



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 51/2020

1. Kalyan Singh S/o Belsi Ram, Aged About 70 Years, Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
2. Takhat Singh S/o Jethu Singh, Aged About 50 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
3. Dan Singh S/o Megh Singh, Aged About 40 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
4. Prabhu Singh S/o Bheru Singh, Aged About 30 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
5. Nathu Kanwar W/o Jethu Singh, Aged About 58 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
6. Chanan Singh S/o Bhanwar Singh, Aged About 50 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
7. Bheev Singh S/o Bhanwar Singh,, Aged About 39 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
8. Man Singh S/o Bhanwar Singh, Aged About 32 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
9. Narpat Singh S/o Bhanwar Singh, Aged About 34 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
10. Dukam Singh S/o Alsi Singh, Aged About 80 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
11. Madhu Kanwar D/o Khet Singh, Aged About 40 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
12. Niju Kanwar D/o Khet Singh, Aged About 38 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
13. Faras Kanwar D/o Khet Singh, Aged About 30 Years, R/o





Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

14. Rukhmo W/o Suresh Kumar, Aged About 32 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

15. Prema Ram S/o Bhut Ram, Aged About 85 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

16. Pukha Ram S/o Bhera Ram, Aged About 36 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

17. Amba Ram S/o Bhera Ram, Aged About 30 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

18. Kana Ram S/o Deva Ram, Aged About 55 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

19. Puna Ram S/o Deva Ram, Aged About 52 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

20. Sawade Ram S/o Deva Ram, Aged About 50 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

21. Daharu Ram S/o Bheeka Ram, Aged About 42 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

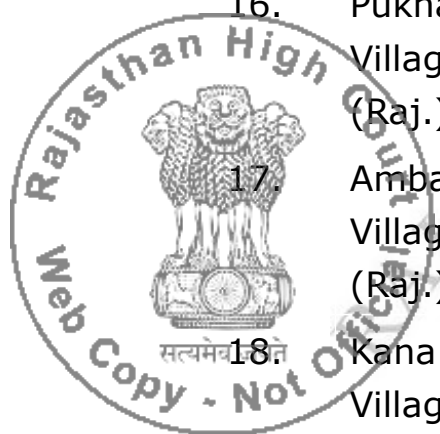
22. Taru Ram S/o Dhedha Ram, Aged About 45 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

23. Jagdish S/o Dhedha Ram, Aged About 42 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

24. Hanuman S/o Dhedha Ram, Aged About 38 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

25. Tiloka Ram S/o Dhedha Ram, Aged About 40 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

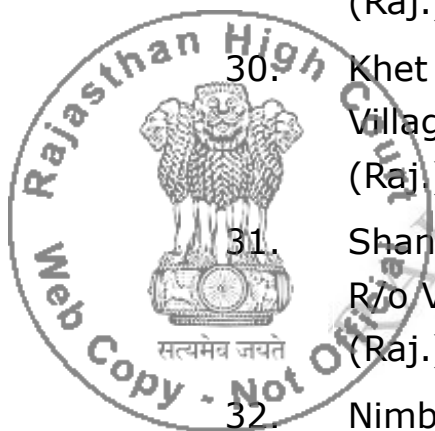
26. Haru Ram S/o Dhedha Ram, Aged About 35 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur





(Raj.).

27. Sharwan Ram S/o Dhedha Ram, Aged About 30 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
28. Antro D/o Dhedha Ram, Aged About 28 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
29. Tulcha Kanwar D/o Bheru Singh, Aged About 35 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
30. Khet Singh S/o Bheru Singh, Aged About 33 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
31. Shankra Ram S/o Bheekha Ram, Aged About 45 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
32. Nimbu Ram S/o Bheekha Ram, Aged About 42 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
33. Bheeya Ram S/o Bheekha Ram, Aged About 35 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
34. Banshi Ram S/o Bheekha Ram, Aged About 30 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
35. Loga Ram S/o Kilasha Ram, Aged About 50 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
36. Pema Ram S/o Kilana Ram, Aged About 45 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
37. Gorakh Ram S/o Kilona Ram, Aged About 40 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
38. Sumera Ram S/o Kilona Ram, Aged About 38 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
39. Taru Ram S/o Joga Ram, Aged About 40 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).





40. Bhanwaru Ram S/o Joga Ram, Aged About 30 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).
41. Roopa Ram S/o Sita Ram, Aged About 20 Years, R/o Village Nagnechinagar, Tehsil Phalodi, District Jodhpur (Raj.).

-----Appellants

Versus

1. State of Rajasthan, Through The Secretary, Revenue Department, State of Rajasthan, Secretariat, Jaipur (Raj.)
2. The Secretary, Energy Department, Government of Rajasthan, Secretariat, Jaipur (Raj.)
3. The District Collector, Jodhpur, Collector Office, Jodhpur (Raj.)
4. Sub-Divisional Officer, Phalodi, Tehsil Phalodi, District Jodhpur (Raj.)
5. The Tehsildar (Revenue/record), Phalodi, Tehsil Office, Phalodi, District Jodhpur (Raj.)
6. The Director, M/s. Essel Saurya Urja Company of Rajasthan Limited, 4th Floor, Flat No. 404, Prabhu Raj Apartment, Parivahan Marg, C-Scheme, Jaipur (Raj.)

-----Respondents

Connected With

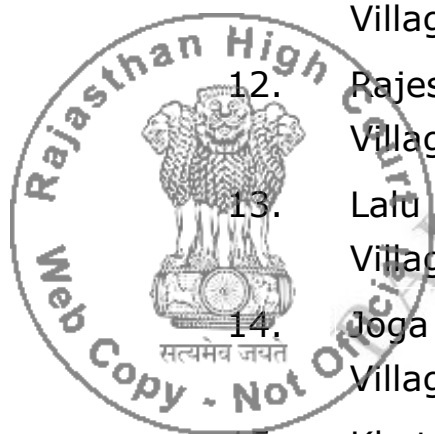
D.B. Spl. Appl. Writ No. 52/2020

1. Shankra Ram S/o Chotha Ram, Aged About 50 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
2. Harchand Singh S/o Jawahar Singh, Aged About 60 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
3. Ganga Singh S/o Hameera Ram, Aged About 55 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
4. Chawna Ram S/o Hameera Ram, Aged About 38 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
5. Uttama Ram S/o Hameera Ram, Aged About 40 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
6. Buddha Ram S/o Hameera Ram, Aged About 36 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
7. Ganga Ram S/o Uda Ram, Aged About 52 Years, R/o



Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).

8. Satram S/o Uda Ram, Aged About 50 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
9. Fusa Ram S/o Uda Ram, Aged About 45 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
10. Ramu Ram S/o Uda Ram, Aged About 40 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
11. Dugar Ram S/o Khiya Ram, Aged About 60 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
12. Rajesh Kumar S/o Gopi Ram, Aged About 55 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
13. Lahu Ram S/o Heera Ram, Aged About 60 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
14. Joga Ram S/o Fakira Ram, Aged About 20 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
15. Khetu S/o Karna Ram, Aged About 30 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
16. Jagmal Ram S/o Kilana Ram, Aged About 30 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
17. Rupa Ram S/o Fakira Ram, Aged About 34 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
18. Kishna Ram S/o Bhoma Ram, Aged About 35 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
19. Sua S/o Nakhta Ram, Aged About 34 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
20. Bhanwaru Ram S/o Joga Ram, Aged About 60 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
21. Bhanwara Ram S/o Panna Ram, Aged About 62 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
22. Ghevar Ram S/o Bhanwaru Ram, Aged About 35 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
23. Rewant Ram S/o Bhanwaru Ram, Aged About 30 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
24. Rupa Ram S/o Sita Ram, Aged About 20 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
25. Joga Ram S/o Bheekha Ram, Aged About 70 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
26. Shiv Ram S/o Dedu Ram, Aged About 65 Years, R/o





Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).

27. Shura Ram S/o Leela Ram, Aged About 55 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
28. Veera Ram S/o Sugra Ram, Aged About 35 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
29. Bomad Ram S/o Sura Ram, Aged About 36 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
30. Navla Ram S/o Sura Ram, Aged About 38 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
31. Ram Chandra S/o Sura Ram, Aged About 35 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).
32. Kheta Ram S/o Sura Ram, Aged About 32 Years, R/o Village Ugras, Tehsil Phalodi, District Jodhpur (Raj.).

-----Appellants

Versus

1. State of Rajasthan, Through The Secretary, Revenue Department, State of Rajasthan, Secretariat, Jaipur (Raj.).
2. The Secretary, Energy Department, Government of Rajasthan, Secretariat, Jaipur (Raj.).
3. The District Collector, Jodhpur, Collector Office, Jodhpur (Raj.).
4. Sub-Divisional Officer, Phalodi, Tehsil Phalodi, District Jodhpur (Raj.).
5. The Tehsildar (Revenue/Record), Phalodi, Tehsil Office, Phalodi, District Jodhpur (Raj.).
6. The Director, M/s Essel Saurya Urja Company of Rajasthan Limited, 4Th Floor, Flat No. 404, Prabhu Raj Apartment, Parivahan Marg, C-Scheme, Jaipur (Raj.).

