

# RAJASTHAN HIGH COURT

Prakash Mal

Vs.

State of Rajasthan

Civil Writ Petition No. 2130 of 1997

(Bhagwati Prasad, J.)

13.12.2001

## ORDER

### **Bhagwati Prasad, J.**

1. The present writ petition has been filed by the petitioner in the background that there was an agriculture holding owned by one Jethu Singh s/o Tej Singh in Khasara No. 759 measuring 12, 14 bighas situated at Kheme Ka Kuan. Jethu Singh was holder of Khatedari rights of this land. The said Khatedar sold his rights in favour of respondent No. 3 by a registered sale deed. After sale, the aforesaid land came to be vested in respondent-

Samiti. A mutation was entered in the name of Society through Mutation No. 554. In the revenue record, in place of Jethu Singh, respondent No. 3 Samiti was entered as Khatedar. Respondent No. 3 was constituted as Housing Cooperative Society having its Registered No. 1186/Q.

2. The respondent No. 3 Society made available plot No. 11 measuring 600 sq. yards (60 ft. x 90 ft) to one Khushal Singh, a Member of the Society vide Annexure 1. The land was not converted and was allotted as agricultural land only. According to the petitioner, it was mentioned in the allotment letter that conversion and development charges are to be borne by the Member itself. The said Khushal Singh made an application for conversion of plot No. 11 measuring 600 sq. yards. The application presented by Khushal Singh was processed in accordance with law. The respondent Trust has given its no objection for its conversion and the Prescribed Authority after fulfilment of all the requirements converted agricultural and into urban land by the order dated 30-4-1988 in case No. 606/88. Patta dated 2nd May, 1988 in favour of said Khushal Singh and the pre-requisite amount was deposited by Khushal Singh and the alleged lease came to be gra

nted in favour of Khushal Singh for a period of 99 years and in the letter issued to said Khushal Singh, plot area was mentioned as 600 sq. yards and plot number was 11. A copy of the patta has been produced on record as Annex. 3. The respondent Society had deposited the amount for sub-division of the land and for that, a receipt was issued by the respondent, marked as Annex.4.

3. It is claimed in the writ petition that by issuance of the patta in favour of Khushal Singh, Khushal Singh became the absolute owner of plot No. 11 measuring 600 sq. yards. After having acquired absolute rights, Khushal Singh along with Leela Devi transferred the said plot in favour of the petitioner in lieu of Rs. 1 lac. The transfer was made in favour of the petitioner through a registered sale deed dated 12-7-

1991 registered in the office of Sub-

Registrar, Jodhpur. A copy of the registered sale deed has been produced on record as Annexure 5. It is claimed by the petitioner that after allotment of land in favour of Khushal Singh, he applied for conversion. The conversion having been ordered and patta having been issued in the name of Khushal Singh, the society had lost control over the plot. The Society had lost its right, title and interest over the land. Any act, omission or commission done by the respondent Society cannot affect the right, title and interest of Khushal Singh. After grant of patta in his favour, Khushal Singh transferred the land in favour of the petitioner along with Smt. Leela Devi, the petitioner became absolute owner of the land and had acquired absolute rights. The patta was issued in the name of His Excellency the Governor of Rajasthan.

4. The Society while allotting the land to Khushal Singh had prepared a map and in that map, various plots were marked and allotted to various persons. The other persons also purchased the lands. After purchase, the petitioner applied to the respondent Trust for permission to raise construction. The respondent Trust has not granted permission as provided in law to the petitioner. On enquiries being made, the petitioner came to know that such applications have been made by other persons also but the respondent Trust is sitting tight over the matter and is not processing the permission applications. The respondent Trust, it appears, was going to enquire the title of the person who had applied for permission but law enjoins that no enquiry is permissible to be made by the Trust in this regard.

