Amilal** (1991 Supp(2) SCC 41), **Bir Singh & ors. V/s Pyare Singh & ors.** ((2000) 3 SCC 652), **Kalanka Devi Sansthan V/s The Maharashtra Revenue,**

Tribunal Nagpur & ors. (AIR 1970 SC 439) and **Deepa V/s State of Rajasthan & ors.** ((1996) 1 SCC 612). The issues were sought to be re-visited by learned Single Judges and Division Benches of this Court striking a discordant note on the facts of the case and on which, a learned Single Judge in Ramesh Chand Tiwari & anr. V/s State of Rajasthan & ors. (supra) observed that the matter should be referred to a Larger Bench. The discussion will show that the anxiety was misplaced. The questions were referred without going through the previous decisions referred to as above, creating a doubt which was never felt earlier and which should have been avoided.

7. Learned Single Judge in Ramesh Chand Tiwari & anr. V/s State of Rajasthan & ors. (supra) threw the pebble in pond, which was otherwise calm, causing ripples which have lead to filing of thousands of claims, much beyond the reasonable period by persons interested in the lands of deity/idol. The erstwhile Jagirdars, Mandatum, Shebaits and all those who have purchased the lands from them, were encouraged by the alleged doubts over the law, resulting in thousands of transactions, giving rise to the matters, which were directed by this Court to await the decision of the Larger Bench. The unfortunate and uncalled for reference resulted into sale of thousands of bighas of lands and references made to the Collectors in respect of the lands, which were resumed long ago.

8. We could have disposed of the reference by referring to the ratio of the judgments of Hon'ble Supreme Court in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra), Budha V/s

Amilal (supra), Bir Singh & ors. V/s Pyare Singh & ors. (supra), Kalanka Devi Sansthan V/s The Maharashtra Revenue, Tribunal Nagpur & ors. (supra) and Deepa V/s State of Rajasthan & ors. (supra), however, since there are a few judgments of learned Single Judges, which have tried to raise an issue, relying on the principles and maxims of law relating to status of the Hindu deity (Idol), it is necessary to discuss and answer the questions.

Question No.(i) Whether the land held in Jagir, by Hindu Idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, such idol being treated as a perpetual minor, will still be regarded as land held in the personal cultivation of the deity or will such land be regarded as held in the tenancy by the person cultivating such land as tenant of a deity?

9. In the State of Rajasthan, prior to abolition of jagirs by the Jagirs Act of 1952, there were two categories of land, namely, the lands held by the Ex-rulers known as “khalsa lands” and the lands held by Jagirdars as 'Jagir lands', in different parts of Rajasthan. All the principalities had agreed to accede to the Rajasthan Union beginning from March, 1948 to May 1949 constituting United States of Rajasthan, as it finally emerged in the Covenant entered into by the 14 Rulers on 30th March, 1949. The authority of the Rajpramukh to enact the legislation was founded on this Covenant to unite and integrate their territories in one State with a common executive, legislature and judiciary by the name of the United State of Rajasthan. Tracing the history of the Jagirs Act of 1952, in Thakur

Amar Singhji & ors. V/s State of Rajasthan & ors. (supra), Hon'ble Venkatarama Ayyar,J upheld the constitutional validity of the Covenant and the Jagirs Act of 1952. Referring to the meaning of "Jagir", it was held that all the lands of the State must fall within one or the other of the two categories, khalsa or jagir, and that the essential features of a jagir are that it was held under a grant from the ruler, and that the grant is of the land revenue. Both in popular sense and legislative practice, the word "jagir" is used as connoting State grants, which conferred on the grantees the rights in respect of land revenue. It was not limited to its original and primary meaning as a grant made for military service rendered or to be rendered, and it cannot be said that accordingly other grants such as maintenance grants made in favour of near relations and dependents would not be covered by it. Article 31A of the Constitution of India saved legislation which was directed to the abolition of intermediaries so as to establish direct relationship between the State and the tillers of the soil, and construing the word in that sense which would achieve that object in a full measure, it was held that 'jagir' was meant to cover all grants under which the grantees had only rights in respect of revenue and were not the tillers of the soil. Maintenance grants in favour of persons, who were not cultivators such as members of the ruling family were held to be jagirs for the purposes of Article 31-A of the Constitution of India. The Jagirs Act of 1952 was found to fall within the ambit of Article 31A, by which the Jagirs were abolished. The Supreme Court considered the various connotations of Jagirs or similar grants such as Bhomiats under the Mewar Government Kanoon Mal Act No.V of

1947, Tikanadars of Shekhawati under the Jagirs Act of 1952, Subeguzars, the estate of Yaswentgarh in the State of Alwar and held that the definition of "Jagir" under section 2(h) of the Jagirs Act of 1952 is subject to any contrary intention which the context might disclose and when section 22(1)(a) enacts that on the resumption of jagir lands, the rights of the Jagirdars in the lands should cease, it clearly means that the holders of jagirs are Jagirdars for the purpose of the section. There cannot be jagirs without there being Jagirdars, and therefore the word 'Jagirdar' in Section 22(1)(a) must mean all holders of jagirs including the tenures mentioned in the Schedule of the Act.

10. It was further held by the Supreme Court in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra) that if a person does not make any payment in respect of an estate, it must be Muafi and that would also be within Article 31-A (paragraph 69) and did not accept the contention based on the narration in Tod's Annals of Rajasthan, Volume II, pp. 25, 26, 140 and 141 that the properties of the petitioners are not jagirs. The Supreme Court went on to hold in paragraph 86 that the Jagirs Act of 1952 did not confer any power on the Government to grant exemption. All the jagirs were liable to be resumed under section 20, no option being left with the Government in that matter. Section 4 of the Act enacted that all jagir lands become liable to pay assessment from the commencement of the Act and the liabilities of the Jagirdars to pay tribute also ceased as from that date. There cannot therefore be any doubt that it was the intention of the Legislature that all jagir lands should be resumed under section 21, which was later on deleted,

which authorized the State to resume different classes of jagir lands on different dates, for practical considerations, such as administrative convenience and facilities for payment of compensation and cannot be held to be discriminatory.

11. In paragraph 98 of the judgment in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra), the Supreme Court dealt with the case of one of the villages forming part of this estate, Jorpura, in which it was held that the land was dedicated for worship of the *Devi* and was therefore, within the exemption enacted in section 20 and a document was also produced to support the claim. It was held that the question as to whether the grant is not in its entirety in favour of the deity, was a question of fact, which does not require determination and made it open to the petitioner to establish in appropriate proceedings that the village or any portion thereof was within the meaning of Section 20 of the Act. The question of fact with regard to the nature of the grant under the deity was an isolated question, which was required to be decided as to whether the grant can be separated for the purpose of resumption under section 20. This however, did not unsettle any of the questions, which were decided by the Supreme Court.

