BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 892 of 2022

IN THE MATTER OF:
PREM MOHAN GAUR ...APPLICANT

VERSUS

NATIONAL HIGHWAY AUTHORITY OF INDIA & ORS
... RESPONDENTS

NDOH:11.01.2023

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APPLICANT

THROUGH

ABHISHEK GAUTAM & SURUCHI MITTAL
ADVOCATES
ICONIC LAW OFFICES
I-1728, LGF, CR PARK,
NEW DELHI-110019
D/1555/07, D/2281/2012
PH: 9811000519,9711357001

Dated:09.01.2023
New Delhi

BEFORE THE NATIONAL GREEN TRIBUNAL,
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AFFIDAVIT IN COMPLIANCE OF ORDER DATED 14.12.2022

I, Prem Mohan Gaur, S/o Sh. Om Prakash Gaur, aged about 30 years, R/o Village Post Office, Hajipur, Tehsil Sohna, Gurugram, do hereby solemnly affirm and state as under:-

1. That I am the Applicant in the above mentioned original application and as such am conversant with the facts of the case and am competent to swear this affidavit.

2. I say that the accompanying Original Application has been filed for restitution of Kiranj pond, hajipur woodlot or charagah land, compensation for illegally cutting trees from woodlot forest, banks of nallah and pond as per the judgement of Hon'ble Supreme Court in SLP(c) no. 25047/2018 titled as Association For Protection of Democratic Rights & Anr Vs The State of West Bengal & Anr, restitution of culvert, water-logged panchayat rastas as well as water courses blocked in khasra no.91 & 92 in

NOTARY ★ GOVT. OF INDIA ★
Baljeet Singh Sangwan
Advocate, Gurugram
Regd No.: 5637
Exp Date: 27.03.23

kiranj and compensation to farmers whose fields abutted the water courses and other reliefs of nature specified in Section 15 of National Green Tribunal Act, 2010 and as such the application can be filed within 5 years of the date of cause of action first arose. The trees were illegally started to be cut first time in November, 2021 when Applicant even sent email dated 11.11.2021 for illegally cutting trees, encroaching upon pond and water channels etc. which is annexed as Annexure-A6 to the application. The work of construction on pond and road construction is ongoing till date and most recent photographs in November, 2022 taken by Applicant of construction of road on pond and email dated 28.11.2022 sent is annexed as **Annexure-A48(colly).**

3. That the Hon'ble Supreme Court in CA no.436 of 2011 titled as "State of Jharkhand & Ors Vs Pakur Jagran Manch & Ors" has duly specified about need for consent of village headman when gochar land or charagah land forms part of village common land. The relevant part of the judgment is reproduced below:

"15. *We should however note that such de-reservation of any government land reserved as gochar, should only be in exceptional circumstances and for valid reasons, having regard*

to the importance of gochar in every village. Any attempt by either the villagers or others to encroach upon or illegally convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar. Whenever it becomes inevitable or necessary to de-reserve any gochar for any public purpose (which as stated above should be as a last resort), the following procedure contemplated in Regulations 24 and 25 and section 38(2) should be strictly followed .....When the gochar is not govt land , but is village common land vesting in the villagers and not the government, the consent of the village headman and the jamabandi Raiyats/villagers in whom the land vests shall have to be obtained, before de-reservation and diversion of use of gochar." A copy of the judgment in CA no.436 of 2011 titled as "State of Jharkhand & Ors Vs Pakur Jagran Manch & Ors" passed by Hon'ble Supreme Court of India is annexed herewith as **Annexure-A49.**

4. That after the aforesaid judgement of the Hon'ble Supreme Court has been dealt with by Animal Welfare Bard of India and vide its communication dated 23.02.2021 has sought information on

gochar or grazing land from all states/UT. A copy of letter dated 23.02.2021 of Animal welfare Board of India is annexed as **Annexure-A50.**

5. That in M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. In Friends Colony Development Committee vs. State of Orissa, 2004 (8) SCC 733 Apex Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

6. That theimportance of gochar land was emphasized in Jagpal singh Vs State of Punjab & ors[CA no.1132 of 2011] by the Hon'ble Supreme Court "*13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on*

to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years."

A copy of judgment in "Jagpal singh Vs State of Punjab & ors" [CA no.1132 of 2011] passed by Hon'ble Supreme Court of India is annexed as **Annexure-A51.**

Further, the Hon'ble Supreme Court in CA no.5135 of 2021 titled as "Rameshbhai Virabhai Chaudhari vs State of Gujarat & Ors"

has ordered restoration of grazing or charagah land. The relevant part is reproduced below:

"It is trite to say that gouchar land can be used only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on. Rehabilitation of persons is really not required in the present case as only three persons are entitled to an alternative site as per rules. There is of course some dispute whether the encroachers have made permanent structures or kuchha construction for keeping cattle but be that as it may, the user cannot be contrary to what is being permitted for gouchar land, which is a grazing land.

In view of the aforesaid, a direction is issued to bring the land in conformity with its use by the State Government taking appropriate action within a maximum period of three months from today.