-----Respondents

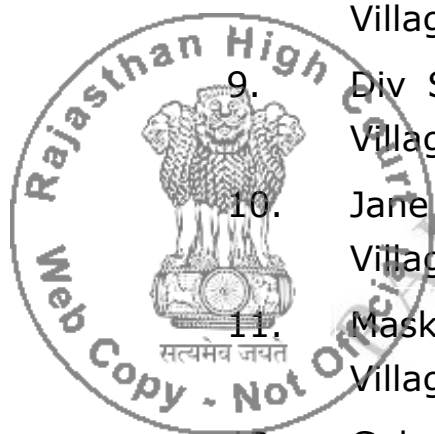
D.B. Spl. Appl. Writ No. 223/2020

1. Barkat Khan S/o Akbar Khan, Aged About 32 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
2. Chamel Khan S/o Mardeen Khan, Aged About 42 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
3. Nale Khan S/o Ise Khan, Aged About 47 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
4. Bhage Khan S/o Ise Khan, Aged About 42 Years, R/o



Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)

5. Adreem Khan S/o Akbar Khan, Aged About 37 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
6. Birbal Khan S/o Kherdeen Khan, Aged About 62 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
7. Saleem Khan S/o Kherdeen Khan, Aged About 52 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
8. Gemar Singh S/o Sagat Singh, Aged About 37 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
9. Div Singh S/o Sagat Singh, Aged About 37 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
10. Jane Khan S/o Dale Khan, Aged About 32 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
11. Maskul Khan S/o Kalu Khan, Aged About 67 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
12. Gulam Khan S/o Kalu Khan, Aged About 47 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
13. Nure Khan S/o Kalu Khan, Aged About 42 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
14. Avadu Khan S/o Kadar Khan, Aged About 43 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
15. Vire Khan S/o Kaji Khan, Aged About 34 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
16. Merdeen Khan S/o Bhareeen Khan, Aged About 27 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
17. Bilal Khan S/o Abdu Khan, Aged About 28 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
18. Nure Khan S/o Pane Khan, Aged About 37 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
19. Duge Khan S/o Bali Khan, Aged About 72 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
20. Misri Khan S/o Ali Khan, Aged About 29 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
21. Bhage Khan S/o Merdeen Khan Khan, Aged About 62 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
22. Sindal Khan S/o Kabool Khan, Aged About 32 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)





23. Sumer Khan S/o Maskul Khan, Aged About 34 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)
24. Sardeen S/o Kalu Khan, Aged About 37 Years, R/o Village Nedan, Tehsil Pokran, District Jaisalmer (Raj.)

----Appellants

Versus

1. State of Rajasthan, Through Secretary, Revenue Department, State Of Rajasthan, Secretariat, Jaipur Raj.
2. The Secretary, Energy Department Government of Rajasthan, Secretariat, Jaipur, Raj.
3. The District Collector, Jaisalmer, Collector Office, Jaisalmer Raj.
4. Sub Divisional Officer, Pokran, Tehsil Pokran, District Jaisalmer Raj.
5. The Tehsildar (Revenue/record) Pokran, Tehsil Office, Pokran, District Jaisalmer Raj.
6. The Director, M/s. Adani Renewable Energy Park Rajasthan Ltd., (JVC of Govt. of Rajasthan and Areprl) 31(A), 6th Floor, Plot No. 5, Swej Farm, Mahima Trinititi New Sanganer Road, Jaipur, Raj.

----Respondents

For Appellant(s)	:	Mr. Moti Singh Rajpurohit Mr. Likhmaram Upadhyay with Mr. Sukhdev Sharma and Ms. Khushboo Chouhan
For Respondent(s)	:	Ms. Rekha Borana, AAG assisted by Mr. Saransh Vij and Ms. Vaishali Parihar Mr. R.N.Mathur, Senior Advocate with Mr. Rajeev Lochan, Mr. Shobhit Jhajharia (through VC) and Mr. D.S.Sodha Mr. Kuldeep Mathur with Mr.Shreyansh Mardia Mr. Bhavit Sharma

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE RAMESHWAR VYAS

Order



29th June, 2021

Per Hon'ble Mr. Sangeet Lodha,J.

Reportable

1. These intra-Court appeals directed against orders dated 27.11.19 passed by the learned Single Judge of this Court, dismissing the writ petitions preferred by the appellants assailing the legality of the allotment of the lands made in favour of M/s. Essel Saurya Urja Company of Rajasthan Limited ("ESUCRL") in revenue villages Ugras and Nagnechinagar of Tehsil Phalodi, District Jodhpur and in favour of Adani Renewable Energy Park Rajasthan Limited ("AREPRL") in revenue village Nedan, Tehsil Pokaran, District Jaisalmer, for establishment of Solar Park, were heard together and are being disposed of by this common order.

2. To appreciate the controversy raised in these appeals, it would be appropriate to notice the brief facts of the each case:

D.B.Special Appeal (Writ) No.51/2020

(Kalyan Singh & Ors. vs. State of Rajasthan & Ors.)

This special appeal arises out of the order dated 27.11.19 passed by the learned Single Judge in Writ Petition No.16305/18. The writ petitioners claiming themselves to be khatedar tenants and cultivators for last 40-45 years of agriculture land comprising various khasras of village Nagnechinagar, assailed the legality of the order dated 23.3.18, issued by the District Collector, Jodhpur, allotting the lands measuring 70.08 *bighas* comprising khasra no.416, 1958.02 *bighas* comprising khasra no.439 and 454.04 *bighas* comprising khasra no.441 of revenue village Nagnechinagar, in favour of ESUCRL for establishing a Solar Park. The petitioners placed on record the *jamabandi* of their land annexed with the writ petition as Annexure-1.



Precisely, the case set out by the writ petitioners in the writ petition was that they are in cultivatory possession of the disputed land and are residing there after constructing *dhani* for last 40-45 years. The land in question has been allotted to the respondents ignoring their rights and without issuing any notice to them. The petitioner claimed to be khatedar tenant of the land and averred that prior to allotment of land in question in favour of ESUCRL, no land has been allotted in their favour. The petitioners claimed that despite request being made by them, their possession has not been regularised by the revenue authorities. Further, according to the writ petitioners, the land allotted to the respondent Company includes the lands of *charagah*, water tank (*talab*), hills, *oran*, river, school, temple and residential etc., the allotment whereof is prohibited under the law. The writ petitioners while assailing the legality of the allotment made in favour of ESUCRL sought direction to the respondents not to dispossess them from the land in their possession.

A reply to the writ petition was filed by the State before the learned Single Judge taking the stand that the land allotted to ESUCRL is *siway chak* Government land and not khatedari land of the petitioners as alleged. It is averred that the possession of the land allotted has already been handed over to the respondent Company after following the due procedure of law. The State categorically denied the factum of existence of *dhani*, *tanka*, *talab*, hills etc. upon the land in question. According to the State, the land allotted is rocky and not cultivable as alleged by the petitioners.



D.B.Special Appeal (Writ) No.52/2020
(Shankra & Ors. vs. State of Rajasthan & Ors.)

This special appeal arises out of the order dated 27.11.19 passed by the learned Single Judge in Writ Petition No.16304/18. The writ petitioners claiming themselves to be khatedar tenants and cultivators of the agriculture land comprising various khasras of village Ugras, challenged the legality of order dated 23.3.18, issued by the District Collector, Jodhpur allotting the land measuring 2045.11 *bighas* comprising khasra no.359, 360/20 and 361 of revenue village Ugras, in favour of ESUCRL for installation of 450 Mega Watts Solar Park. The petitioners averred that they are in cultivatory possession of the land of the aforementioned khasras of village Ugras for last 40-45 years. The petitioners placed on record the *jamabandi* of their land annexed with the writ petition as Annexure-1.

Precisely, the case set out by the writ petitioners in the writ petition was that they are in cultivatory possession of the disputed land and are residing there after constructing *dhani* since 40-45 years. The land in question has been allotted to the respondents ignoring their rights and without issuing any notice to them. The petitioner claimed to be khatedar tenant of the land and averred that prior to allotment of land in question in favour of ESUCRL, no other land has been allotted in their favour. The petitioners claimed that despite request being made by them, their possession has not been regularised by the revenue authorities. Further, according to the writ petitioners, the land allotted to the respondent Company includes the lands of *charagah*, water tank (*talab*), hills, *oran*, river, school, temple and residential etc., the allotment whereof is prohibited under the law. The writ petitioners while assailing the legality of the allotment made in



favour of ESUCRL sought direction to the respondents not to dispossess them from the land in their possession.

A reply to the writ petition was filed by the State taking the stand similar to the stand taken in the reply to writ petition filed in S.B.Civil Writ Petition No. 16305/18 : Kalyan Singh vs. State of Rajasthan & Ors..

D.B. Spl. Appl. Writ No. 223/2020

(Barkat Khan & Ors. vs. State of Rajasthan & ors.)

This special appeal arises out of the order dated 27.11.19 passed by the learned Single Judge in Writ Petition No.11551/18.

The writ petitioners had challenged the legality of order dated 11.1.18, issued by the District Collector, Jaisalmer allotting the land measuring 6115.06 bighas comprising khasra nos. 2, 3, 4, 483/3, 480/4, 493/4, 494/4, 527/4, 528/4, 5, 8, 9, 11, 43, 82 & 485/82 of revenue village Nedan, Tehsil Pokaran, District Jaisalmer, in favour of AREPRL for installation of 1500 Mega Watts Solar Park.

In the writ petition filed, the petitioners averred that the Sub-Divisional Officer, Pokaran ("SDO") had issued an advertisement dated 8.3.06 inviting applications for allotment of the agriculture land inter-alia in the revenue Village Nedan, under Rule 7 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 ("the Rules of 1970"). The petitioners being cultivators of the land in revenue Village Nedan since 40-45 years, submitted their applications along with requisite documents to SDO, Pokaran. The receipts of the applications submitted, issued in favour of the petitioners Barkat Khan, Deep Singh, Gemar Singh, Manohar Singh and Arjun Singh, were placed on record as Annexure-2. No proof regarding the



applications, if any, submitted on behalf of the remaining petitioners was filed.