12. To sum up, in paragraph 102, the Supreme Court in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra) held that the Jagirs Act of 1952 is not open to attack either on the ground that the Rajpramukh had no legislative competence to enact it, or that the procedure prescribed in Article 212-A of the Constitution of India for enactment of laws had not been followed. The Jagirs Act of 1952 is, in substance, one for acquisition of property, and is within the

legislative competence of the State, and it is protected by Article 31-A. However, with regard to some of the properties as izaras, it was held to be bad as izaras were not found to be within the impugned Jagirs Act of 1952. The properties in Petition No.36 of 1955 were found to be dedicated for religious services and were exempted under section 20 of the Act. The right of the petitioner in Petition No.468 of 1954 to claim exemption under section 20 of the Act for the village of Jorpura on the ground that it was dedicated for worship of the deity was reserved and the petition was otherwise dismissed.

13. In Budha V/a Amilal (supra), the Apex Court in 1991 was concerned with the question as to whether the appellant, on the date of vesting of biswedari estate under the Jagirs Act of 1952, acquired khatedari rights over the lands in dispute on the basis that the same were his khudkasht lands although he was not in actual possession of the same on the said date. The Supreme Court dismissing the appeal held that the expression “Khudkasht” has not been defined in the Act and in view of Section 2(6) of the Act, the definition of the said expression contained in the Rajasthan Tenancy Act, 1955 will be applicable. The word “Khudkasht” means personal cultivation. The definition of this expression contained in Section 5 (23) of the Rajasthan Tenancy Act, which is in two parts, indicated that it has been used in the same sense in the Jagirs Act of 1952. The expression 'khudkasht' as defined in Section 5(23) of the Rajasthan Tenancy Act would not include land in possession of and cultivated by a tenant or mortgagee. The entry in jamabandies recording the appellant as 'kastkar' against the suit lands could not

be treated as entry of 'khudkasht' envisaged in clause (i) of the inclusive part of the definition of 'khudkasht' in section 5(23) of the Rajasthan Tenancy Act, especially when it was not the case of the appellant that after the execution of the mortgages the defendant mortgagee had parted with the possession of the mortgaged property in favour of the appellant and had allowed the appellant to cultivate the lands. The Supreme Court relied on the expression "land cultivated personally" defined in clause (25) of Section 5 of the Rajasthan Tenancy Act and Section 5(2) providing for consequences of abolition of zamindari and biswedari estates as well as Section 29 which made the provision for conferring khatedari rights in khudkasht land. The Supreme Court explained the meaning of "khudkasht" in paragraph 10 of the judgment as follows:

> "10. Literally speaking the word "Khudkasht" means personal cultivation. The definition of this expression contained in Section 5(23) of the Rajasthan Tenancy Act, which is in two parts, indicates that it has been used in the same sense in the Act. In the main part Khudkasht has been defined to mean land cultivated personally by an estate holder. This is further clarified by clause (25) of Section 5 of the Rajasthan Tenancy Act which defines the expression "land cultivated personally" to mean land cultivated on one's own account (I) by one's own labour, or (ii) by the labour of any member of one's family, or (iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or in kind but not by way of a share in crops. An exception has been made in the proviso in respect of widows, minors, persons subject to physical or mental disability, members of military, air or naval service of India and students of an educational institution recognized by the State Government who are below the age of twenty five years and their land is to be deemed to be cultivated personally

even in the absence of such personal supervision. By the inclusive part of the definition of "Khudkasht" contained in Section 5(23) of the Rajasthan Tenancy Act lands which are recorded as Khudkasht, sir, havala, niji-jot, gharkhed in settlement records at the commencement of this Act in accordance with law in force at the time when such record was made and lands allotted after such commencement as Khudkasht under any law for the time being in force in any part of the State, are to be treated as Khudkasht. Here also the emphasis is on personal cultivation which is to be inferred from the entry in the settlement records at the commencement of the Rajasthan tenancy Act or the purpose for which the land was allotted after the commencement of the Act. The expression :"Khudkasht" as defined in Section 5(23) of the Rajasthan tenancy Act, would, in our opinion, not include and in possession of land cultivated by a tenant or mortgagee."

14. In Bir Singh & ors. V/s Pyare Singh & ors. (supra), in the year 2000, relying on Budha V/s Amilal (supra), the Supreme Court held interpreting Sections 2, 5, 29 and 30 of the Rajasthan Zamindari and Biswedari Abolition Act, 1959 that Zamindar became entitled to khatedari tenancy rights in khudkasht land only if he was in occupation thereof on the date of vesting under the Act. Once the land vested in the State, Zamindar was divested of any right of possession and thus, was not entitled to maintain a suit for recovery of possession of the land from any other person.

15. The most important judgment to consider the issue raised in the present reference was rendered by the Hon'ble Supreme Court in Kalanka Devi Sansthan V/s The Maharashtra Revenue Tribunal Nagpur and ors. (supra), in which the Supreme Court referring to the definition of the word " "to cultivate personally" under section 2

(12) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 held in paragraph 4 as follows:-

"4. Now it is well known that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. As pointed out in Mukherjee's Hindu Law of Religions and Charitable Trust at pp. 142-43, this view is in accordance with the Hindu ideas and has been uniformly accepted in a long series of judicial decisions. The idol is capable of holding property in the same way as a natural person. "It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir". The question, however, is whether the idol is capable of cultivating the land personally. The argument raised on behalf of the appellant is that under Explanation I in Section 2(12) of the Act a person who is subject to any physical or mental disability shall be deemed to cultivate the land personally if it is cultivated by the servants or by hired labourer. In other words an idol or a Sansthan that would fall within the meaning of the word "person" can well be regarded to be subject to a physical or mental disability and land can be cultivated on its behalf by servants or hired labourers. It is urged that in Explanation (I) the idol would be in the same position as a minor and it can certainly cultivate the land personally within the meaning of Section 2(12). It is difficult to accept the suggestion that the case of the appellant would fall within Explanation (I) in Section 2(12). Physical or mental disability as defined by Section 2(22) lays emphasis on the words "personal labour or supervision". As has been rightly pointed out in Shri Kesheoraj Deo Sansthan, Karanji v. Bapurao Deoba [1964] Mah. L.J.589 in which an identically similar point came up for consideration, the dominating idea of anything done personally or in person is that the thing must be done by the person himself and not by or through some one else. In our opinion the following passage in that judgment at p. 593

explains the whole position correctly:

"It should thus appear that the legislative intent clearly is that in order to claim a cultivation as a personal cultivation there must be established a direct nexus between the person who makes such a claim, and the agricultural processes or activities carried on the land. In other words, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in the sense that the words "personal supervision" must be understood. In other words, the requirement of personal supervision under the third category of personal cultivation provided for in the definition does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person."

