

राजस्थान सरकार
नगरीय विकास विभाग

क्रमांक :प. 3 (821)नविवि/3/2012

जयपुर, दिनांक 27 OCT 2013

परिपत्र

चारागाह भूमि के संबंध में जगपाल सिंह बनाम पंजाब राज्य व अन्य में माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय दिनांक 28.01.2011 तथा राजस्व विभाग द्वारा परिपत्र दिनांक 25.04.000002011 जविप्रा स्वामित्व की भूमियों पर लागू होता है अथवा नहीं, इस संबंध में श्री जी.ई.वाहनवती, अटार्नी जनरल ऑफ इण्डिया द्वारा निम्नानुसार राय/मार्गदर्शन दिया गया है- (प्रति संलग्न है)

13. I shall now proceed to answer the queries as under :
- Q. a Whether the judgment to the Hon'ble Supreme Court of India dated 28-01-2011 does in any manner impunge upon the rights of JDA to dispose of the land or develop the land in accordance with the provisions of Jaipur Development Authority Act of 1982 ?
- Ans. No.
- Q. b Whether the circular issued by Govt. of Rajasthan dated 25-04-2011 would also be confined to lands which are governed by Rajasthan Land Revenue Act., i.e. the land which are not urban and rural in nature ?
- Ans. Does not arise
- Q. c Whether the provisions of Jaipur Development Authority Act shall have overriding effect over the provisions of Rajasthan Land Revenue Act as laid down under Section 54 of the Jaipur Development Authority Act.
- Ans. Yes

राज्य सरकार द्वारा सक्षम स्तर पर लिये गये निर्णयानुसार उक्त मार्गदर्शन के अनुसार चारागाह भूमि के संबंध में आवश्यक कार्यवाही सम्पादित करावे।

राज्यपाल की आज्ञा से,


(प्रकाश चन्द्र शर्मा)

संयुक्त शासन सचिव-तृतीय

प्रतिलिपि निम्नांकित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित है—

1. विशिष्ट सहायक, मा. मंत्री महोदय, नगरीय विकास विभाग, राजस्थान, जयपुर।
2. निजी सचिव, अतिरिक्त मुख्य सचिव, नगरीय विकास विभाग, राजस्थान, जयपुर।
3. निजी सचिव, प्रमुख शासन सचिव, राजस्व विभाग, राजस्थान, जयपुर।
4. आयुक्त, जयपुर विकास प्राधिकरण, जयपुर को राज्य सरकार द्वारा सक्षम स्तर पर लिए गये निर्णयानुसार प्रकरण में श्री जी.ई.वाहनवती, अटार्नी जनरल ऑफ इण्डिया से प्राप्त बिल राशि रूपये 4,95,000/- एवं डॉ. मनीष सिंघवी, अतिरिक्त महाधिवक्ता, राजस्थान सरकार से प्राप्त बिल राशि रूपये 56,500/- भुगतान की आवश्यक कार्यवाही हेतु मूल ही संलग्न कर प्रेषित है। कृपया उक्त बिलों का भुगतान कराने की आवश्यक कार्यवाही सम्पादित करावे।
5. आयुक्त, जोधपुर विकास प्राधिकरण, जोधपुर।
6. आयुक्त, अजमेर विकास प्राधिकरण, अजमेर।
7. संयुक्त शासन सचिव (प्रथम/द्वितीय/तृतीय), नगरीय विकास विभाग।
8. निदेशक (वित्त), जयपुर विकास प्राधिकरण, जयपुर।
9. सचिव, नगर विकास न्यास (समस्त)।
10. रक्षित पत्रावली।

संयुक्त शासन सचिव-तृतीय



सत्यमेव जयते

G. E. VAHANVATI
ATTORNEY GENERAL FOR INDIA

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Ex parte

Jaipur Development Authority

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Querist

1. I have gone through the Case for Opinion submitted by the Additional Advocate General, Dr. Manish Singhvi dated 08.09.2013.
2. In order to appreciate the queries which have been raised it first becomes necessary to analyse the judgment of the Supreme Court in *Jagpal Singh's* case reported in (2011) 11 SCC 396.
3. That case pertained to an appeal against a judgment of the Division Bench of the Punjab & Haryana High Court dated 21.05.2010 which had upheld the judgment of the Learned Single Judge dated 10.02.2010. There was an encroachment in relation to a village pond which had been used for a common purpose by the villagers. The Commissioner had set aside the order of the Collector and held that regularisation of the illegal encroachment is not in the interest of the Gram Panchayat. The order of the Commissioner had been upheld by the Learned Single Judge whose order in turn, was upheld by the Division Bench of the Punjab & Haryana High Court.

4. In para 23 of the judgment, the Supreme Court observed as under:

"13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village."

5. It is in this context that the court went on to make further observations with regard to village ponds and tanks attached to temples, etc. Paras 19 and 20 of the judgment expressly refer to such ponds and tanks.