Precisely, the case set out by the petitioners in the writ petition was that the applications of the petitioners, the landless persons, seeking allotment, being pending since the year 2006 and thus, the land could not have been allotted in favour of AREPRL without considering their applications for allotment in accordance with the Rules of 1970. The petitioners contended that they are entitled for regularization of their old possession. According to the petitioners, in the first instance, half of the land of Village Nedan i.e. 5547 bighas was allotted in favour of RIICO Limited and now the remaining land ad measuring 6115-06 bigha has been allotted in favour of respondent AREPRL. In this regard, the layout plan of the allotted land has been placed on record by the petitioners as Annexure-5. It is submitted that the petitioners are residing in their *dhani* constructed in Village Nedan and there exists Schools, Temple, Water Tank, Pond, Oran land etc., but while allotting the land this fact has also been ignored. Prior to allotting the land in favour of AREPRL, no opportunity of hearing was extended to the petitioners and thus according to the petitioner, the action of the respondents is highly illegal, arbitrary and violative of principles of natural justice. The grievance of the petitioners is that if they are divested of the land in their possession, in respect whereof the applications submitted are pending consideration since 2006, they shall stand deprived of their livelihood. The petitioners while questioning the legality of the order dated 11.1.18 prayed that the respondents be directed to regularise their old possession over the land in question by deciding the applications submitted by them in the year 2006 and



they may not be dispossessed from the lands in their cultivatory possession.

No reply to the writ petition was filed by any of the respondents before the learned Single Judge.

3. All the three writ petitions preferred as aforesaid, have been dismissed by the learned Single Judge in the light of the decision in the matter of Chanesar Khan & Ors. Vs. State of Rajasthan & Ors.: S.B Civil Writ Petition No.5707/18, decided on the same day. The said writ petition was related to the challenge to the allotment made in favour of company AREPRL in the Village Nedan. In Chanesar Khan's case, the learned Single Judge opined that the petition preferred involve host of disputed question of facts, which cannot be gone into by the Court in exercise of the writ jurisdiction and thus, the petitioners were heard only qua the prayer clause (a) of the writ petition i.e. with respect to order impugned therein dated 11.1.18 issued by the District Collector, Jaisalmer allotting 6115 bighas 6 biswas land comprising various khasras of Village Nedan in favour of AREPRL. The contentions of the petitioners therein that the land has been allotted in violation of Section 16 of the Rajasthan Tenancy Act, 1955 ("Act of 1955") and Rule 5 of the Rajasthan Land Revenue (Allotment of Land for Setting up of Power Plant based on Renewable Energy Sources) Rules, 2007 ("Rules of 2007") was negated by the learned Single Judge taking note of the submission of the learned Advocate General appearing for AREPRL that the possession of the land of public utility such as Pond, *Talab*, 1, Graveyard etc. has not been handed over to AREPRL and they will not insist for handing over possession or allotment of such land, possession whereof, has not been given. The Court further observed:



"Before advertizing to the argument of learned counsel for the petitioners, Mr. Raghav with respect to provision contained in Section 16 (xiv) of the Act of 1955, it would be apt to reproduce the provision for ready reference, which I hereby do:

"Land which has been set apart or is, in the opinion of the Collector, necessary for flow of water thereon in to any reservoir or tanka for drinking water for a village or for surrounding village"

A simple look at the provision aforesaid leaves no room for ambiguity that it has been enacted with a view to protect water flow to any reservoir or 'tanka', which has been set apart by the Collector.

Argument advanced by learned counsel for the petitioners that before allotting such land it was imperative of the Collector to summon a report, cannot be countenanced. As a matter of fact, the provision postulates that a land which has been set apart or in the opinion of Collector is necessary for flow of water, in terms of the proviso, a report would be summoned. There is no material on record to show that the part of the land has been set apart or in the opinion of Collector is necessary for flow of water. As such, the argument advanced in this regard is untenable and thus rejected.

However, in view of the statement given by the respondent- State that possession of the land which falls in the catchment area or flow of river, pond has not been given to respondent No.6, and that the allotment made in relation to such land would stand cancelled; argument advanced by the petitioner does not need any further deliberations."

Regarding the pending applications of the petitioners for allotment, taking note of the material placed by the respondent- State that the Cabinet of the State Government by way of resolution has decided on 16.8.09 that the applications invited for allotment of the land in Jaisalmer would stand cancelled, learned Single Judge observed that the argument of the petitioner has no ground to hold. The learned Single Judge observed that the petitioners' applications for allotment/regularization having been



turned down by the State, the argument of prior right of allotment is no more available to them.

4. A counter and objection to the writ petition has been filed on behalf of the respondent no.6-ESUCRL in the special appeals arising out of the order impugned passed by the learned Single Judge in Writ Petition No.16305/18 and 16304/18. A preliminary objection has been raised on behalf of ESUCRL that the writ petitions/special appeals involve disputed questions of facts and therefore, this Court should not entertain the same, more so when the learned Single Judge has declined to interfere.

5. It is submitted that the allotment made in favour of ESUCRL does not include any part of the land covered by Annexure-1 to the writ petition. No land has been given to ESUCRL nor any claim is made over the land which is in possession of the Gram Panchayat and earmarked for the purpose of public utility, plantation, ponds and *Shamshan* land etc. The writ petitioners contended that they are in possession of the land allotted to ESUCRL for last 40-45 years, however, no documents were brought on record establishing it; in absence whereof no legal right can be said to have accrued in favour of the writ petitioners. That apart, it is contended that the land in question was allotted by the State Government to ESUCRL, only after receipt of NOC's in accordance with the provisions of Rajasthan Land Revenue (Allotment of Land for Setting up of Power Plant based on Renewable Energy Sources) Rules, 2007 ('Rules of 2007'). The land being mostly barren, rocky and flat was found suitable for the purpose of installation of Solar Parks. It is submitted that the allotment of the land in question, possession whereof has been given to ESUCRL, is not in derogation of the law laid down in



Abdul Rehman Vs. State of Rajasthan (D.B. Civil Writ Petition No. 1536/2003) and also that of the legal mandate enshrined under Section 100 and Section 90B of the Rajasthan Land Revenue Act, 1956 ('Act of 1956'). It is further submitted that on 25.10.2018 the learned Single Judge passed the order to maintain the status quo of the land in question. No interference in any manner was done by ESUCRL but during the pendency of the petition some of the writ petitioners got involved in the criminal act against ESUCRL and consequently, an FIR bearing No. 460/2019 was lodged at PS Phalodi, Jodhpur under section(s) 147, 148, 341, 323, 307, 395, 427 & 149 IPC.

6. An additional affidavit has been filed on behalf of the appellants in Appeal No.51/20 & 52/20 taking the stand that the appellants' khatedari land and the land of public utilities i.e. temple, cremation ground, school etc. are surrounded by the land allotted in favour of the company ESUCRL and thus, they stand deprived from beneficial use of their cultivatory rights as also the other public facilities inasmuch as, there are no approach roads to their land and the land for public utility exist at the site. It is further averred that the respondents have constructed boundary wall around the land allotted. The petitioners have produced photostat copies of the *jamabandi* of some of their khatedari land.

7. A reply to the Writ Petition has also been filed by the Respondent No. 1, 3 to 5 in the special appeal arising out of the order impugned passed by the learned Single Judge in Writ Petition No.11551/18 (Barkat Khan's case) wherein a preliminary objection has been raised that the writ petitioners have concealed the material facts from this court as to their fulfillment of eligibility criteria of 'landless person' for allotment of land in their favour, as



the perusal of applications of the writ petitioners vividly depict that they are in ownership of other lands and thus, do not fall under the category of 'landless person', this being one of the requisite condition also in advertisement dated 8.3.2006 (Annexure -1).

8. It is submitted that the writ petition has been filed by 24 petitioners but only 3 of them have placed copies of applications on record thus, implying that the remaining petitioners never applied for the allotment. Moreover the applications stated by the writ petitioners to be filed in the year 2006 stood rejected way back in 2010 on account of the policy decision taken by the State Government vide Cabinet Decision No. 65/2009 dated 25.08.2009 to which the District Collector, Jaisalmer had also issued forwarding letter dated 11.03.2010 (Annexure-R/1) to the SDO concerned, wherein directions were issued for rejection of applications of allotment of land, which were pending consideration. When called for the factual report in the matter, the Additional District Collector, Jaisalmer had forwarded letter dated 2.11.2010 (Annexure R/2) to the Deputy Secretary, Revenue (Group -III) Department, Rajasthan, Jaipur whereby, it was informed that the applications pending consideration for allotment of land have been rejected. It is contended that although the original allotment was pertaining to 6115.06 Bighas but the possession of only 4662.13 bighas was handed over to AREPRL in respect of which entries in the revenue record were also made and it was also ensured that no possession of public utility land has been handed over. Neither encroachment was found on the disputed land nor cases were found registered against any encroacher as evident from the *mauka* report dated



13.09.2018 (Annexure R/5). It is further submitted that the Khatedari lands of the writ petitioners have also not been disturbed in any manner nor the same were allotted to AREPRL, rather, the writ petitioners have miserably failed to place on record any document establishing their ownership/possession over the land in question.

9. An additional affidavit was filed on behalf of the State clarifying that out of total 6115.06 bighas of land allotted to AREPRL at the first instance, the possession of only 4662.13 bighas of land was handed over; the lease was executed between AREPRL and the Collector, Jaisalmer on behalf of the State and the entries in revenue record were made accordingly. The copy of the amended lease deed executed between the parties is placed on record as Annexure R/7. A copy of the possession handing over report dated 27.4.18 is also placed on record to show that the possession of none of the public utility lands was handed over to AREPRL. It is submitted that even the lands surrounding the ponds which are not recorded as catchment of the ponds in the revenue record are still recorded in the name of the State. Similarly, it is submitted that the land of khasra no. 552/11 (*gair mumkin kabristan*) and the land of khasra no.11/1 (*barani-4*) are completely surrounded by remaining land of khasra no.11 and the same is entered in the revenue record as *barani-4*. It is submitted that a total of 126.3022 hectares (780.05 bighas) of the remaining land of khasra no.11 surrounding khasra nos. 552/11 and 11/1 has not been allotted to AREPRL and the same is entered in the revenue record in the name of the State.