5. It has also been averred by the petitioner that plot holders from serial No. 71 to 94 approached the Society and a request was made to the Society to safeguard their interes

t by raising a boundry wall. The suit was filed by the Society to permit holders of plot No. 79 to 94 to raise boundry wall. In this suit, temporary injunction was granted. Against such order of temporary injunction, an appeal was preferred before the court to District Judge which ultimately came to be decided by the Addl. District Judge No. 2, Jodhpur vide Annexure 8. Certain observations were made in the order of the Addl. District Judge No. 2, Jodhpur in relation to right and title of the parties. The Trust has proceeded to get its actions guided by the observations made by the Addl. District Judge No. 2.

6. It has been claimed by the petitioner that observations of the Addl. District Judge No. 2 were ineffective, immaterial and irrelevant so far as rights of the petitioner are concerned nor the rights of his predecessor in title were to be guided by such observations

7. The petitioner was apprised that land in question was undeveloped colony . If the land holders are desirous to have a properly developed colony as that of other colonies of U.I.T., the land holders shall have to deposit the development charges. The Trust shall develop the colony by way of providing roads, drinking water, sewerage lines, drainage etc. The petitioner genuinely and bonafidely relied upon the version of the U.I.T. and in these circumstances agreed to deposit Rs. 560/- per sq. mt. in favour of Trust with a pious hope that the plot where it is situated may come up as a well developed Colony. The petitioner issued a cheque of Rs. 70,235/- being 25% of the development charges. The petitioner has claimed that the Act no provision empowering the Trust to realise the development charges.

8. The application which has been made by the petitioner for seeking to raise construction, has so far not been finalised though registered by the respondent Trust. In Nov. Dec., 1996, the petitioner came to know that over land in question which includes the plot of the petitioner, some fresh demarcation has been made and roads are being constructed. Such constructions were in disregard to the plan prepared by the Society and thus, infringed the patta granted in favour of the petitioner. The petitioner approached the Chairman of the Trust who in turn apprised him that the plot which the petitioner is having in accordance with the conversion order made by the Land Acquisition Officer is no more there as all the plots in Khasra No. 759 and 817/751 have been changed at the instance of the respondent Society. The Chairman informed the petitioner that a request was made by the Society for entering into the settlement with the Trust and accordingly the application of the Society was considered and accepted and accordingly, a re

solution was passed on 9-1-1996. A copy of resolution of the Trust is produced as Annexure 10.

9. The respondent society in an illegal and arbitrary manner submitted a list of persons along with their new plot numbers and in that list, it was shown that the petitioner shall be entitled to have plot No. 20 measuring 458.3 sq. yards. Such delineation substantially changed the area of petitioner's measuring 142 sq. yards without authority of law. Such reduction has been without consent of the petitioner. The negotiations made by the Society in this regard are unauthorised. No request by the petitioner was made to the Society to get any such changes made. The proposal of the society is void, ineffective and inconsequential so far as property of the petitioner is concerned because petitioner purchased the plot through registered sale deed and became absolute owner of the plot. The trust and society have committed grave error of law by revision the plan and approving it because this has altered, reduced and changed the area of plots and interfered with the property of the petitioner in an illegal manner.

10. Fresh site plan changes the position of plots and the petitioners plot has also been changed from S. No. 11 to 20. Neither, the respondent Trust nor the respondent Society were at liberty to deal with the property of the petitioner and to change site and location as has been purportedly been done by them. The petitioner has claimed that the property has vested in the petitioner after a registered sale deed from his predecessor in title. Any act done by the respondent Trust and Society in relation to the plot in question are without jurisdiction, inoperative and ineffective. Khushal Singh got the land in his favour in the name of His Excellency the Governor of Rajasthan and became absolute owner of the property. He had every right to transfer it in favour of the petitioner.

11. The trust has extracted huge sum for more than Rs. 70,000/- from the petitioner illegally under a misrepresentation. They have no jurisdiction to re-settle and re-examine the land and scheme once accepted by the conversion authority. All this has been done without affording opportunity to the petitioner whose rights and title have been affected by the actions of Trust and State Government. Such action without notice is arbitrary and has resulted into immense loss to the petitioner. It has been prayed in the writ petition that petitioner should be permitted to raise construction over plot No. 11 and the respondents be restrained from interfering with the possession of the petitioner over the plot No. 11. It has been prayed that the amount charged by the Trust as development charges be ordered to be refunded with interest at the rate of 24% per annum.