In other words the intention is that the cultivation of the land concerned must be by natural persons and not by legal persons."

16. Whatever doubts were left with regard to the land held in jagir, by Hindu Idol (deity) as Dolidar or Maufidar cultivated by a person other than the Shebait/Pujari were led to rest in Deepa V/s State of Rajasthan and ors (supra). In the short judgment, the Supreme Court referring to abolition of jagirs under the Jagirs Act of 1952, held that the name of the appellant (Deepa) had been recorded as cultivator by Samvat 2012 because of which the land could not be regarded as khudkasht of the Jagirdar which would make Section 10 of the Jagirs Act of 1952, inoperative and so, the respondent's name could not be recorded as khatedar tenant. If a

person becomes a khatedar tenant, then by the force of Section 9 of the Jagirs Act of 1952, his right becomes heritable and fully transferable.

17. We do not find that there was any such proposition of law in Ram Lal & anr. V/s Board of Revenue (supra), which could have unsettled the law. In Ram Lal & anr. V/s Board of Revenue & ors., it was clearly held that where the agricultural land was held by the deity, which is a perpetual minor, the khatedar tenants and resumption of Muafi and grant of annuity did not in any way derogate from its authority to hold the land as khatedar. The land in question was not khudkasht land of deity, but was cultivated by tenants and on resumption of Jagir the land should be treated as khatedari land of the tenants. Referring to the meaning of khudkasht and the exclusion of khudkasht land, which remains with the khatedar on the resumption of Jagirs Act, 1952, the Division Bench held as follows:-

> "14. We have heard learned counsel for the parties in D.B.Civil Writ Petition No.306/78 (Ram Lal Vs. Board of Revenue and others). Learned counsel or the petitioner has invited our attention to the fact that the petitioner is a recorded tenant and the land was not a khudkast land. He has invited our attention to Annexure 5, 5A, 5B. Girdawaris. In the Girdawaris it has been mentioned that Ram Lal and Shyam Lal sons of Natthu Ram are the tenants. He has also invited my (sic our) attention to Annexures 6, 7, 8 and 9. Annexure-9 is a mutation entry. We have gone through the judgment of the Revenue Board dated 8.4.78 and the Revenue Board has held that the deity of the temple has been entered as a Muafidar. Revenue Board has also held that the position of a deity and the Muafidar is a separate and distinct from its position. Khatedar tenants and resumption of Muafi and grant of annuity

do not in any way derogate from its authority to hold land as Khatedar. The respondents have supported the judgment of the court below and have also invited our attention to number of entries. Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 defines under section 2(1) Khudkast land. Khudkast means any land cultivated personally by the Jagirdar and includes any land recorded as khudkast. Sir or Harwat in settlement records or any land allotted to Jagirdar as Khudkast under Chapter-IV. Sub-clause (k) of Section 2 defines land cultivated personally as under:-

(k) 'land cultivated personally, with its grammatical variations and cognate expressions means land cultivated on one's own account:

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) by servants on wages payable in cash or in kind (but not by way of a share in crops) or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Provided that in the case of a person who is a widow or a minor or is subject to any physical or mental disability or is a member of the Armed Forces of the Union, or who being a student of an educational institution recognized by the Government is below the age of twenty five years, land shall be deemed to be cultivated personally even in absence of such personal supervision.

15. Thus, it is clear that either it must be cultivated with one's own labour or the labour of the family member or by servant on wages payable in cash or kind but not by way of share in crop on the resumption of jagir, the khudkasht land remained with the khatedar and the other land vested in the State. Under Section-9 of the Act of 1952, every tenant in a Jagir land who at the commencement of this Act is entered in the revenue as a Khamdar, Pattedar or under any other

description implying that the tenant has heritable and full transferable rights in the tenancy shall continue to have such rights and shall be called a Khatedar tenant in respect of such land.

16. Section 18 deals with the maximum area of the khudkast. Section 19 deals with the categories of lands that may be allotted.

17. It will not be out of place here to mention that the land held by the tenant cannot be allotted to Jagidar. Section 22 deals with the consequences of resumption. The consequence of resumption is that except the khudkast land the right, title and interest of the khatedar in his Jagir Lands including the forests, trees, fisheries etc. stand resumed to the Government free from all encumbrances. Under the Zamindari and Bishwedari Act no. 8 of 1959 also there are similar provisions relating to the khudkast land. Under the Act of 1959, all lands vested in the Government except the khudkast land. It is not necessary for us to go into the provisions of law which were applicable in the erstwhile State of Jaipur.

18. In the case of Kalankar Devi v.State of Maharashtra (AIR 1970 SC 439), Hon'ble Supreme Court has held that Hindu idol is a juristic person. It cannot cultivate personally within Explanation I to Section 2(12) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) (Act 99 of 1958). The explanation No.I provides in the said Act that minor or a persons subject to any mental or physical disability shall be deemed to cultivate the land personally if it is cultivated by her or his servant or by Halwal. In the instant case, this case does not apply and even the non-petitioners have not come with a case that the land was cultivated by the servant or through hired labour. There is sufficient material on record to show that it was not a khudkast land, but the land was cultivated by the tenants, which is clear from Annexure-6 and other documents. The finding of the Board of Revenue seems to be perverse on this point and the Board of Revenue has not considered the relevant entries particularly, about the right of tenancy of the

petitioner at all."