10. During the course of hearing, a perusal of the original record relating to the allotment of land of village Nedan in favour of



AREPRL revealed that the lands allotted in favour of AREPRL in village Rasla is near to closures established for protection of Great Indian Bustard (GIB). A suo moto PIL petition being D.B.C.Writ Petition No.825/19 is pending consideration before this Court in respect of the project run for conservation of this critically endangered species which has the status of 'State Bird' in the State of Rajasthan. Confronted with this situation, on 8.9.20, learned AAG while giving an undertaking to maintain the status quo, sought time to complete her instructions. Later, by way of an application seeking leave to withdraw the undertaking given as aforesaid, it is submitted that the original proposal for allotment of the land to the company AREPRL was for three villages viz. Dwara, Rasla and Nedan and the objections pertaining to the GIB Closures being nearby to the disputed land are concerned, the same are pertaining to villages Dwara and Rasla. In view of the objection of Department of Forest, all the land parcel falling in Desert National Park area was taken out of the proposal and consequently, the same was not allotted to the company. Out of proposed area of 9303 bighas, a proposal for only 4425 bighas was forwarded further. It was submitted that allotted land in village Nedan is situated 70 kms. away from DNP area and therefore, the allotment of the land does not contradict any of the guidelines issued by the Courts in respect of GIB Arc area. It is further submitted that the original proposed transmission line of the company was not approved by the Chief Conservator of Forest and therefore, the company has revised the plans for laying down the transmission line which is totally outside the purview of GIB Arc area.

11. The company AREPRL has also filed an additional affidavit taking the stand that in respect of allotment of the subject land



there are no issues of GIB or GIB Arc. It is submitted that the subject land where Solar Park is being developed is falling outside the GIB Arc area and the distance between the boundary of GIB Arc and priority area and the subject land is about 17 to 18 kms. It is submitted that the Solar Project is a major step in fulfillment of the vision of the State to establish 30,000 MW by the year 2025. As per the Government of India by the year 2022, 100 GW of solar energy will be generated in the country. The investment in renewable energy is for the benefit of the public at large across the State of Rajasthan which would not only generate new courses of growth, increase income, improve trade balances, contribute to industrial development and create jobs but would also create additional opportunities. The renewable energy has the effect of reducing the carbon emission to the extent of 43,80,000 tons per year.

12. Mr. Moti Singh Rajpurohit, learned counsel appearing for appellants Barkat Khan and others submitted that admittedly the Sub Divisional Officer ('SDO'), Pokaran, issued a proclamation under Rule 7 of the Rules of 1970, while notifying the list of unoccupied Government lands available for allotment inter alia in the revenue village Nedan, invited applications from the persons eligible for allotment. Pursuant to the proclamation made, the appellants being the landless persons, made applications for allotment within the stipulated period of thirty days. However, no steps were taken for allotment of the land and the request of the appellants for regularization of their old possession was also not acceded to. Learned counsel submitted that the appellants had set out the case in the writ petition that without deciding the applications preferred by them for allotment of the land, the



disputed land has been allotted to the respondent no.6-AREPRL. Learned counsel submitted that the order dated 11.3.10 (Annexure-R1) issued by the District Collector, Jaisalmer or the order dated 2.11.10 (Annexure-R2) issued by the Additional Collector, Jaisalmer, rejecting the applications pursuant to Cabinet Decision No.65/2009 dated 25.8.09 were never communicated to the appellants and the appellants have come to know about the factum of rejection of their applications only through the reply to the writ petition filed on behalf of the State. Drawing the attention of the Court to the prayer clause in the writ petition, learned counsel submitted that the petitioners have sought directions for regularisation of their old cultivatory possession over the disputed land by deciding the application made in the year 2006 and therefore, there is no reason as to why the legality of the order passed rejecting the applications should not be examined by this Court though the orders were not specifically under challenge in the writ petition. Learned counsel submitted that though as per the reply filed on behalf of the State, the applications stand rejected but the proclamation dated 8.3.06 has not been withdrawn till this date and thus, the land which had already been identified as unoccupied Government land available for allotment and was duly notified, could not have been allotted to the company AREPRL. Learned counsel submitted that the land set apart for agriculture purposes cannot be divested for any other purpose. Learned counsel submitted that just to extend favour to the respondent Company, no survey was conducted before the allotment to ascertain as to whether the land sought to be allotted is available for allotment or not. As a matter of fact, the lands which are covered by the prohibition contained in Section 16 of



the Rajasthan Tenancy Act, 1955 ('the Act of 1955') not available for allotment, were also allotted to the respondent Company, the fact which is not even disputed by the respondents before this Court. Drawing the attention of the Court to the Rule 5(c) of the Rules of 2007, learned counsel submitted that the land which was reserved for allotment to the 'landless persons' for agriculture purposes under the Rules of 1970, was also not available for allotment but while making the allotment in favour of the respondent Company, the said provision was also altogether ignored. Learned counsel submitted that the contentions raised on behalf of the appellants in this regard have been rejected by the learned Single Judge without taking into consideration the statutory mandate but on merely noticing the submission of the learned counsel appearing for the AREPRL that the possession of the land of public utility such as pond, *talab*, *nadi*, graveyard etc. has not been handed over to the Company. Learned counsel submitted that the conclusion arrived at by the learned Single Judge in this regard apparently runs contrary to the statutory provisions.

13. Learned counsel submitted that the allotment of the land made in favour of the respondent AREPRL was inclusive of the land falling in prohibited category, the fact which stands fortified from perusal of the possession handing over report placed on record by the State as Annex.R/4. According to the State out of 6115.06 bighas land allotted to the Company, the possession of only 4662.13 bighas land has been handed over, which clearly indicates that before making the allotment of the land no survey/site inspection was undertaken and the allotment was made straightaway as per the demands of the Company without



application of mind. Learned counsel submitted that number of inhabitants are residing in their *dhani* which now stand surrounded by the land allotted to the respondent AREPRL but before allotting the land this fact was not taken care of that on account of the allotment made the persons residing within the area are not deprived of beneficial use of their land and the public facilities.

Drawing the attention of the Court to the site plan produced learned counsel submitted that while allotting the land even the approach road to the *dhani*, agricultural field and other public facilities were not earmarked, what to say about the entries of the land set apart for said purposes in the revenue record. Strangely enough the land falling within the flow of the river has also been allotted. Learned counsel submitted that the Company cannot be permitted to install the solar park around the appellants' land, *dhani* and public facilities. It is submitted that the Company has already commenced the construction of the boundary wall, and if that continues, the rights of inhabitants of the area are bound to be seriously affected.

14. Drawing the attention of the Court to Rule 2 (jjj) of the Rules of 2007 learned counsel submitted that the 'Solar Park' is a group of solar plants/solar power plants/ solar PV power plants/solar thermal power plants/solar farms in the same location used for production of electric power. As per provisions of Rule 3 of the Rules of 2007, the application for allotment of Government land for setting up Renewable Energy Power Plant is required to be submitted by the Power Producer in the prescribed form to the Rajasthan Renewable Energy Corporation (R.R.E.C.) and if the application is found complete in all respect and the applicant fulfills all the requirements for the allotment of the land as per the



Policy of promoting generation of electricity through non-conventional energy sources declared by the Energy Department, Government of Rajasthan from time to time, R.R.E.C. would process and recommend to the District Collector for allotment. The District Collector with his comments shall forward the application to the State Government, which in its turn may allot the land for setting up of Renewable Energy Power Plant. Drawing the attention of the Court to the allotment order, learned counsel submitted that in the instant case on the recommendations of R.R.E.C. the allotment has been made in favour of respondent AREPRL by the District Collector straightaway and thus, the allotment made is exfacie without jurisdiction. Learned counsel submitted that as per Rule 4, the allotment can be made only on leasehold basis and the land is transferred to the lease holder only with the limited rights for the purpose of setting up of Renewable Energy Power Plant and after expiry of the lease period the land shall revert back to the State Government but in the instant case in the revenue record the name of the respondent AREPRL has been entered as owner of the land, whereas as per Rule 6 (4) of the Rules of 2007 the ownership of the land shall continue to vest in the State Government.

15. Learned counsel would submit that as per Rule 12A, the land for setting up and developing Solar Park may be allotted to R.R.E.C. or Rajasthan Solar Park Development Company Ltd. (R.S.P.D.C.L.) on the terms and conditions as specified and the said Corporation/ Company may sub-lease the lease land or part whereof for setting up and developing solar park/ solar plant/solar power plant/ solar PV power plant/solar thermal power plant/solar farm purposes and thus, any entrepreneur aspirant for setting up



solar park can only be allotted the land by way of sub-lease by R.R.E.C. or R.S.P.D.C.L. and not otherwise.

16. Mr. Likhma Ram Upadhyay, learned counsel appearing on behalf of the appellants in SAW Nos.51/2020 and 52/2020 while reiterating the submissions made before the learned Single Judge and adopting the arguments advanced by Mr. Moti Singh, appearing on behalf of the appellants- Barkat Khan and others, submitted that the appellants in SAW No.51/2020 are in cultivatory possession of the agricultural land allotted to them in Khasra Nos.416, 439 and 441 of Village Ugras and the appellants in SAW No.52/2020 are in possession of the land comprising Khasra Nos.360 and 329 of Village Nagnechi Nagar, which are situated in the centre of the land allotted to the respondent- ESUCRL. The company has already started construction of the boundary wall and if the boundary wall is constructed, the approach road to the petitioners' agricultural field and the public utilities i.e. temple, cremation ground, school etc. shall stand closed and thus, they will stand deprived of beneficial use of their land. In this regard, learned counsel has drawn the attention of this Court to the site plans of the land allotted in favour of the respondent ESUCRL. Learned counsel submitted that the action of the respondents in allotting the land in favour of the respondent- ESUCRL without conducting the proper survey and depriving the appellants from beneficial use of their land, is ex facie arbitrary and without jurisdiction.