12. The respondent Trust has joined the issue and filed reply. The stand of the respondent is that the petitioner has no *locus standi* to challenge the resolution dated 9-1-1996 or the agreement arrived at between the answering respondent Trust and respondent No. 3. The petitioner fundamentally lacks any right so as to seek its enforcement through a writ petition. The petitioner has filed present writ petition assuming himself to be an absolute owner of the alleged plot in question. The petitioner has styled himself as to be the absolute owner of the property but the same is a misnomer. Neither the petitioner nor his so called predecessor in title have or had any unfettered rights on the property in question. The entire writ petition is fundamentally baseless and deserves to be dismissed.

13. The respondent Trust has submitted that even if it is assumed that respondent No. 3 had a right to deal with the land in question, then too it could not have been granted any unfettered rights to any person. By the very nature of its incorporation, the Samiti would frame the scheme for its Members and the scheme has to be in conformity with the master plan and approval of the Trust. After confirmation by the answering respondent, the Samiti could allot land to its members only. The allotment so made was not liable to be transferred by any of the members to anyone else outside the society. This is admitted fact that the petitioner was not a Member of the Society and any transfer in favour of a Non-Member of the Society is fundamentally illegal, unauthorised and ineffective. Further, even if it is assumed that some transfers could be made, then the transferee was bound by the limits and rights of his so called predecessor in title.

14. The allotment letter in its very nature has made clear to the allottee in condition No. 3 that The Society reserved the right to make any change in the plan of the scheme and reduce the plot area as and when if deemed necessary in the interest of Society. " This has further been claimed by the answering respondent that conversion order and patta has been granted to the person concerned only as and in the capacity of Member of respondent No. 3 the Samiti. The patta granted in favour of Khushal Singh was not in his personal capacity.

15. Khushal Singh has not been added as party to the proceedings. He is a necessary party. The dispute is squarely in between the Samiti and its Members. The answering respondent could not have been dragged in the present writ petition. It has further been claimed that writ petition involves serious disputed questions of facts and rights sought

to be claimed by way of present writ petition cannot be adjudicated in the extra ordinary jurisdiction of this Court. The present writ petition is in the nature of civil suit and such rights and title cannot be decided on the basis of affidavit. The claim of the petitioner is that his size of plot has been reduced and the placement has been changed. While making the allotment, the Samiti had reserved its right to make any change in the plan or the scheme and reduce the plot area as and when it becomes necessary. In the present case, in view of the long drawn litigation and for balancing the equities, the answering respondent resolved to enter into the settlement with the Samiti and accepted the proposal made by the Samiti. Thus, the answering respondent has acted on behalf of the representation made by the Samiti.

16. The petitioner only gets his rights through member of the Samiti respondent No. 3 himself. It is also important to note that the petitioner himself has acted upon the resolution dated 9-1-

1996 and a cheque has been presented by the petitioner to the answering respondent. He has acted on the basis of the resolution which he is questioning now. Thus, by his conduct, the petitioner is estopped from challenging the same. The rights and title whatever the petitioner claims is through the Society. Such resolution dated 9-1-1996 was passed by the answering respondent at the request of the Society only. The petitioners right flow from the Society. The petitioner has got no independent right and that being the position, the dispute if at all is on the basis of resolution of the Trust, the petitioners baseless fight is with the Society.