6. In para 23 the Court went on to give further directions as under:

"23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. ⁴⁰² where lease

has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land."

7. The said directions apply to illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/ shamlat land.
8. I may also mention that certain further orders have been passed in the said civil appeal by the same Bench including the order dated 03.05.2011 where it was noted that several States had not complied with the order. Thereafter, however, the matter was not taken up before that Bench but subsequently mentioned before the Learned Chief Justice in several matters between the period 29.11.2012 to 15.07.2013, whereby certain clarifications have been issued. I do not find any consequential order passed subsequent to the main order.
9. As far as the Jaipur Development Authority (JDA) is concerned it has been set up under the Jaipur Development Authority Act, 1982. Certain lands which were governed by the Rajasthan Land Revenue Act were vested in the JDA. Section 54 provides as under:

"Section 54 - Land to vest in the Authority and its disposal

Notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956 (Rajasthan Act No. 15 of 1956), the land as defined in Sec. 103 of that Act, excluding land referred to in Sub-clause (ii) of Clause (a) of the said section and Nazul Land placed at the disposal of a local authority under Sec. 102-A of that Act in Jaipur Region shall, immediately after establishment of the Authority under Sec. 3 of this Act, be deemed to have been placed at the disposal of and vested in the Authority which shall take over such land for and on behalf of the State Government and may use the same for the purposes of this Act and may dispose of the same (by way of

behalf of the State Government and may use the same for the purposes of this Act and may dispose of the same "(by way of allotment, regularisation or auction) subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe:

Provided that the Authority may dispose of any such land—

(a) without undertaking or carrying out any development thereon; or

(b) after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider expedient to impose for securing development according to plan.

(2) No development of any land shall be undertaken or carried out except by or under the control and supervision of the Authority.

(3) If any land vested in the Authority is required at any time thereafter by the State Government, the Authority shall, by notification in the Official Gazette place it at the disposal of the State Government upon such terms and conditions as may be agreed upon between the State Government and the Authority.]

(3) All land acquired by the Authority, or by the State Government and transferred to the Authority, shall be disposed of by the Authority in the same manner as may be prescribed for land in Sub-section(1).

10. The question that arises is whether the judgment of the Supreme Court in *Jagpal Singh's* case would apply to lands held by the JDA. Having regard to what I have stated above, certain points must be noted. The Supreme Court was concerned with village ponds and village tanks in areas generally meant for common use by villagers such as ponds and tanks. This is clear from paras 19 and 20 which I have referred to above. It is also clear that the directions given in para 23 require such lands to be restored which enure for the common use of the villagers in the village. I fail to see how the judgment would apply to the JDA because apart from the fact that

that such lands have to be used by the JDA for the purposes of this Act. The JDA has also been given the power to dispose of the land subject to such conditions as the State Government may lay down or subject to such other covenants and conditions as are necessary during the development of the land in accordance with the provisions of the plan.

11. It is difficult to conceive how such land can be described as lands which were meant to be used for common purposes by villages such as ponds and tanks. In my opinion, neither the judgment of the Hon'ble Supreme Court of India dated 28.01.2011 nor the circular issued by the Govt. of Rajasthan on 25.04.2011 is applicable to land which vests with the JDA. This is so because of the overriding provisions of Section 54 of the JDA Act which excludes the applicability of the Rajasthan Land Revenue Act. Once the land vests with Jaipur Development Authority, the land is developed in accordance with the Master Plan. If the area is marked as residential then residential colonies have to be carved out in that area and it cannot remain as land available for grazing of cattle. There is also a decision of the Hon'ble Supreme Court of India that the land to be used for dairy purposes should be on the outskirts of the city and therefore there would be no purpose served in having the chargah/grazing land in the midst of the city, especially when the land already vests with the JDA.
12. I must point out that since there is lack of adequate green cover in the Jaipur city, certain lands required to be kept as green area in

12. I must point out that since there is lack of adequate green cover in the Jaipur city, certain lands required to be kept as green area in accordance with the Master Plan will fall within the spirit of the Supreme Court order.

13. I shall now proceed to answer the queries as under:

Q.a Whether the judgment of the Hon'ble Supreme Court of India dated 28.01.2011 does in any manner impinge upon the rights of JDA to dispose of the land or develop the land in accordance with the provisions of Jaipur Development Authority Act of 1982?

Ans. No.

Q.b Whether the circular issued by Govt. of Rajasthan dated 25.04.2011 would also be confined to lands which are governed by Rajasthan Land Revenue Act, i.e. the lands which are not urban and rural in nature?

Ans. Does not arise.

Q.c Whether the provisions of Jaipur Development Authority Act shall have overriding effect over the provisions of Rajasthan Land Revenue Act as laid down under Section 54 of the Jaipur Development Authority Act?

Ans. Yes.

14. I have nothing further to add.

Goolam E Vahanvati
Goolam E Vahanvati
Attorney General for India

01 October 2013
New Delhi.