17. Ms. Rekha Borana, Additional Advocate General appearing for the State contended that the arguments advanced on behalf of the appellants are beyond the pleadings which cannot be entertained by this Court in intra Court appeal preferred against the order



passed by the learned Single Judge. Learned AAG urged that there is no foundation in the writ petitions preferred regarding alleged violation of the provisions of the Rules of 1970 and the Rules of 2007 and thus, the intra Court appeals deserve to be dismissed on this count alone. Learned AAG submitted that the case set out by the petitioners that they were entitled for allotment of the land pursuant to the proclamation issued by the State Government is absolutely incorrect. Learned AAG submitted that person applying for the allotment of the land must be a landless person, however, the petitioner nos.1, 6, 8, 13, 15 & 21 in Barkat Khan's case who alleged to have submitted the applications for allotment of the land pursuant to the proclamation issued by the State Government, are already in ownership of the khatedari land and do not fall in the category of 'landless person' and thus, were not even entitled for allotment. Drawing the attention of the Court to the reply to the writ petition filed on behalf of the State in the special appeal, learned AAG submitted that the averments made in the reply in this regard are not controverted by the appellants by filing a counter thereto. Learned AAG urged that pursuant to the policy decision taken by the State Government vide Cabinet Decision No.65/2009 dated 25.8.2009, all the applications submitted have already been rejected after following the due process of law vide order dated 2.11.2010 issued by the Additional Collector, Jaisalmer. Learned AAG submitted that the State Government is the land holder and it is well within its jurisdiction not to act upon the proclamation issued and reject the applications filed. Learned AAG would submit that merely on the basis of the applications preferred, no right is created in favour of the applicants to claim the allotment as a matter of right and the



process initiated for allotment of the land to the respondent Company can always be adopted by the State Government. Learned AAG submitted that the applications were rejected way back in the year 2010 and none of the petitioner had challenged the decision of the State Government in rejecting the applications by availing the appropriate remedy available under the law and thus, at this stage, when the validity of the orders issued by the respondents, rejecting the applications preferred are not even under challenge in the writ petition filed, there is no reason why this Court should enter into a roving and fishing inquiry into the question of facts relating to the cancellation/rejection of the applications. Learned AAG submits that the special appeals filed against the decision of the learned Single Judge, dismissing the writ petition agitating individual rights, cannot be converted into PIL and thus, this Court would not like to travel beyond the scope of the writ petition originally filed. Learned AAG submitted that there is no co-relation between cancellation of the applications seeking allotment made by the appellants and the allotment made in favour of the respondent Company inasmuch as, the applications seeking allotment were rejected in the year 2010, whereas the process for allotment of the land in favour of the respondent Company was initiated in the year 2014 and thus, the attempt made on behalf of the appellants to impress upon this Court that their applications were rejected so as to facilitate the allotment of the land in favour of the respondent Company, is absolutely baseless. Learned AAG submitted that the appellants have set out the case in the writ petition that they are in cultivatory possession of the land for last 40-45 years but no documents in this regard have been placed on record and thus,



the claim sought to be raised on behalf of the appellants on the basis of the alleged old possession over the disputed land is also baseless.

18. In Barkat Khan's case, learned AAG while referring to the assertions made by the State Government in reply to the writ petition, submitted that out of 6115.06 bighas land allotted to the respondent Company, the possession of 4662.13 bighas only was handed over to the respondent Company and even in the revenue record, the entries have been made in favour of the Company of 4662.13 bighas and the remaining land 1452.13 bighas continues to be in possession of the State Government. Learned AAG submitted that the State Government has already proposed access to the khatedari land of the inhabitants and the public utilities land in the village and thus, the right of the inhabitants to beneficial use of their land are not going to be adversely affected as contended on behalf of the appellants. However, it is not disputed by the learned AAG before this Court that the allotment originally made in favour of the respondent Company vide Annexure-4 dated 11.1.2018 includes some lands of public utility and other lands not available for allotment. However, the learned AAG assured that the allotment of the land, possession whereof has not been handed over to the respondent Company for various reasons, shall be cancelled.

19. The learned AAG while controverting the contention raised on behalf of the appellants regarding the allotment being made in violation of the provisions of Rule 12 A of the Rules of 2007, submitted that the argument advanced is absolutely misconceived inasmuch as, Rule 12 A makes the provision for allotment of land in favour of R.R.E.C. and R.S.P.D.C.L. and creates rights in their



favour to sub-lease the leased land, but the provision does not debar the allotment of the land in favour of other entrepreneurs for setting up of Solar Park for production of electricity.

20. Learned AAG submitted that the contention sought to be raised by the appellants regarding the allotment made in favour of the respondent Company by the Collector being without jurisdiction is apparently incorrect inasmuch as, the land was allotted in favour of the respondent Company by the State Government and the order impugned is issued by the Collector on behalf of the State Government and accordingly, the lease has also been executed between the respondent Company and the State Government through District Collector.

21. Regarding the lands allotted in villages Nagnechinagar (Kalyan Singh's case) and Ugras (Shankra Ram's case), learned AAG submitted that the petitioners therein had claimed the rights on the basis of the old possession which is not proved by any documents on record. Learned AAG submitted that the old possession of 40-45 years is claimed by most of the petitioners in the writ petitions, who are falling in the age group/bracket of 20 to 35 years and thus, falsity of the claim is apparent on the face of record. However, being confronted by the Court regarding the lands being allotted in the village Ugras in favour of the Company surrounding the khatedari lands of the petitioners and their likes and other public utilities land, the learned AAG had no answer.

22. Regarding the allotment of the land near GIB Arc, learned AAG submitted that the said allotment does not relate to the land, subject matter of the instant intra Court appeals rather, the same relates to the land allotted in favour of the Company AREPRL at village Rasla and not the village Nedan. It is submitted that in



view of the objections raised by the Department of Forest against the laying down of transmission line in GIB area Fatehgarh-Bhadla Transmission Limited (FBTL), the Company which is developing the transmission line for evacuation of power from the Solar Park being developed by the Company AREPRL has already decided to change the route of transmission lines have been taken outside the GIB Arc area. The said revised plan of transmission lines outside GIB Arc has resulted into increase in length of transmission line from 102-98 kms. to 152 kms. It is submitted that the distance between the boundary of GIB Arc and the priority area and the subject land is around 17-18 kms. Learned AAG submitted that the issue with regard to the allotment near the GIB Arc area at village Rasla is beyond the scope of the present special appeal and thus, it would not be appropriate to enter into the question raised in this regard by the appellants inasmuch as, it will amount to converting the intra Court appeal into PIL.

23. Mr. R.N. Mathur, learned Senior Advocate appearing on behalf of the respondent Companies submitted that the claim of the appellants as to right to regularisation/allotment of the land is in nature of a personal right and thus, the petition filed for enforcement of the personal right cannot be converted into PIL. Reiterating the contention raised on behalf of the State, learned counsel submitted that the applications of the appellants for allotment of the land were rejected way back in the year 2010 which is not even under challenge before this Court. Learned counsel would submit that the issues which are not raised in the writ petition cannot be raised in intra Court appeal; the appellants cannot claim any right over the land in questions on the basis of



applications so made, which already stand rejected and thus nothing survives for consideration before this Court in the present intra Court appeals. Learned counsel submitted that as a matter of fact, neither legal nor any fundamental right of the appellants herein is violated and therefore, the writ petitions were liable to be dismissed as not maintainable. Learned Senior Counsel submitted that the reference of provisions of Sections 145 and 148 of the Rajasthan Land Revenue Act, 1956 referred to on behalf of the appellants is absolutely misplaced, inasmuch as those provisions relate with periodical survey/settlement operation and has no bearing whatsoever in the matter of allotment of the lands to the respondent Companies under the provisions of Rules of 2007 for setting up of Solar Park. Reiterating the contention raised by AAG on behalf of State, learned Senior Counsel submitted that Rule 12A of the Rules of 2007, which makes provision for allotment of the land to R.R.E.C. and R.S.P.D.C.L. for setting up and developing Solar Park inserted vide Amendment Rules, 2014 dated 04th of August, 2014 in no manner debars allotment in favour of the entrepreneurs other than R.R.E.C. and R.S.P.D.C.L. Learned counsel submitted that Solar power generation is a public interest far greater than any alleged right or interest of the individual. Learned counsel submitted that the Scheme for development of Solar Parks and Ultra Solar Power Projects was promulgated by the Government of India keeping in view the objective inter alia that the scattering of solar power projects leads to higher project cost per MW and higher transmission losses. That apart, individual projects of smaller capacity incur significant expenses in the site development, drawing separate transmission line to nearest sub-station, procuring water and in creation of other necessary



infrastructure. Learned counsel submitted that Rajasthan Solar Energy Policy, dated 8th October, 2014 was framed with an objective of developing a global hub of solar power of 25000 MW capacity to meet energy requirements of Rajasthan and India, providing a long term sustainable solution for meeting energy needs and considerably reducing dependence on depleting fossil fuel resources like coal, oil and gas. It is submitted that Thar Desert in the State of Rajasthan on account of availability of maximum sunlight and plain ground is ideal place for generating solar energy and is considered best location in terms of solar irradiation and therefore, the development of solar park is proposed at the location in question. Learned counsel submitted that the installation of proposed solar park is a joint venture of the respondent Company and the State Government having shares in the ratio 50:50. Learned counsel urged that on account of the installation of the park in question, the right and interest of the inhabitants of the area shall not be adversely affected inasmuch as, full care is being taken to provide access to their lands/*dhani* and the public utilities and for this reason that in village Nedan out of 6115.06 bighas land allotted, the possession of only 4662.13 bighas has been given to the respondent Company. Learned counsel submitted that under the Rules of 2007, for establishment of the solar park, the projected land allotment is 3.5 hectare per MW and thus, the allotment of the land made in favour of the respondent Company for 1500 MW project cannot be said to be excessive. Reiterating the contention raised on behalf of the State Government, learned counsel submitted that Rule 12A envisages allotment of land in favour of R.R.E.C. and R.S.P.D.C.L. inter alia for development of the solar park but the said provision in no



manner debars the allotment in favour of other private entrepreneurs or the State undertakings. Learned counsel submitted that the project in question is infrastructure project and thus, on account of some procedural irregularities not affecting the legal right or the fundamental right of the appellants herein, cannot vitiate the allotment made. Adopting the arguments advanced on behalf of the State Government in respect of the lands allotted in the revenue villages Nagnechinagar and Ugras, learned counsel submitted that the writ petitioners therein had no right or locus to maintain the writ petitions inasmuch as, they do not have any legitimate claim for allotment of the disputed land and therefore, the same were liable to be dismissed on this count alone.