17. The parties have filed written submissions apart from their other submissions.

18. It has been submitted on behalf of the petitioner that respondent UIT has erred in acting on the basis of the observations of the Addl. District Judge No. 2, Jodhpur in an appeal filed by the respondent No. 3. The petitioner nor his predecessor in title was party to those proceedings. Since, the petitioner was not a party to those proceedings, any observations made thereunder will not be binding on the petitioner. The respondent Society has unauthorisedly filed an application to UIT for entering into a compromise which has resulted into resolution of the Trust dated 9-1-

1996. The property at the time when the application for compromise was filed did not belong to the Society and therefore, it had no jurisdiction to enter into any compromise. According to the compromise, all the parties were required to surrender their pattas and were to withdraw their cases pending before various courts, Parties were also required to deposit Rs. 560/-

per sq. m. Such a resolution on compromise could not bind the petitioner as he was not a Member of the Society and the Society has no jurisdiction to enter into any compromises in this regard. Once, the petitioner has been vested with the rights over the plot, then the rights could not have been divested. The petitioner had already been issued patta of the plot in the name of his Excellency the Governor of Rajasthan. In the proceedings for issuance of patta, UIT was given notice, dues of the UIT had been ascertained and the UIT has virtually acquiesced in the matter and subsequently, UIT cannot be permitted to claim any right, title or interest over the land. The UIT has wrongly passed the resolution dated 9-1-

1996. There is no provision in the UIT Act which enables the UIT to realise and charge development charges. The petitioner claims that in ignorance of his right in law, he had agreed to pay development charges but in this regard, an application was moved by the petitioner in which a specific mention was made that he is making the deposit for plot No. 11 measuring 60 fts. x 90 fts. and such application has been accepted by the Chairman of the UIT and therefore, UIT is now estopped from changing its stand. In the cases where patta has been issued by his Excellency the Governor of Rajasthan, it was open for the UIT to compel plot holders to surrender the patta. In any case, the petitioner being not a member of the Society is not bound by the agreement of the Society. The petitioner has claimed that in terms of condition No. 3 of the allotment letter quoted hereinabove, the Society reserves the right to make any change in the plan of the scheme and reduce the plot area. This stand of the UIT is not correct because UIT has issued pattas to such persons who were not members of the society and thus recognised the independent rights of the parties on the land in question notwithstanding such person being a member of the Society. In this background, right of Khushal Singh has to be judged. Since, Khushal Singh has transferred the land after getting a patta from his Excellency the Governor of Rajasthan, there were no restriction. The petitioner has relied on Rule 17 of Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agriculture land for residential and commercial purposes in Urban Areas) Rules, 1981 wherein it has been provided that an unauthorised conversion of land when regularised, the person seeking regularisation will not be entitled to make a sale within five years of the regularisation. It has been contended on behalf of the petitioner that when law permits the trespasser after regularisation to sell land after five years, then there can not be any prohibition or embargo in the matter of transfer of land for person like Khushal Singh who has in his favour a patta issued in rightful manner. It has been claimed by the petitioner that as and when any transfer of property takes place, then in terms of Section [10](#) of the Transfer of Property Act, where there is any prohibition applied in relation to transfer of the property, such conditions are not valid. In the patta, there is n

o condition which acted as an embargo on the petitioner to acquire the plot by transfer. The petitioner has taken a definite stand on the basis of following points and asserts that he is not entitled to be treated in the manner in which the respondent UIT sought him to be treated. He is liable to retain the plot for the following reasons :-

- i. That the petitioner had an adequate right over the property as he had purchased the same by a registered sale deed, therefore, his rights cannot be interfered with by the UIT.
- ii. That UIT had no jurisdiction to deal with, consider or enter into any kind of compromise with the society because the land was not belonging to the UIT.
- iii. That without prejudice to the aforesaid submission, and in the alternative and in addition, the petitioner submits that so far as the petitioner is concerned, in respect of his land neither society nor UIT had any jurisdiction because the petitioner was not even member of the society.
- iv. That UIT had no jurisdiction to realise any kind of development charges because neither under the Act nor under the Rules, there is any provision which enables the UIT to realise development charges.
- v. That since the land was not belonging to the UIT and in the matter of grant of Patta under the Rule 4 of 1981 no objection was raised by the UIT, therefore, the UIT is not at liberty to raise or set up any kind of right, title or interest over the land as it is estopped from doing so.
- vi. That the stand taken by the UIT is absolutely untenable. In this regard it is submitted that according to the UIT the petitioner is entitled to have Plot No. 20 having an area of 458.3 Sq.Yards, but if he puts the claim to have the plot No. 11 measuring 600 Sq. Yards, then he has got no right. Suffice it to say that the argument is absolutely fallacious and preposterous. Since at no point of time, UIT had taken this stand that the person like the petitioner has got no right, therefore, as a respondent in the writ petition UIT cannot be permitted to take this stand nor there is any documentary evidence showing that this stand was ever taken by the UIT as the reply is claimed to have been filed on the basis of record of the trust and no record to this effect has been produced."