18. The judgments in **Bal Kishan V/s Board of Revenue & ors.** (2000 RRD 14), **Kanchan Bai & ors. V/s Board of Revenue & ors.** (2000 RRD 109) and **Gauri Shanker & ors. V/s State of Raj. & ors.** (2000 RRD 189), were all rendered by same learned Single Judge (J.C.Verma,J.), the judgment of the Division Bench in **Prabhu Das V/s State of Raj. & ors.** (1993 RRD 319) following the judgment in Ram Lal & anr. V/s Board of Revenue & ors. (supra) and the judgment in **Idan V/s State of Raj. & anr.** (S.B.Civil Writ Petition No.1325/2000) decided on 11.7.2000, did not, in our opinion, deviate from the principles of law as was laid down in the aforesaid cases. In Idan's case (supra), the principle that a deity is a perpetual minor and can hold the property was mixed with the principles of "*lex non cogit ad impossibilia*" (the law does not compel a man to do what he cannot possibly perform) and "*impossibiliium nulla obligatio est"* (the law does not expect the party to do the impossible) and applying these maxims, it was held that since the law does not require a deity, which is minor in perpetuity and juristic person, to cultivate the land by itself, the judgment in Ram Lal's case (supra) requires reconsideration. It was observed that the proviso that in case of minor, the requirement of personal cultivation need not be necessary by personal supervision, was not considered in Ram Lal's case (supra) and thus, the judgment remains *per incuriam.* In the last paragraph, learned Single Judge observed that as the entry made by the Settlement Authorities in favour of the petitioner's father was without competence, the acceptance of the reference could not be held to be suffering from

any illegality and on the facts do not warrant any interference.

19. In our opinion, an unnecessary and unwarranted doubt was expressed in Idan's case (supra) on the ratio in Ram Lal & anr. V/s Board of Revenue & ors. (supra) on the basis of maxims, which were not applicable for the purposes of consideration as to whether under the Jagirs Act of 1952, all kind of jagirs were abolished and the land was acquired and not resumed. The maxims were cited out of context. As held in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra) without any exception that only those lands were left which were khudkast lands either with jagirdars and which were in their cultivation.

20. The legislature by enacting Jagirs Act of 1952 included the Doli and Muafi lands of the deity as jagirs. Schedule I of the Jagirs Act of 1952 included the land held in Jagirs as Doli and Maufi. All the lands were resumed by the State vide Notification issued under section 21 of the Jagirs Act of 1952. No jagir of any deity was resumed prior to coming into force of the Rajasthan Tenancy Act, 1955 on 15.10.1955. The consequences of resumption, which was held to be acquisition by the Supreme Court in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra) are given in Section 22 of the Jagirs Act of 1952. Section 22(1)(a) provides that the right, title and interest of the Jagirdar and every other person claiming through him shall stand resumed to the Government free from all encumbrances, The deity, therefore, even if it is to be treated as perpetual minor, ceased to have any interest or right in the jagir lands in which deity was recorded as Dolidar or Muafidar. Section 23 of the Jagirs Act of 1952 permitted the Jagirdar to continue in possession of the lands,

which were khudkasht on the date of resumption of jagir. It was necessary for all Jagirdars including Hindu Idol (deity) that they had khudkasht lands before claiming khatedari rights in the area of lands held as khudkasht. The right and title of the persons claiming through the Deity were not different than that of deity. Their rights were also resumed under section 22(1) of the Jagirs Act of 1952. They did not have any independent right other than rights of Hindu Idol (deity). Section 9 of the Jagirs Act of 1952 allowed the khatedari rights of the tenant on which they had direct relations with the State Government. Section 22(1) of the Jagirs Act of 1952 provided that the right and title of the person claiming through Hindu Idol (deity) also stood resumed to the State.

21. In Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra), the Supreme Court held that the Jagirs Act of 1952 is an Act for acquisition of Jagirs, though in the Act, it was mentioned as resumption. The Jagirs Act of 1952 was protected by the provisions of Article 31A(2) of the Constitution of India. The various grants named in the first schedule of the Jagirs Act of 1952 were all jagirs including Maufi and Doli and stood acquired under the Jagirs Act of 1952. The Supreme Court in Thakur Amar Singhji & ors. V/s State of Rajasthan & ors. (supra) finally decided all the issues raised before it, on which the law was settled. There was absolutely no reason to express any doubt or to take a different view. The judgment of the Supreme Court is binding on all the authorities and especially on the State which includes the courts, on the issues raised and decided by it. The rights of the Hindu Idol (Deity) in the land held by it as Jagirs thus came to an end and stood vested in the State with a

limited right of cultivating the land as khudkasht and only those lands which were khudkasht lands in accordance with the provisions of Section 2(i) and 2(k) of the Jagirs Act of 1952 and Section 5(23) and 5(25) of the Rajasthan Tenancy Act, 1955, could be claimed and regarded as held in tenancy by Hindu Idol (deity) through Pujari/Mahant/Shebait for the purposes of performing sewa pooja or other religious activities. All the persons, who were cultivating the land as tenants of Hindu Idol (deity) on the land became khatedars and held the lands as tenants of the State.

22. In Budha V/s Amilal (supra) and Bir Singh & ors. V/s Pyare Singh & ors. (supra), the Supreme Court considered the term "khudkasht" and their rights under the Rajasthan Zamindari and Biswedari Abolition Act, 1959. It was held that in order to claim lands and rights, the Khudkasht, Jamidar and Biswadar must be in possession of the land.He cannot claim khudkasht land if he is not in possession. Where the land was admittedly cultivated by the tenant of the Hindu Idol (deity) and that the Hindu Idol (deity) was not in possession through Mehant/Shebait, it could not be treated as khudkasht and could not claim any khatedari rights in the land. The Supreme Court clearly held that the expression "khudkasht" has not been defined in the Rajasthan Zamindari and Biswedari Abolition Act, 1959, but in view of Section 2(6), the definition of "khudkasht" in Section 5(23) of the Rajasthan Tenancy Act, 1955 will apply. The expression "khudkasht" will not include the land cultivated by a tenant. All those lands, which were not khudkasht of the Hindu Idol (deity) cultivated through Mehant/Shebait and were in possession with tenants, could not be held by Hindu Idol (deity) as khatedari

lands.

23. It is wholly irrelevant as to whether the Hindu Idol (deity) is a perpetual minor and whether it held jagir lands. The principles of Hindu Law and all the Special Legislations of Hindu Endowment are not applicable to the rights of tenancy, which were to be governed by the Jagirs Act of 1952, as the land was held of jagir and the Rajasthan Tenancy Act, 1955. The judgments of learned Single Judges of this Court accepting the Hindu Idol (deity) as perpetual minor and its capacity to hold the property are rendered in ignorance of the tenancy rights of the Hindu Idol (deity) to be governed by the Jagirs Act of 1952, and the Rajasthan Tenancy Act, 1955.