24. Replying the arguments advanced by the learned AAG and the counsel for the respondent companies, Mr. Moti Singh submitted that the foundation of facts in respect of the contentions raised are specifically set out in the writ petitions. Learned counsel submitted that the writ petition filed by the petitioners have made prayer for cancellation of the allotment and therefore, other reliefs are consequential and therefore, nothing turns on the question that no specific prayer has been made for quashing the orders issued by the State authorities rejecting the applications of the petitioners for allotment of the agriculture land. Learned counsel submitted that village Nedan is not part of the colony area and therefore, the decision of the Cabinet does not cover the lands proposed to be allotted for agriculture purpose.

25. We have considered the rival submissions and perused the material on record.



26. It is well settled that the pleadings are foundation of the litigation. All necessary and material facts should be pleaded by the party to the proceedings in support of the case set up by it. The object and purpose of the pleadings is to enable the adversary party to know the case it has to meet. No party can be permitted to travel beyond its pleadings.

27. In *Bharat Singh Vs. State of Haryana* : AIR 1988 SC 2181, while considering the issue with regard to an abstract point of law raised before the High Court without reference to any material in support thereof, the Hon'ble Supreme Court held:

"In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter, affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

28. Relying upon the decision in *Bharat Singh's case* (supra) in *Rajasthan Pradesh V.S. Sardarsahar & Anr. Vs. Union of India & Ors.* : AIR 2010 SC 2221, the Hon'ble Supreme Court observed that it is settled position of law that the party has to plead the



case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas.

29. Thus, there cannot be any quarrel with the preposition advanced by the learned Additional Advocate General and the counsel appearing for the respondent No.6 that this Court is under no obligation to entertain the contentions raised on behalf of the appellants without foundation of the facts in the writ petition/additional affidavits.

30. There is yet another objection raised on behalf of the respondents that the writ petition was filed by the appellants herein claiming right to regularisation of their possession over the disputed land, which is a personal right, and thus, the present intra court appeals arising out of the orders impugned passed by the learned Single Judge adjudicating the personal rights of the appellants cannot be converted into a public interest litigation. It is true that the a writ petition preferred for enforcing the personal rights cannot be ordinarily converted into PIL. But, it is also equally well settled that in appropriate case even where the petitioner might have moved a Court in private interest, if such litigation assumes the character of the Public Interest Litigation, the inquiry into the state of affairs of the subject of litigation by the Court, necessary and essential for the administration of justice, cannot be avoided. [Vide **Shivajirao Nilangekar Patil**

vs. Dr. Mahesh Madhav Gosavi & Ors.: (1987) 1 SCC 227].

Wherever injustice is meted out to a large number of people, the Court cannot hesitate in stepping in. When the Court is prima facie satisfied about the violation of any constitutional right of a disadvantaged group of the people, it may not allow the



respondents from raising the question as to maintainability of the petition [Vide ***Guruvayoor Devaswom Managing Committee & Anr. vs. C.K.Rajan & Ors.*: (2003) 7 SCC 546 and *Bandhua Mukti Morcha v. Union of India*: (1984) 3 SCC 161**].

31. In the backdrop of the settled position of law as aforesaid, advertent to the facts of the present cases it is noticed that in the writ petitions filed by Kalyan Singh & Ors. and Shankra Ram & Ors., the challenge was to the allotment made in favour of the respondent – ESUCRL in the villages Nagnechinagar and Ugras of District Jodhpur. The writ petitioners averred in the petition that they are khatedar tenants of the land and they are cultivating the land for last 40-45 years, which has now been allotted to ESUCRL.

In Kalyan Singh's case the petitioners while claiming themselves to be khatedar tenants of the land placed on record Jamabandi of their land comprising Khasra Nos.429/3, 421, 440, 433, 434, 427, 435 & 437, whereas the land allotted to ESUCRL vide order dated 23.03.2018 impugned in the writ petition, bears Khasra Nos.416, 439 and 441. Similarly, the writ petitioners in Shankra Ram's case placed on record the photostat copies of the Jamabandi of their land comprising Khasra Nos.360/11, 359/8, 359/14, 359/6, 359/12, 359/13, 360/5, 359/4, 359/1, 359/3 & 360/3 of village Ugras, whereas the land allotted to ESUCRL vide allotment order dated 23.03.2018 impugned in the writ petition bears the Khasra Nos.359, 360/20 and 361 of village Ugras. Thus, there was no document produced on record by the writ petitioners to substantiate their claim that the lands in their possession, as khatedar tenants have been allotted in favour of ESUCRL. As a matter of fact, the claim of the writ petitioners in the writ petition filed was apparently contradictory, inasmuch as on the one hand



the petitioners claimed themselves to be khatedar tenants of the land and on the other hand they asserted that their possession over the land has not been regularised by the revenue authorities despite request being made on their behalf several times. Obviously, if the petitioners were khatedar tenants of the disputed land then there was no occasion for them to claim regularisation of their possession. Be that as it may, there was no material placed on record on behalf of the writ petitioners substantiating the assertion made that they are in cultivatory possession of the disputed land for last 40 – 45 years either. On the other hand, the State in its return filed had taken a categorical stand that the land in question allotted is a government '*sivay chak*' land and not the khatedari land of the petitioners, the possession whereof has already been handed over to the respondent company. The categorical stand of the State was not controverted by the writ petitioners by filing a counter thereto. On the facts and the material placed on record, the learned Additional Advocate General was also justified in contending that the writ petitioners who are falling in the age group/bracket of 20-30 years cannot be said to be in cultivatory possession of the land for the period 40-45 years, which also indicates towards the falsity of their claim. A fortiori, in the writ petitions filed, there is no prayer made seeking directions to the respondents to regularise the possession of the writ petitioners over the land, rather while questioning the allotment made in favour of ESUCRL the writ petitioners had sought direction that they may not be dispossessed from the land, alleged to be in their cultivatory possession. In this view of the matter, in absence of proper pleadings and the evidence substantiating the claim of the appellants of being khatedar



tenants of the land or their right to regularisation on the basis of old cultivatory possession, the challenge laid to the allotment made in favour of respondent ESUCRL, has rightly been negated by the learned Single Judge.

32. Coming to Barkat Khan's case, the writ petitioners therein laid challenge to the order allotting the land to respondent AREPRL in village Nedan, Tehsil Pokaran, District Jaisalmer, inter alia on the ground that their applications seeking allotment of the land for agricultural purposes under the Rules of 1970, pursuant to the proclamation dated 08.03.2006 (Annex.1) issued by the State Government, were pending consideration and thus, the land in question was not available for allotment in favour of AREPRL for establishing a Solar Park.

33. It is noticed that a joint writ petition claiming the relief as aforesaid, is filed on behalf of 24 writ petitioners. To substantiate the claim the photostat copies of the applications seeking allotment made on behalf of the applicants, Barkat Khan, Div Singh, Gemar Singh and Manohar Singh were annexed with writ petition, whereas Arjun Singh and Manohar Singh were not the petitioners before this Court. Thus, out of 24 writ petitioners, the copies of the applications alleged to have been filed only on behalf of three writ petitioners were placed on record.

34. As noticed herein above, no reply to the writ petition was filed on behalf of any of the respondents before the learned Single Judge. The writ petition preferred by the writ petitioners has been dismissed by the learned Single Judge in the light of decision in Chanesar Khan's case (supra). The file of the Chanesar Khan's case was requisitioned by this Court from the Registry. A perusal of the writ petition filed by Chanesar Khan and others, reveals that



the writ petitioners therein had challenged the allotment of the land made in favour of AREPRL in village Nedan on identical facts and grounds. A reply to the writ petition was filed on behalf of the State therein taking a stand that the advertisement dated 08.03.2006 issued by the State Government was cancelled by the Government of Rajasthan. Later, by way of an additional affidavit, the State had taken a categorical stand that the applications stated to have been filed by the writ petitioners in the year 2006 stood rejected way back in the year 2010. It was averred that the pending applications for allotment of the land were rejected on account of a policy decision taken by the State Government vide Cabinet Decision No.65/2009 dated 25.08.2009. In this regard, a copy of the letter dated 11.03.2010 sent by the District Collector directing the Sub Divisional Officer, Jaisalmer, Pokran and Fatehgarh to reject the pending applications pursuant to the cabinet decision and accordingly, vide order dated 02.11.2010 issued by the Additional Collector, Jaisalmer, all the pending applications 26335 in number, for allotment of *barani* land, were rejected. A copy of the order dated 2.11.10 was also placed on record. Neither the factual position brought on record as aforesaid, was controverted by the writ petitioners therein by filing any counter thereto nor any challenge was laid to the order rejecting applications by way of amendment of the writ petition or filing the fresh petition.

35. It is not the case of the State that the orders rejecting the applications were communicated by the authority concerned to the individual applicant and thus, the stand sought to be taken by the writ petitioners that they were not aware about the rejection of the applications at the time of filing of the writ petition, may be



correct. But, indisputably the factum of rejection of the applications was brought on record by the respondents and thus, apparently, this fact had come to the notice of the writ petitioners prior to the disposal of their writ petition by the learned Single Judge. It is not out of the place to mention here that the writ petitioners in Chanesar Khan's case as also in the Barkat Khan's case were represented before the learned Single Judge by the same learned counsel and the petitions were heard and disposed of on the same day.