19. The petitioner has further emphasized that non-registration of the grant in favour of the petitioner by the State Government while issuing patta is of no consequence because such a transfer is covered under Clause (c) of Section 90 of the Rajasthan Govt. Grants Act, 1961. The petitioner has relied on the decision of this Court reported in *Champalal v. Rameshwar*.<sup>1</sup> The law laid down by the a

foresaid decision has been followed in another case by this Court reported in , *L.Rs. of Jasraj v. Dhingarmal*.<sup>2</sup> The petitioner has emphasized that that provisions of the Govt . Grants Act, 1895 are applicable in the case of the petitioner and patta granted in favour of the petitioner is valid even without registration. The Trust has no jurisdiction to raise any objection because the property does not belong to the Trust. The Society has not raised any objection. The Society has transferred the property in the name of predecessor in title of the petitioner. The whole proceedings taken by the respondent UIT are in gross violation of the principles of natural justice. The petitioner has been condemned unheard as his plot has been changed and area has been reduced without affording an opportunity to the petitioner. An Urban Improvement Trust could only dispose of the property in the manner known to law. No recourse was taken by the respondent Trust to dispose of the property in terms of the Rajasthan Urban Improvement Trust (Disposal of Urban Land) Rules, 1974. The only manner in which a Trust can handle the land is by way of framing schemes etc. It had no jurisdiction to transit a business in relation to private land of the petitioner. Thus, it has been canvassed on behalf of the petitioner that he had an absolute right over the plot. There is no privity of contract between the Society of the petitioner. The resolution of the UIT is without jurisdiction. In this background, it has been claimed on behalf of the petitioner that respondent Society and UIT should be restrained from enforcing their resolution and decision against the petitioner and his plot being Plot No. 11 be restored to him and amount deposited by him for development charges be returned.

20. The UIT has contested the case of the petitioner and has submitted that case of the petitioner is based on a fundamental fallacy that over the land in question, Khushal Singh had independent right. After assuming that Khushal Singh had independent right, the petitioner has proceeded to state that Khushal Singh applied for conversion in his personal capacity and that a patta was granted in favour of an individual i.e. Khushal Singh which is not correct statement of facts. In fact, the claim of the petitioner is that of derivative title from Khushal Singh only. Khushal Singh was allotted land by Society. By that allotment, what position has been acquired by Khushal Singh is required to be considered. Khushal Singh in the capacity of the member got in allotment letter. That allotment was not a registered document. The land was agricultural land and khatedari stood in the name of the Society. A title of the khatedari land could only be transferred by recognised modes of transfer.

21. Khushal Singh is alleged to have been allotted plot No. 11 in a land belonging to the Society. The so called allotment could be anything within the house of the Society a

amongst its members but does not and cannot operate as a transfer of an ascertained immoveable property extinguishing the title of the society. Unless title of the society is extinguished creation of title in Khushal Singh is not possible. As and when, a right was to be granted in Khushal Singh, it could only be done by way of recognised modes under the Transfer of Property Act and such transfers under Section 17 of the Registration Act, 1908 is required to be compulsorily registered. This is an admitted fact that allotment letter in favour of Khushal Singh was not a registered instrument. In absence of a registered document, Khushal Singh cannot derive an independent title in the property. Petitioner cannot claim a title better than possessed by Khushal Singh as he has stepped in his shoes.