24. In Kalanka Devi Sansthan V./s The Maharashtra Revenue, Tribunal and ors. (supra), the Supreme Court in reference to Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 discussed the well known concept in Hindu law that when the property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. Thereafter, the Supreme Court discussed the question of the rights of the tenancy of such juristic person and held in paragraph 4, as quoted above, that the idol would be in the same position as a minor and it can certainly cultivate the land personally. It was held that in case idol is treated to have cultivated the land, it should be personal cultivation in which a direct nexus should be established between the person who makes such a claim (Hindu idol (deity)) and the agricultural processes or activities carried on the land. All the agricultural operations, though allowed to be done through hired labour or workers must be under

the labour or workers must be under the direct supervision, control or management of the landlord, without any intermediary. The concept of juristic person has to be understood in the sense that such juristic person must be cultivating the land having direct nexus with the cultivation on the land. The Supreme Court further held that the distinction between a manger or a Shebait of an idol and a trustee where a trust has been created is well recognized. The properties of the Trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager. In order to appreciate the proposition, it is necessary to quote the relevant portion of para 5 of the judgment as follows:-

> "It may be mentioned that in Ishwardas case, (1968) 3 SCR 441= (AIR 1968 SC 1364) the court refrained from expressing any opinion on the question whether a manager or a Shebait of the properties of an idol or the manger of the Sansthan can or cannot apply for surrender by a tenant of lands for personal cultivation. The distinction between a manger or a Shebait of an idol and a trustee where a trust has been created is well recognized. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manger or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager."

25. In our opinion, on the aforesaid settled principles of law, the Hindu idol (deity) could only hold such lands in Jagir, which

Shebait/Pujari was cultivating for such deity, having direct nexus with agricultural operations either themselves or through hired labour or servant engaged by them as to claim to be khudkasht and to be protected from resumption/acquisition under the Jagirs Act of 1952. If the land was given for cultivation to a tenant or was cultivated through a tenant, such land became khatedari of the tenant and on which the tenant had direct relations with the State. The Jagirs Act of 1952 took away all the rights of the Jagirdars including Hindu Idol (deity) as Dolidar or Muafidar on the land cultivated by the tenants. They ceased to have any right on such land. The Shebait/Pujari could not have any independent status to have claimed any right over such land cultivated by tenants. Such tenancy could also not be regarded as sub-tenant of Hindu Idol (deity) to confer any right on the Hindu Idol (deity).

26. In view of the above discussion, we decide the question no.(i) in favour of the State and against the Shebait/Pujari claiming the land to be saved by the Jagirs Act of 1952. The land held in Jagir by Hindu idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity personally or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, shall vest in the State, after the Jagirs Act of 1952. The Hindu idol (deity), even if it is treated to be a perpetual minor, could not continue to hold such land. Such land cannot be treated to be in its personal cultivation. A tenant of such land cultivating the land acquired the rights of khatedar of the State. Such land under the tenancy of a person other than

Shebait/Purjari of Hindu Idol (deity) became khatedari land of such tenant. The name of Hindu Idol (deity) from such land had to be expunged from the revenue records with Shebait/Pujuri having no right to claim the land as Khatedar. Consequently, they had no right to transfer such lands, and all such transfers have to be treated as null and void, in contravention of the Jagirs Act 1952, and the land under such transfers to be resumed by the State.

Question No.(ii).-What are the rights of the Hindu Idol (deity) in the lands held by them in the name of its Shebaits/Pujari on the date of resumption of such Jagir, under the provisions of the Rajasthan Land Reforms & Resumption of Jagir Act, 1952?

27. This question is linked with question no.(i). Every tenant in the Jagir land, who at the commencement of the Jagirs Act of 1952, was entered in the revenue records as Khatedar or pattedar or khademdar or under any other description became a khatedar having heritable and full transferable rights in the tenancy. In Deepa V/s State of Rajasthan & ors. (supra), the Supreme Court upheld the contention that where the tenant was recorded as cultivator in Samvat 2012, the land could not be regarded as khudkasht of Jagirdar. In the Board of Revenue, the contention was that Deepa's father had been given the land for cultivation on "Panti Basis" i.e. on share basis, which would clearly show that the land was under the tenancy of Deepa's father and in lieu of cash he was to pay in kind. Under Chapter III-A of the Rajasthan Tenancy Act, 1955, even a sub-tenant of khudkasht land becomes a khatedar

tenant on the required procedure being followed, which was satisfied because of what was recorded in the Khasra Girdawari. The Supreme Court thereafter held that if a person becomes a khatedar tenant, then by the force of Section 9 of the Jagirs Act of 1952, his right becomes heritable and fully transferable and so, the contrary view taken by the authorities was not correct. Further, Section 13 of the Marwar Tenancy Act, 1949 provided that the interest of a tenant is heritable but is not transferable otherwise than in accordance with the provisions of that Act. Even if Section 13 is kept out of consideration, Deepa (appellant) had to be accepted as a tenant and a khatedar tenant at that and so, the revenue records could not have been corrected to show the respondent as the khatedar tenant.

28. In Kalanka Devi Sansthan V/s The Maharshtra Revenue, Tribunal Nagpur & ors. (supra), the Supreme Court considered the the words "to cultivate personally" under section 2(12) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, which mean to cultivate on one's own account i.e. by one's own labour, or by the labour of any member of one's family, or under the personal supervision of oneself or of any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share. The definition of 'personal cultivation' is similar to the definition of 'personal cultivation' in the Jagirs Act of 1952 and the Rajasthan Tenancy Act, 1955. The exception was only for a widow under Explanation-I of Section 2(12) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, in which a widow or a minor or a person who is subject to any physical or mental disability, or a serving member of the armed forces could

be deemed to cultivate the land personally if it is cultivated by her or his servants or by hired labourer. In order to become personal cultivation, the cultivation of the land concerned must be by a natural person and not by a legal person. There cannot be any personal cultivation by juridical person. The Supreme Court did not accept the argument that Hindu Idol (deity) being a perpetual minor could be taken to be cultivating the land personally, if the land was cultivated by servant or hired labour. It was held that since Hindu idol (deity) could have no personal cultivation and that as per the definitions of 'khudkasht' and 'personal cultivation', there could be no claim of khudkasht by the Hindu Idol (deity) and therefore, the tenant in possession on the date of resumption became khatedar tenant. In Ram Lal and anr. V/s State of Rajasthan & ors. (supra), the Division Bench of this Court following Kalanka Devi V/s The Maharashtra Revenue, Tribunal, Nagpur & ors. (supra), held that a tenant was entitled to khatedari rights after resumption of jagir. The view was consistently followed by learned Single Judges of this Court in in Bal Kishan V/s Board of Revenue (supra), Kanchan Bai & ors. V/s Board of Revenue & ors. (supra) and Gauri Shanker & ors. V/s State of Raj. & ors. (supra), in which it was held that the tenants acquired khatedari rights after the resumption of jagir.