36. Though the reply to the writ petition was not filed on behalf of any of the respondents before the learned Single Judge in Barkat Khan's case but a reply to the writ petition has been filed in the present special appeal before this Court on behalf of the State taking a categorical stand regarding the rejection of the applications, in the same terms as in the case of Chanesar Khan. But, the appellants herein instead of questioning the legality of the order rejecting their applications on available grounds by way of amendment of writ petition or by filing the fresh petition, have contended before us that since by way of writ petition the appellants had challenged the allotment made in favour of respondent Company and sought directions for regularisation of their old possession over the land in question by deciding their applications, other reliefs are consequential and therefore, they are not required to challenge the order rejecting their applications. In the considered opinion of this Court the proclamation issued by the State Government inviting application for allotment was an independent process initiated by the State Government for allotment of the land for agricultural purposes under the Rules of 1970 to the landless persons, which has nothing to do with the



alleged right of regularisation of the writ petitioners on the basis of old cultivatory possession. In any case once it has come on record that the applications preferred by the writ petitioners were rejected pursuant to the cabinet decision in dropping the process initiated for allotment of the land vide proclamation dated 08.03.2006, if aggrieved thereby, the writ petitioners were required to challenge the decision by availing appropriate remedy available under the law and thus, in absence of challenge to the said decision on the available grounds, the challenge of the writ petitioners to the allotment made in favour of the respondent Company on the ground that their applications seeking allotment of the lands in question were pending consideration at the time of allotment of the land, cannot be entertained by this Court.

37. There is yet another aspect of the matter, as in the case of Shankra Ram and others and Kalyan Singh and others, in Barkat Khan's case as well, there is nothing on record suggesting that the writ petitioners therein are in cultivatory possession of the land for last 40-45 years. To the contrary, the State while denying the alleged cultivatory possession of the writ petitioners over the land in question, has taken the stand that the writ petitioner Nos.1, 5, 8, 9, 10, 15, 16, 17, 18, 20, 22, 23 and 24 are below the age of 40 years, and thus cannot be said to be cultivatory possession of the land for more than 40-45 years. The assertions made by the State as aforesaid, have not been controverted by the appellants by filing a counter affidavit. Suffice it to say that the case set out by the writ petitioners-Barkat Khan and others regarding their right to regularisation of possession over the disputed land is not different than the case set out by the writ petitioners-Kalyan Singh and others & Shankra Ram and others and thus, for the parity of



the reasons assigned herein above, the order passed by the learned Single Judge, not entertaining the claim of the writ petitioners-Barkat Khan and others for regularisation on the basis of alleged old cultivatory possession over the disputed land relying upon decision in Chanser Khan's case (supra), cannot be faulted with and does not warrant any interference by us in exercise of intra Court appeal jurisdiction.

38. The contention raised on behalf of the appellants that notwithstanding the rejection of their applications for allotment of the land, the proclamation issued by the State Government identifying the land as 'Unoccupied Government Land' available for allotment survives, is also devoid of any merit. The Cabinet Memorandum dated 3.8.09 produced by the learned AAG for perusal of this Court reveal that the application submitted for allotment of the land inter alia in Jaisalmer District pursuant to the proclamation issued were proposed to be rejected observing that the average rain fall in the area is very less and thus, there is possibility of agriculture production in *barani* land being negligible. That apart, it was specifically observed that there exists possibility of abundant production of oil, natural gas, solar energy, wind energy etc. in the area in question and therefore, it would be appropriate to reserve the land for the said purposes. In considered opinion of this Court, in view of conscious decision taken by the State Government not to allot the land in question for agricultural purposes and reserve the same for the purposes specified, nothing turns on the question that a formal order withdrawing the proclamation has not been issued.

39. Indubitably, besides raising the claim for regularisation of their cultivatory possession/allotment of the land pursuant to the



proclamation issued, the writ petitioners in all the three writ petitions had challenged the allotment made in favour of the respondent companies also on the ground that the lands allotted to the respondents-ESUCRL/AREPRL include the lands covered by the writ petitioners' *dhani*, *talab*, *oran*, school, temple, hospital and the land falling within the flow of river, which fall within prohibited categories.

40. In the reply to the writ petition filed on behalf of the State in Kalyan Singh's case before the learned Single Judge, a specific stand was taken that upon the land in question there are no *dhani*, *tanka*, *talab*, hills etc. and the land in question is rocky and not cultivable. The respondent no.6 in a counter affidavit filed, in the special appeal has taken the stand that the respondent Company is not making any claim on any land where any school, temple or any other construction of public utility is existing. It is submitted that by setting up of solar park, no public utility/facility will be adversely affected.

41. A perusal of the map of Village Nagnechi Nagar placed on record wherein the land allotted in favour of the ESUCRL, the khatedari land of khatedar tenants, their *dhani* and the lands of public utilities have been specifically marked reveal that the land surrounding *dhani* of one Shri Prema Ram son of Joga Ram Mali has been allotted to the respondent Company. Besides, the land surrounding the temple and cremation ground has also been allotted to the Company. In the map produced, it is indicated that a road connecting the said land of public utilities has already been proposed. As per the map produced, except the *dhani* of Prema Ram son of Joga Ram, who is not the writ petitioner before this



Court, rest of the *dhani*/agriculture lands are outside the area of the land allotted to the respondent Company.

42. In Shankra Ram's case, while taking similar stand regarding non-existence of *dhani*, *tanka*, residential construction, *talab*, hills upon the land in question, it is averred on behalf of the State that the land is classified as '*barani charam*' and out of the disputed khasras, the land measuring 5 bigha comprising Khasra No.359/15 is allotted to the Government school, which is not allotted to the Company. The respondent ESUCRL has filed a counter in the special appeal wherein it is denied that land allotted and given possession of to the Company, any *dhani*, school, temple or water body exists. It is the specific stand of the company that land belonging to none of the khatedar tenants has been allotted to it. A perusal of the map of Village-Ugras placed on record by the State reveals that only the land comprising Khasra No.360/11 and Khasra No.360/05 belonging to petitioner no.1-Shankra Ram s/o Bhikha Ram and petitioner no.20 Bhanwaru Ram S/o Joga Ram respectively, are surrounded by the land allotted to the respondent Company. That apart, the land comprising Khasra No.359/11 *gair mumkin shamshan* and land comprising Khasra Nos.360/16 & 360/26 categorized as *gair mumkin oran* i.e. the public utility lands are also surrounded by the land allotted to the respondent Company. The khatedari lands of the rest of the writ petitioners, the documents relating to which are placed on record fall outside the area of the land allotted to the respondent Company. But apparently the lands of number of khatedars though not allotted to the Company ESUCRL stand surrounded by the land allotted to the Company.



43. Coming to the case of Barkat Khan, which relates to the land allotted in favour of respondent AREPRL in Village Nedan, Tehsil Pokran District Jaisalmer, as noticed above no reply to the writ petition was filed on behalf of the respondents before the learned Single Judge, however, in the reply filed on behalf of the State in the special appeal, the State has taken the stand that out of 6115-06 bigha of land the possession of only 4662-13 bigha of land has been handed over and the possession of the land forming part of public utility land or land falling under restricted category has not been handed over to the respondent- AREPRL. The possession handing over report is placed on record as Annexure-R/4 alongwith the reply to the petition, wherein also it is clarified that out of 6115-06 bigha land allotted in favour of the respondent Company, the possession of only 4662-13 bigha land was handed over. It is specifically mentioned therein that the lands covered by old *dhani*, GLR, schools, mosque, *nadi*, *talab*, tubewell, *kabristan*, public tank, Sabha Bhawan, NAREGA roads, the land covered by plantation of Forest Department etc., the land required for approach roads to the land possessed by khatedar tenants and the land of public utilities has not been handed over to the respondent company. Before the learned Single Judge in Chanesar Khan's case (*supra*), the specific stand was taken that the land, the possession whereof has not been given, will be left to be used for the purpose it was meant. It has also been brought on record on behalf of the State that the lease deed for only 4662-13 bigha land was executed between the respondent Company and the State Government through the District Collector and only the land covered by lease deed, has been entered in the revenue records in the name of the respondent company. But, the fact remains that



the allotment of the land made in favour of respondent- AREPRL, the possession whereof was not handed over for the reasons referred supra, has not been cancelled.

44. A perusal of the original record relating to allotment of the land to AREPRL in villages Dawara and Rasla of Tehsil Fatehgarh and village Nedan, Tehsil Pokran of Jaisalmer district produced by the learned AAG reveals that in the first instance the Company submitted the proposal for allotment of 4041 hectares of land at the said villages for development of 1500 MW capacity Solar Park. In village Dawara, out of 14,319-16 bigha land applied for 6236-11 bigha land was proposed to be excluded from allotment inter alia for the reason that the said land was situated near *abadi*. In village Rasla, taking into consideration the objections of Desert National Park, the land near to GIB closure was proposed to be excluded. In village Nedan, the land falling within the flow of river was proposed to be excluded. That apart, the existence of the lands of the khatedar tenants, their *dhani* and absence of the approach road was also taken note of and accordingly, after due consideration of the objections and recommendations made, in village Rasla against 9303 bigha of land applied for land measuring 4425 bigha, in village Dawara against 14325-17 bigha applied for, land measuring 9113-12 bigha and in village Nedan as against 1364-15 bigha of land applied for, land measuring 1249-07 bigha, total, as against 24993-12 bigha of land applied for, 15587.95 bigha of land was proposed to be allotted to the Company. Precisely, taking into consideration the objections raised by the Assistant Engineer, Water Resources, Deputy Conservator of Forest and the inhabitants of the villages etc. as against 4041-73 hectares land applied for 2500 hectares land was proposed to



be allotted. Accordingly, the cost of the land was determined and the demand notice dated 08.12.2016 was issued.

45. Thereafter, the proposal of the company for allotment of the deficit 1573 hectares land was taken up. The company submitted the proposal for allotment of 7482 bigha land in village Nedan, out of which while excluding the land covered by the plantation of Forest Department, 32-35 *dhani*, the land already allotted to RIICO, the land covered by GLR, 6115 bigha of land was proposed to be allotted to the Company, and accordingly, after due approval the land was allotted vide allotment order dated 11.01.2018.