22. The document Ex. 1 cannot be read in evidence establishing that the land was transferred by Samiti to Khushal Singh being an unregistered document. In the aforesaid circumstances, it is not correct to contend that Khushal Singh had acquired absolute right over the property. The application filed by Khushal Singh was entertained by the conversion authorities in the capacity of member of respondent Society. When application of Khushal Singh is considered as member of the Society, then that knocks out the fallacy that Khushal Singh had absolute right over the property. Khushal Singh never had any independent title over the land. He was acting as member of the Society and he could not have been transferred anything better than one which was vested in him. Every action taken by the Statutory Authority has to be read in consonance with the Statutory Rules, otherwise, the order would be without jurisdiction or would be invalid (vide *Union Territory, Chandigarh, Admn. v. Managing Society, Goswami, GDSDC, 3*

23. The basic plank of the petitioner is the patta granted by the conversion authorities in the name of his Excellency the Governor of Rajasthan which makes a mention that the same is issued in the capacity of the member of the Samiti. The conversion order also records that application has been considered as member of the Society and Khushal Singh is granted patta as a member of the society. Such is the tenor of the patta in favour of Khushal Singh produced as Annex. 3. In this background, if the assertions of the petitioners are judged, then only one conclusion is possible that the sale attempted to be made by Khushal Singh is void-ab-initio and does not confer any title upon anybody as Khushal Singh himself was also not having any independent title.

24. A member of the society under the bye-laws of the Society cannot transfer his share in the society to anyone other than the member of the society. Thus, there was a prohibition contained in very character of the all

otment which had flown from the Society to Khushal Singh. The allotment did not represent any inheritable and transferable right which could be alienated. Further, at the time when allotment was made in favour of Khushal Singh, the allotment Annex. 1 has reserved the right in the Society to make any such plan or scheme and reduce the plot area. Therefore, it cannot be contended that petitioner or Khushal Singh had no information of the fact that the area and the plot were liable to be changed. In terms of Section 25 of the Rajasthan Cooperative Societies Act, 1965, the transfer of share and interest of a member in a cooperative society cannot be transferred to anyone who is not a member of the Society.

25. The settlement made between the Society and the Trust was in the best interest of everybody and petitioner has no right to challenge the same. The plan prepared by the Samiti was not providing for proper layout and therefore in the interest of planned development of the Samiti, a compromise was entered into between the Society and the UIT. Reference to Section [10](#) of the Transfer of Property Act is misplaced. There could not have been any property which Khushal Singh could transfer. The allotment was only an arrangement between the member of the society and the patta Annex. 3 did not confer any independent title on Khushal Singh. There had been consistent efforts on the part of the petitioner to claim that he had an absolute right over the property because of the patta issued to Khushal Singh and Khushal Singh has made registered sale to him and which is in ignorance of the fact that Khushal Singh had claimed allotment of land as member of Society. Society had khatedari right over the land. Khatedari right could only be got extinguished against society and in favour of Khushal Singh by way of registered document. There was no such executed document between Society and Khushal Singh. Unless rights of the Society are extinguished, the State had no right to make any grant in favour of Khushal Singh over a land belonging to Society. Under the Rajasthan Government Grants Act, 1961. Thus, no right had vested in the petitioner whatsoever. The whole questions raised by the petitioner relate to declaration and recognition of civil rights which is a disputed question. Decision on such disputed questions in a writ petition is not permissible and on this count also, the petitioner is not entitled to seek any declaration in the present writ petition.

26. I have heard learned counsel for the parties, perused the record and have given my thoughtful consideration.

27. This is admitted case of the petitioner that agricultural land subject matter of the petition was khatedari land, mutated in the name of the Cooperative Society, Respondent

t No. 3. This is also admitted that the petitioner has nothing to do with the society. The Society is alleged to have made an allotment in the name of one of its member, Khushal Singh. The allotment letter was not registered. What is the effect of this allotment letter is to be seen.