29. A different note was struck in Prabhu Das V/s State of Raj. & ors. (supra) and in Idan V/s State of Rajasthan & ors. (supra), without considering the judgments of the Supreme Court and the settled position of law, which could not have been doubted. The decisions in Prabhu Das V/s State of Raj. & ors. (supra) and Idan V/s State of Rajasthan & ors. (supra) are *per incuriam*, in ignorance

of the judgments of the Supreme Court cited above and on the same principles, the judgment of learned Single Judge in State of Rajasthan V/s Tara and ors. (S.B.Civil Writ Petition No.4232/1999) decided on 7.2.2001, which gave rise to the Special Appeal, which has been referred to the Larger Bench, is also *per incuriam,* to the principles of law settled by the Supreme Court.

30. In view of the above, we answer the question no.(ii) in favour of the State and against the persons claiming land for Hindu idol (deity) as Dolidar or Muafidar. The Hindu Idol (deity) in the lands held by them in the name of its Shebait/Pujari on the date of resumption of such Jagir under the provisions of the Jagirs Act of 1952 did not have any rights except in khudkasht land cultivated by Shebait/Pujari either by themselves or by hired labour or servant engaged by them for the benefit of the expenses of the temple including *sewa puja*. All those lands let out by them to the tenants or sub-tenants were resumed by the Jagirs Act of 1952 and that the Hindu idol (deity) lost all the rights in such jagir lands.

Question No.(iii).-Whether such a Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol (deity) in their name after the date of resumption of the Jagir (Muafi) can be alienated by them? If so, what is the effect?

31. Under section 191 of the Marwar Land Revenue Act, no grant was transferable by Jagirdar. The same was the position in Jaipur Tenancy Act, 1945 and the Jaipur State Grants Land Tenures Act,

1947, which was enacted to consolidate and amend the laws relating to tenancies in State grants, the rights and obligations of tenants therein, the fixation of rent and other allied matters. Under the **Jaipur State Grants Land Tenures Act, 1947** (for short, "the Act of 1947"), the tenancy rights were not created in favour of Maufi Mandir. The words "Estate", "Estate Holder" and "State Grant Tenants" have been defined under the Act of 1947. The land cultivated through the estate holder at the commencement of the Act of 1947 or may be cultivated at any time thereafter, either by himself or by his servants or by hired labour, could be treated as khudkast land. In the case of land belonging to Hindu Idol (deity), Section 152 was not applicable because neither the estate holder was cultivating the land nor it was cultivated through his servant or hired labour. The provisions of Section 152(b) were not applicable as the State had not granted the land as khudkasht. After coming into force of the Jagirs Act of 1952, there was no grant or sanad on record and no order conferring khatedaeri rights by the Government was produced by the petitioner, namely, Mandir Thakur Govind Devji Maharaj in Writ Petition No.12265/2012 transferred from Jaipur Bench to Jodhpur. The Jagir Commissioner clearly held that no such sanad/grant was produced by the Mahant claiming to be khatedar. The land was not recorded as khudkasht in the records. It was only in respect of a few khasra of village out of 36 villages in which 180,000 bighas of land including the village Amer was recorded as khatedar for which khatedari rights were granted under section 10 of the Jagirs Act of 1952. The entire land except in few khasras where the land is recorded as khatedari, stood resumed

vide notification dated 1.1.1959.

32. It is brought on record in the orders of the Jagir Commissioner that a claim was made by the then Mahant on which the annuity was duly determined by the Jagir Commissioner vide order dated 24.8.1962. This determination of annuity clearly extinguishes all the rights of Mahant and on which the entire land stood vested in the State Government free from all encumbrances and the religious jagir of Thakur Govind Devji had no right over the said land. In respect of lands of village Amer, the lands in Khasra No.6388 and 6389 in village Amer were recorded in the name of Pujari of Govind Devji and after its resumption, a suit was filed, which was decreed and on which the khatedari rights were granted to the plaintiff. The land was thereafter purchased by a Hotel. Even thereafter, the lands remained recorded in the name of Thakur Govind Devji, whereas no rights were left to be claimed as khatedari rights to allow the name of the Hindu idol (deity) to continue in the revenue records. No rights could be conferred in favour of the religious jagir after its resumption nor its Mahant/Shebait could be recorded as Khatedar. They did not have any rights to sell the land. The land came to be resumed and vested in the State after which no right were claimed or could be claimed for bringing an action in court.

33. On the aforesaid discussion, the question no.(iii) is also decided in favour of the State. The Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol(deity) in their name after the date of resumption of the Jagir (Muafi) by the Jagirs Act of 1952 will not give them any right nor they could alienate

the land. The alienation made by them of such land which was resumed/acquired by the State Government and for which claims were made and settled before the Jagir Commissioner, would be null and void and will have no effect.

Question No.(iv) Whether any person can acquire right by adverse possession in the lands of aforesaid nature against the holder?

34. There is no provision in the Jagirs Act of 1952 or in the Rajasthan Tenancy Act, 1955 for conferment of khatedari rights by adverse possession. Once the land is resumed by the State Government under the Jagirs Act of 1952, it vests in the State Government. No person can claim rights by adverse possession against the State Government nor the provisions of Section 27 of the Limitation Act will apply to the Rajasthan Tenancy Act, 1955 as the Rajasthan Tenancy Act, 1955 provides the limitation for filing a suit for possession against the trespasser. In **Dindayal & anr. V/s Rajaram** (AIR 1970 SC 1019), the Supreme Court considered the question of acquisition of rights in the tenancy under the CP Tenancy Act, 1920 by adverse possession. It was held that it is one thing to say that a tenant who who was in possession of the tenancy holding at the time of dispossession had lost his rights in the holding but it is another thing to say that a trespasser had become the tenant of that holding at the end of the prescribed period. The CP Tenancy Act is a Special Act. It only governs those matters for which provisions are made therein. In other respects the general law continues to apply. Where the Act provides for a limitation for filing a suit for

possession, the question of adverse possession does not arise. It was held in paragraph 13 as follows:-