Admittedly, after allotment of the land as aforesaid, at the time of handing over of the possession, out of land measuring 6115-06 bigha, the possession of the land measuring 1452-13 bigha was not handed over to the respondent Company for the various reasons, specified in the possession handing over report noticed above. This fact by itself indicates that before allotting the land no proper survey was conducted and even the entries in the revenue record were not appropriately considered so as to ascertain as to whether the land sought to be allotted, is actually available for allotment or not. As noticed above, while allotting the land in village Dawara, the lands nearby the land of the khatedar tenants and their *dhani* were excluded from allotment, then there was no reason as to why the same yardstick was not adopted while allotting the land in favour of respondent Company AREPRL at the time of second allotment i.e. allotment of 6115-06 bigha of land in village Nedan. Strangely enough, while allotting the land as aforesaid, the State Authorities even did not ensure the exclusion of the lands of public utilities, the approach road, the land falling within the flow of the river and the land required to be left open so



as to protect the rights of the inhabitants and the khatedar tenants to beneficial use of their own land as also the public utilities. Though it is brought on record that the possession of the land falling in the aforesaid categories has not been handed over to the respondent AREPRL but the fact remains that the allotment made has not been cancelled.

46. The tenancies of agricultural lands in the State of Rajasthan are governed by the provisions of the Rajasthan Tenancy Act, 1955 and the Rules made there under. Section 16 of the Rajasthan Tenancy Act, 1955 ('Act of 1955') specifies the lands in respect whereof no khatedari rights shall accrue, which inter alia include the land used for casual and occasional cultivation in the bed of a river or tank, land covered by water and used for the purpose of growing *Singhara* or other like product, land acquired or held for a public purpose or a work of public utility and land which has been set apart or is, in the opinion of the Collector necessary for the flow of water therein into any reservoir or tank of drinking water for a village or for the surrounding villages. Thus, the land falling in prohibited categories were not available for allotment to the respondent AREPRL.

47. In *Hinch Lal Tiwari vs. Kamla Devi & Ors.* : (2001) 6 SCC 496, the Hon'ble Supreme Court while dealing with the issue relating to the allotment of land forming part of the pond observed:

"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue



Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.” (emphasis added)

48. In *Jagpal Singh & Ors. vs. State of Punjab & Ors.* : 2011 ACR

SCW 990, while declining to interfere with the order of the High

Court, dismissing the writ petition preferred against the order of the Commissioner, setting aside the order of the Collector,

whereby the directions were issued to the Gram Panchayat to transfer the land forming part of the pond to the occupants

thereof, the Hon’ble Supreme Court issued directions to all the

State Governments in the country in the following terms :

“22. 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/unauthoized occupants of Gram Sabha /Gram Panchayat/ Poramboke/ Shmlat 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 act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.” (emphasis added)

49. In *Jitendra Singh vs. Ministry of Environment & Ors.* : 2019

SCC OnLine SC 1510, the Hon’ble Supreme Court while dealing

with the issue regarding the common lands vested in the village communities observed:

“20. Protection of such village-commons is essential to safeguard the fundamental right guaranteed



by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.” (emphasis added)

50. In *Abdul Rahman vs. State of Rajasthan* : (2004) 4 WLC (Raj.) 435, a Bench of this Court has already issued directions to the State Government to remove encroachment in the catchment area of the water bodies and in '*Suo Moto Vs. State of Rajasthan*' (S.B.C Writ Petition No.11153/2011) decided by Jaipur Bench of this Court vide order dated 29.5.12, specific directions have been issued restraining the allotment of the land falling in catchment areas of water bodies like *Johar, Nala*, Tank, River, Pond etc. and it is further directed that the appropriate action shall be taken for cancellation of the allotment made in defiance of Section 16 of the Act of 1955.

51. In *Gulab Kothari vs State of Rajasthan & Ors.* : 2017 (2) RLW 1178 (Raj.), a Bench of this Court has issued directions to the State authorities to take effective steps for conservation and preservation of natural resources i.e. hills, forests, rivers, other water bodies and catchment area. Further, the State Authorities have been directed to undertake a drive to remove all encroachments made over the natural resources and unauthorised activities operating thereon and restore such natural resources by taking appropriate action including the cancellation of allotment made in defiance of provisions of Section 16 of the Act of 1955.



52. As noticed above, besides the allotment of the land forming part of the public utilities in favour of the respondents-AREPRL in all the three cases, the land surrounding the lands of the petitioners, other khatedar tenants and the public utilities have been allotted to the respondent companies without ensuring the protection of the rights of khatedar tenants and inhabitants of the village to beneficial use and enjoyment of their own properties and the public utilities. As a matter of fact, a perusal of the map of the different villages apparently shows that the land of the khatedar tenants and the public utilities stand locked on account of the entire surrounding land being allotted in favour of the respondent companies. The State even did not take care to set apart the land for approach road to the lands of the petitioners and other khatedar tenants. As per the mandate of the provisions of the Act of 1955, the State Government was under an obligation to open the new way where there exists no way for access to holding of the khatedar tenant but in the instant case, the access of the khatedar tenant to their land was taken away without making provision for the way to their lands, before making the allotment. As a matter of fact, before making the allotment the State Authorities were required to set apart the land for access to the lands of the khatedar tenants, their *dhani* and the public utilities and the entries thereof were required to be made in the revenue record accordingly.

53. The contention of the learned counsel for the appellants-Barkat Khan and others that the land has been allotted in favour of the respondent companies straightaway by the District Collector



on the recommendations of R.R.E.C. and thus, the allotment made is without jurisdiction, is absolutely devoid of any merit. A perusal of the record reveals that on the recommendations of R.R.E.C., the proposals for allotment of land were submitted by the Revenue Authorities and after due deliberation the decision to allot the land was taken by the State Government. Apparently, the allotment order has been issued by the District Collector on behalf of the State Government and accordingly, the lease deed was executed wherein the District Collector, is signatory on behalf of the State Government.

54. Coming to the contention of the learned counsel for the appellants regarding the allotment of the land made being violative of Rule 12A of the Rules of 2007, undoubtedly, the said Rules makes the provision for allotment of the land in favour of R.R.E.C. or R.S.P.D.C.L. for setting up and developing solar park on the terms and conditions specified, under which the R.R.E.C. or R.S.P.D.C.L. are empowered to sub lease the land leased out but then, said provision in no manner creates exclusive right in favour of R.R.E.C. or R.S.P.D.C.L. for allotment of land for developing solar park. To put in other words, Rule 12A does not debar the State Government from allotting the land in favour of any other entrepreneur for developing the solar park, if is otherwise permissible in terms of the Rules of 2007. As defined under Rule 2(jjj) "Solar park" is a group of solar plants/solar power plants/solar PV power plants/solar thermal power plants/solar farms in the same location used for production of electric power. Rule 2A of the Rules of 2007, specifies the maximum area to be



allotted for setting up of renewable energy power plant. For Solar Photo Voltaic (SPV) or Crystalline Technology, the area specified is 3.5 Hectare per MW, whereas for Solar Photo Voltaic (SPV) on thin film/Amorphous Technology, the area specified is 2.5 Hectare per MW. It is not even the case of the appellants before this Court that the land has been allotted in the favour of the respondent companies for developing the Solar Park of projected capacity, ignoring the yardstick of maximum area specified under Rule 2A of the Rules of 2007 and thus, the contention sought to be raised on behalf of the appellants regarding alleged violation of the provisions of the Rules of 2007, is also untenable.

55. Indisputably, the land allotted to the respondent AREPRL nearby GIB Arc area relates to the allotment of the land in the Village-Rasla, which is not subject matter of the present special appeals and therefore, we leave the question regarding legality of the said allotment to be dealt with in suo moto PIL (D.B.C.Writ Petition No.825/19) pending consideration before this Court.

56. In view of the discussion above, the special appeals and consequently, the writ petitions are partly allowed. The allotment of the land of public utilities etc. made in favour of the respondent-AREPRL in Village-Nedan measuring 1452.13 bigha, the possession whereof has not been handed over to AREPRL for the reasons specified shall be cancelled forthwith. The State Government shall conduct survey of the lands allotted to the respondent companies in all the three villages and if any part of the land allotted is found covered by public utilities, the allotment of the land to that extent shall also be cancelled. Further, the



allotment of the land surrounding the lands of the petitioners, other khatedar tenants and the land of public utilities made in favour of the respondent-ESUCRL in Village-Nagnechinagar and Ugras and in favour of the respondent-AREPRL in Village-Nedan shall also be reviewed by the State Government so as to ensure that on account of allotment made in favour of the respondent companies, ESUCRL and AREPRL the rights of the khatedar tenants and the inhabitants of the aforesaid villages to beneficial use and enjoyment of their properties and public utilities are not infringed or adversely affected. The lands required to be excluded from the lands already allotted so as to ensure the beneficial use of the lands of the khatedar tenants and the inhabitants of the village and the public utilities land shall be set apart and the allotment thereof made in favour of the respondent companies to that extent shall be cancelled. The land for approach road to the lands of khatedar tenants and the *dhani* of the inhabitants of the village shall be specifically set apart and entered in the revenue record for the said purpose. The entire exercise pursuant to this order shall be completed by the State Government within a period of six weeks from the date of receipt of certified copy of this order. The order passed by the learned Single Judge shall stand modified to the extent indicated above. No order as to costs.

57. As observed herein above, the matter with regard to legality of the allotment of the land made in favour of the respondent AREPRL near the GIB Arc in village Rasla shall be considered in the pending suo moto PIL being D.B.C.Writ Petition No.825/19



pending consideration before this Court. Let the copy of this order be placed on the files of said writ petition.

(RAMESHWAR VYAS),J

(SANGEET LODHA),J

Aditya/-



सत्यमेव जयते