28. The case of the petitioner is that Khushal Singh after getting land converted, received a patta issued in the name of His Excellency, the Governor of Rajasthan. He sold the land covered by patta to petitioner. The title of the petitioner is claimed through Khushal Singh. What is most important in the circumstances is the evaluation of right, which Khushal Singh acquired by allotment made by the society in his name. On such determination will depend the effect of conversion made by the State Authorities in relation to the land covered by allotment letter.

29. The land was khatedari land of the society. Khatedari rights can only be divested by a registered instrument. No such instrument was ever executed by the Society in favour of Khushal Singh. Thus, notwithstanding the allotment of land in favour of Khushal Singh, the khatedari rights stood in the name of the Society.

30. The allotment made in favour of Khushal Singh was not absolute. It had reserved certain rights in favour of the Society itself. The Society had reserved in itself right to make a change in the plan of the scheme and reduce the plot area as contained in condition No. 3. Could that right be exercised by the Society after conversion in favour of Khushal Singh is a material question which deserves attention.

31. The claim of the petitioner is that by conversion Khushal Singh got absolute right. A reference to the conversion order and result of conversion, the patta shows that Khushal Singh was given the grant in the capacity of the member of the society. It was not in independent capacity that grant came into existence to Khushal Singh. If grant is made in favour of Khushal Singh as member of the society, then can it be said that Khushal Singh had absolute right over the land notwithstanding the rider with the grant. This is another question which deserves attention.

32. The land being khatedari land of the society could only be made subject matter of grant by the State when State had the sanction of the Tehsildar. For making a State grant in favour of an individual, grantee is required to have his capacity to make the grant. In khatedari land unless khatedari is extinguished, State would not be able to make a grant to a third party. State has not sought any concession from the society to extinguish

h its khatedari rights and then allot the land to Khushal Singh. Thus, it cannot be concluded that State had absolute right to handle the land for allotment to Khushal Singh. If the State had not acquired right to make a conversion in favour of Khushal Singh, then it cannot be said that the order of conversion is an order which has the effect of divesting the owner of its khatedari rights.

33. If khatedari rights of the Society had not been extinguished, then the land was not available with the State to be dealt with in any manner. Merely because there was an allotment made in favour of Khushal Singh, it cannot be said that land was available to the State for being converted in favour of Khushal Singh. Before any conversion order was made, the rights of the Society over the land in question were necessarily required to be extinguished. A land cannot vest in two persons at a given point of time. With the existence of khatedari rights, land belonged to the Society.

34. The petitioner claims that by conversion, the land got vested into Khushal Singh. Such a proposition cannot have sanction of law. Either of these two titles will be a legitimate right. The Society had acquired the right by undisputed transfer. After allotment, Khushal Singh had conversion in his favour by the grant made to him by the State Government over a land which was khatedari of the society. The Society had not given up its right by surrendering khatedari. Thus, before an order of conversion made by the State Government, it was not considered proper by the State Government to go into this question. Any exercise without divesting the Society for its khatedari rights cannot be said to be a legitimate exercise of powers.

35. An exercise of power by the State over the land of a person who has a legitimate right is not permissible unless such rights are extinguished by a known mode in law. Khatedari rights of the society were neither extinguished by operation of law nor by any act of the Society. The petitioner has not claimed that by any act of the Society, the Society abdicated its khatedari rights except that of an allotment in favour of Khushal Singh. That allotment was unregistered, and thus, was incapable of transferring an inheritable right in an immoveable property.

36. The petitioner has raised a grievance that UIT had no right to interfere with the land belonging to the petitioner. The UIT had assumed jurisdiction only after society had agreed for intervention. The society as a khatedar had every right to negotiate with the UIT. A member of the society independent of the decision of the Society itself could not override the wishes of the Society. He had bound himself by the instrument of const

itution of the Society and in such instrument, there is providence that members cannot transfer the land without the permission of the Society. Such permission having not been taken by Khushal Singh, he has violated the instrument of his relationship with the Society. Thus the very foundation of his relationship with the Society itself has come to a situation where he was liable to forfeit his rights by operation of law.