> "13. Further it is one thing to say that a tenant who was in possession of the tenancy holding at the time of dispossession had lost his rights in the holding but it is another thing to say that a trespasser had become the tenant of that holding at the end of the prescribed period. It must be remembered that C.P. Tenancy Act is a special Act. It only governs those matters for which provisions is made therein. In other respects the general law continues to apply. The Act does not say that a tenant's right in respect of any property can be acquired by adverse possession. We do not think that the provisions of the Act enabled (The Act has been repealed) a trespasser to impose himself as a tenant on the landlord by means of adverse possession of the holding as against the tenant of a period of three years. Similarly it is not possible to hold that a tenancy right could have been acquired in a holding so as to affect the rights of third parties by being in wrongful possession of that holding for a period of three years. If it is otherwise, valuable rights of third parties could have been jeopardized for no fault of theirs. Take the case of a widow, who was in possession of a tenancy holding. The prospective reversioners to her husband's estate would have had no right in that holding during her life time. Is it reasonable to hold that the reversioners would have lost his rights in the holding even before he acquired them because some one was in possession of that holding adversely to the widow for a period of thee years? That would not have been the position even under Article 144 of the Limitation Act, 1908. It could not be different under the Act. A right cannot be barred even before it accrues. The fact that the tenant dispossessed happened to become the reversioner on the death of the widow cannot make any difference in law."

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 favour 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.

Question No.(v)-Whether any time limit can be fixed for reference u/s 82 of the Rajasthan Land Revenue Act, 1956 and u/s.232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity). If so, to what extent?"

37. Section 82 of the Rajasthan Land Revenue Act, 1956 provides as follows:-

> "**82. Power to call for records and proceedings and reference to State Government or Board:** The Settlement Commissioner or the Director of Land Records (or a Collector) may call or and examine the record of any case decided or proceedings held by any revenue court or officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity or proceedings:
>
> and, if he is of opinion that the proceedings taken or order passed by such subordinate court or officer should be varied,

cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board, if the case is of a judicial nature or connected with settlement, or for the orders of the State Government if the case is of a non-judicial nature not connected with Settlement;

and the Board or the State Government, as the case may be, shall thereupon pass such order as it thinks fit.

38. Section 232 of the Rajasthan Tenancy Act, 1955 provides as follows:-

> **"232. Power to call for record and refer to the Board.-** The Collector may call for and examine the record of any case or proceedings decided by or pending before and revenue court subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order or decree passed and as to the regularity of the proceedings, and, if he is of opinion that the order or decree passed or the proceeding taken by such court should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board shall, thereupon, pass such order as it thinks fit:
>
> **Provided** that the power conferred by this section shall not be exercised in respect of suits or proceedings falling within the purview of section 239."

39. Neither Section 232 of the Rajasthan Tenancy Act, 1955 nor Section 82 of the Rajasthan Land Revenue Act, 1956 prescribes any period for exercising the power by the competent authority for calling and examining the record. Where the period is not prescribed in the Statute for exercising the power, the power must be exercised within a reasonable time, except in case of fraud. The reasonable time has been held to be one to three years in **State of Gujarat V/s Patel Raghave Natha & ors.** (AIR 1969 SC 1297), **Mansa Ram V/s S.P.Pathak & ors.** (AIR 1983 SC 1239) and **State of**

Punjab V/s Bhatinda District Cooperative Milk Producers Union Ltd. ((2007) 11 SCC 363).

40. In a recent case in **Joint Collector Ranga Reddy District and anr. V/s D.Narsing Rao and ors**. ((2015) 3 SCC 695), it was held that where no time limit is prescribed under the Statute for invocation of powers, such power must be exercised within a reasonable period. If the power is allowed to be exercised after decades, it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties. The suo motu action cannot be taken after a long lapse of time. Absence of any period of limitation does not mean that the power can be exercised at any time, which will make the exercise of power arbitrary and oppose to the concept of Rule of Law. Relying on the decision in State of Punjab V/s Bhatinda District Coop.Milk Producers Union Ltd. (supra), it was held that where no period of limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period, would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. The Supreme Court further relied on its earlier decision in **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham V/s K.Suresh Reddy** ((2003) 7 SC 667) in which in relation to Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950 providing for suo motu power, it was held that in absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be

exercised within a reasonable period from the date of discovery of fraud was not urged, the High Court was right in not examining the question of fraud alleged to have been committed. The use of the words "at any time" in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised. The exercise of power depends upon the facts and circumstances of each case. In case of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. The words "at any time" must be understood as reasonable time depending on the facts and circumstances of each case.

41. In paragraph 16 of the judgment in Joint Collector Ranga Reddy District and anr. V/s D.Narsing Rao and ors. (supra), it was held that though no time limit is prescribed in Section 166-B for exercising suo motu power, however, such power could not have been exercised after a period of five decades and if allowed to do so it would lead to anomalous position resulting into uncertainty and complications seriously affecting the rights of the parties over immovable properties. In paragraph 25, it was held as follows:-

> "25. The legal position is fairly well settled by a long line of decisions of this Court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a

reasonable period."

42. On the aforesaid discussion and in the light of the judgments of the Supreme Court referred to above, we decide the question no.(v) in the manner that even if no time limit has been fixed for reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity), a reference can be made within a reasonable time, which will depend upon the facts and circumstances of each case. Even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, after several decades claiming rights over the land.

43. Before parting with the matter, it may be useful to refer the arguments raised in the written submissions submitted by the State Government, in which it has relied on the Division Bench judgment of this Court in Mangi Lal V/s State of Rajasthan (supra) and the Larger Bench decisions of the Board of Revenue in the matter of **Gurdayal V/s Mandir Shri Shanischarji Maharj** (1994 RRD 1) and **Shri Shivram V/s Shri Mishru** (1987 RRD 261). It is submitted that a Hindu Idol (deity) is a perpetual minor and consequently, for the purposes of the Jagirs Act of 1952 and the Rajasthan Tenancy Act, 1955 also. The lands held in Muafi by a deity, but cultivated by a person other than Shebait of the deity himself or by hired labour or servant engaged by its Shebait, as a tenant of the deity, will still be regarded as lands in the personal cultivation of the deity and khatedari rights shall not accrue to the person cultivating the land. A person, who immediately preceding

the commencement of the Jagirs Act of 1952 entered in the revenue records as a khatedar, pattedar, khadamdar or under any other description implying that he is a tenant having heritable and fully transferable rights in the tenancy of the Muafi land of a Hindu idol (deity), shall become a khatedar tenant of such land on resumption of the Muafi for the purposes of the Jagirs Act of 1952 and the Rajasthan Tenancy Act, 1955, however, if he is not so entered then the khatedaeri rights cannot accure to him on lands held by a Hindu Idol (deity) after the commencement of the Jargirs Act of 1952. Reliance has been placed on the judgment of this Court in Hanuman Prasad V/s State of Rajasthan in which the Division Bench dismissing the appeals highlighting the orders passed by the Apex Court regarding the safeguard of the rights of the deity, a perpetual minor, observed that the trustee/archakas/shebaits/ employees entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such proprieties by setting up false claims of ownership or tenancy, or adverse possession in collision with the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of the Boards/Trusts and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of the courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