37. In the background of the aforesaid discussion, it clearly turns out that unregistered letter of allotment in favour of Khushal Singh was incapable of extinguishing the Khatadari rights of the Society. It was at best recognition of the entitlement of Khushal Singh in the property of the Society as a Member of the Society. It had not attained finality because it was contingent by condition No. 3 that society had reserved a right into itself that it can make a change as contemplated by condition No. 3 in the allotment that a change in plan which could extend upto reduction of the plot area. Thus, from the letter of allotment, Khushal Singh had not acquired any indefeasible right where society could not step in and interfere in the fashion in which it was permissible in law.

38. The conversion and issuance of patta by the State in the name of His Excellency the Governor was in the capacity of a Member of the Society. Society had not given up its khatedari rights until the conversion order was passed. Thus, the State had passed a conversion order over a land which belongs to the Society and there was no concession made by the Society that it is agreeable to extinguish its khatedari rights. No such representation was made by the Society before the State Government. The petitioner has claimed that there is an endorsement on the patta that conversion charges will have to be borne by the allottee alone is not sufficient to clothe the rights in Khushal Singh that he could get the land converted. Some thing more than that in more express term was required to be communicated to the State that Society is prepared to get its khatedari rights extinguished on the land. In the ultimate analysis, the Society found that best interest of its Members would be served, if it enters into a compromise with the UIT because its original allotment had some shadow over it. If the whole society agrees for a change and only a few members resist, then it is impermissible because majority dominance is provided in the rules of the Society. Under the cover of a patta issued by the State on khatedari land of the society, name of Khushal Singh cannot be recognised as an absolute right because before any such right was granted in favour of Khushal Singh, rights of society were not extinguished.

39. In Co-operative Societies Act, it is clearly provided that right of a Member of the Society can

only be transferred with the concurrence of the Cooperative Society. Such concurrence being absent in the matter, it is more than obvious that though petitioner claims through Khushal Singh as member of the Society, he has tried to impugn the very authority of the Society which is the owner of the land. Thus a petitioner who claims a right better than the one its transferers had shows that he wants to overreach the provisions of law.

40. In fact, before the surrender of khatedari, land was not available with State for conversion. Khatedari was not surrendered before conversion. Thus, the land was not capable of being subjected to an order of conversion.

41. The Society as a khatedar had every right to guard the safe interest of its members. If it has been done, the petitioner has no right to challenge the same.

42. The aforesaid discussion leads to only one direction that the relief claimed by the petitioner cannot be granted to him as majority of the members have already acquired rights with the concurrence of the society and a new layout has already come into existence. In view of the new layout, the plot claimed by the petitioner has lost its existence. The right of the petitioner has not been recognised. The plot has lost its existence. These two contingencies lead to only one inference that in the facts and circumstances of the case, no relief can be granted to the petitioner. The petitioner himself wanted the UIT to develop land for himself. He has deposited the amount for that purpose. This only shows that the petitioner recognised the right of the respondent UIT to be the Agency which has to develop the localities. If such an Institution in the best interest of the City, enters into a compromise with the Society and the Society agrees to the same, then an individual like the petitioner who derives his right through a member, yet denies obligation arising out of that relationship, cannot get any advantage. In view thereof also, it is not possible to recognise any right in the petitioner which can be enforced through this writ petition. The writ petition involves various complicated questions. Decision of all of them on affidavits is also not possible. What is claimed in the writ petition is a civil right. That requires deep investigation which is impermissible in a writ petition under Article 226 of the Constitution of India.

43. In view of the aforesaid, no relief likely to be granted to the petitioner. There is no force in the writ petition. The writ petition is dismissed.

Petition dismissed.

## Cases Referred.

1. AIR 1967 Raj 233
2. (1989) 1 Raj LW 541
3. 1. (1996) 7 SCC 665