44. Further, relying on the judgments of this Court in Mangi Lal V/s State of Rajasthan (supra) and Ram Lal & anr. V/s Board of Revenue & ors. (supra) and also the judgments of the Supreme

Court in **Bishwanath and anr. V/s Thakur Radha Vallabh Ji & ors**. (AIR 1967 SC 1044), Budha V/s Amilal (supra) and Beer Singh V/s Pyare Singh (supra), it is stated that the deity is a perpetual minor and its interest is to be protected by the State Government, Revenue Authorities and the Courts. The Division Bench of this Court dismissed 17 writ petitions filed by Ram Pratap and ors. holding that in Muafi lands, the rights of idols/temples were not extinguished as the lands held by these idols were deemed to be in personal cultivation. The lands, which were mentioned in Section 23(2) of the Jagirs Act of 1952, were not subject to resumption under the Jagirs Act of 1952. If the deity is considered as Jagirdar or Muafidar of such lands, it cannot be resumed as per the definition provided in Section 2(k) of the Jagirs Act of 1952.

45. On the question whether such lands could be alienated, it is stated on behalf of the State that the transfer is not permissible as deity is a minor in perpetuity, but being a juristic person, has a judicial status with the power of suing or being sued under the provisions of the Hindu Minority and Guardianship Act, 1956, immovable property of minor cannot be sold without the permission of the Court and hence the deity lands cannot be alienated except for legal necessity after obtaining the permission of the Court.

46. The other counsels adopted the arguments of Shri J.L.Purohit, learned Senior counsel.

47. Since we have dealt with the common arguments raised by the petitioners and the respondents, we have not found it necessary to advert to the written submissions filed on behalf of the State of Rajasthan and of each of the counsel separately. The discussion and

the answers given by us to the aforesaid questions, has taken into consideration the submissions both written and oral raised by the counsel appearing for the parties including the counsel appearing for the State of Rajasthan.

48. In order to summarize the answers, the questions framed by by the Court and our decisions on the questions are stated as below:-

"Question no.(i) Whether the land held in Jagir, by Hindu Idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, such idol being treated as a perpetual minor, will still be regarded as land held in the personal cultivation of the deity or will such land be regarded as held in the tenancy by the person cultivating such land as tenant of a deity?

Answer:- The question no.(i) is decided in favour of the State and against the Shebait/Pujari claiming the land to be saved by the Jagirs Act of 1952. The land held in Jagir by Hindu idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity personally or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, shall vest in the State, after the Jagirs Act of 1952. The Hindu idol (deity), even if it is treated to be a perpetual minor, could not continue to hold such land. Such land cannot be treated to be in its personal cultivation. A tenant of such land cultivating the land acquired the rights of khatedar of the State. Such land under the tenancy of a person other than Shebait/Purjari of Hindu Idol (deity) became khatedari land of such tenant. The name of Hindu Idol (deity) from such land had to be expunged from the revenue records with Shebait/Pujuri

having no right to claim the land as Khatedar. Consequently, they had no right to transfer such lands, and all such transfers have to be treated as null and void, in contravention of the Jagirs Act 1952, and the land under such transfers to be resumed by the State.

Question no.(ii) What are the rights of the Hindu Idol (deity) in the lands held by them in the name of its Shebaits/Pujari on the date of resumption of such Jagir, under the provisions of the Rajasthan Land Reforms & Resumption of Jagir Act, 1952?

Answer:- The Hindu Idol (deity) in the lands held by them in the name of its Shebait/Pujari on the date of resumption of such Jagir under the provisions of the Jagirs Act of 1952 did not have any rights except in khudkasht land cultivated by Shebait/Pujari either by themselves or by hired labour or servant engaged by them for the benefit of the expenses of the temple including *sewa puja*. All those lands let out by them to the tenants or sub-tenants were resumed by the Jagirs Act of 1952 and that the Hindu idol (deity) lost all the rights in such jagir lands.

Question no.(iii) Whether such a Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol (deity) in their name after the date of resumption of the Jagir (Muafi) can be alienated by them? If so, what is the effect?

Answer:- The Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol(deity) in their name after the date of resumption of the Jagir (Muafi) by the Jagirs Act of 1952 will not give them any right nor they could alienate the land. The alienation made by them of such land which was resumed/acquired by the State Government and for which claims were made and settled

before the Jagir Commissioner, would be null and void and will have no effect.

Question no.(iv) Whether any person can acquire right by adverse possession in the lands of aforesaid nature against the holder?

Answer:- 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.

Question no.(v) Whether any time limit can be fixed for reference u/s 82 of the Rajasthan Land Revenue Act, 1956 and u/s.232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity). If so, to what extent?

Answer:- No time limit has been fixed for reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity), and thus a reference can be made within a reasonable time, which will depend upon the facts and circumstances of each case. Even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, after several decades claiming rights over the land."

49. We are thankful to Mr.J.L.Purohit,Senior Advocate assisted by Mr.Rajeev Purohit, Mr.N.R.Budania, Mr.R.S.Mehta,

Mr.T.S.Champawat, Mr.Paramveer Singh, Mr.Moti Singh, Mr.C.R.Jakhar and Mr.V.N.Kalla, who are arguing for the appellants/petitioners and Dr.P.S.Bhati, Addl.Advocate General with Mr.Sajjan Singh, Mr.Monit Bhatnagar, Mr.O.P.Boob, Mr.B.L.Choudhary, Mr.D.S.Rajvi, Mr.RDSS Kharlia and Mr.Rajesh Choudhary for the respondents, in assisting the Court for deciding the questions.

50. The file of the cases will be sent back to the concerned Benches to decide the matter expeditiously in the light of the decision made by us on the aforesaid questions of law. We also hope that the Revenue Authorities ceased with the matters, will consider and decide the matters pending before them in accordance with the answers given by us to the questions framed and that the matters pending before the revenue authorities and the Courts will be decided expeditiously.

(P.K.LOHRA)J. (GOPAL KRISHAN VYAS)J. (SUNIL AMBWANI),CJ.

Parmar