The impugned order is set aside with the direction aforesaid and the appeal is, accordingly, allowed."

A copy of judgment in CA no.5135 of 2021 titled as "Rameshbhai Virabhai Chaudhari vs State of Gujarat & Ors is annexed as **Annexure-A52.**

8. That Respondent no.1 in the present case i.e. NHAI has not even taken necessary permissions for diversion of village woodlot or charagah land in Hajipur and divided in into two halves where by one half cannot be accessed by the other and one side half is not

accessible from any side rendering it futile for the purpose. The said charagah land was the village common land and not govt. land was transferred by the Village panchayat to Forest department under the social forestry scheme. The copy of Village panchayat proceeding book dated 14.09.1983 is already annexed with application with Annexure-A41(colly), permission of village headman/sarpanch was necessary before any such diversion under the judgment of the Hon'ble Supreme Court in State of Jharkhand Vs Pakur Jagran Manch(supra), there is none in the present case. The woodlot is required to be restored to its original form and shape. No permissions were taken for either constructing on Kiranj pond or cutting the trees in the woodlot or encroaching upon water courses in khasra no.91 & 92 in Kiranj.

9. That the present affidavit has been drafted under my instructions and the contents thereof are true and correct to my knowledge and belief, no part of it is false and no material has been concealed there from. The contents of the same have been read over to me in vernacular and I have understood the same.

DEPONENT

VERIFICATION:

Verified at Gurugram on this the 9th day of January, 2023 that the contents of the above affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed therefrom.

NOTARY GOVT. OF INDIA
Baljeet Singh Sangwan
Area : Gurugram
Regd No. : 5637
Exp Date : 27.03.23

ATTESTED
09 JAN 2023
BALJEET SINGH SANGWAN
ADVOCATE & NOTARY
DISTT. COURT GURUGRAM (HARYANA)

DEPONENT

ANNEXURE-A48(COLLY) 8

Gmail

suruchi mittal <suruchi.m14@gmail.com>

Fwd: REQUEST FOR STOPPING OF CONTINUED ILLEGITIMATE WORK OVER PROTECTED POND IN KIRANJ. NUH DESPITE ORDERS OF HPWWMA SECRETARY, BDPO INDRI NOTICE, HON'BLE CM

Prem Mohan Gaur <gpremmohan@gmail.com> Mon, Jan 9, 2023 at 6:27 PM
To: suruchi mittal <suruchi.m14@gmail.com>

---------- Forwarded message ---------
From: **Prem Mohan Gaur** <gpremmohan@gmail.com>
Date: Mon, 28 Nov 2022, 12:28
Subject: REQUEST FOR STOPPING OF CONTINUED ILLEGITIMATE WORK OVER PROTECTED POND IN KIRANJ. NUH DESPITE ORDERS OF HPWWMA SECRETARY, BDPO INDRI NOTICE, HON'BLE CM
To: Haryana Pond Authority <haryanapondauthority@gmail.com>, <ms.haryanapondauthority@gmail.com>, <bdpoindrinuh@gmail.com>, Vineet Narwal XEN MWS Nuh Irrigation <xen-wsnuh.irr@gov.in>, <dcnuh@hry.nic.in>, xenmwsnuh@gmail.com <xenmwsnuh@gmail.com>, <dragiriraj@draipl.com>, <mat@nhai.org>, <cmumathura@gmail.com>, <irrigation@hry.nic.in>, <devendersinghacs@gmail.com>, <eic.irrigation@hry.nic.in>
Cc: <fciwrd@gmail.com>, <registrar-ngt@nic.in>, <secy-moef@nic.in>, <cabinetsy@nic.in>, <cmharyana@nic.in>, <cs@hry.nic.in>, Regional Officer MoEF IRO Chandigarh <ronz.chd-mef@nic.in>, RO Delhi <rodelhi@nhai.org>

To,

The Project Director, CMMU, Mathura at Faridabad,
Deputy Commissioner, Nuh,
District Pond Officer, Nuh (Irrigation Department)
Member Secretary, HPWWMA, Panchkula
Block Development and Panchayat Officer, Indri
Additional Chief Secretary to Government of Haryana, (Irrigation and Water Resources Department)
Dinesh Chandra Giriraj Infra Pvt Limited, D-3, R.D. Apartment Sec - 6, Plot No. 20, Dwarka, New Delhi

Under Intimation To:
Chief Secretary, Haryana
Registrar General, Hon'ble NGT,
Commissioner (Irrigation Department), Haryana,
Secretary, MoEF&CC,
IRO, MoEF&CC, Chandigarh
Hon'ble Cabinet Secretary,
Hon'ble Chief Minister, Haryana

REQUEST FOR STOPPING OF CONTINUED ILLEGITIMATE WORK OVER PROTECTED POND IN KIRANJ DESPITE ORDERS OF HPWWMA SECRETARY, BDPO INDRI NOTICE, HON'BLE CM'S DIRECTION

Dear Sir,

I would like to bring it to your kind attention that work of road construction by illegtimately filling the pond in Kiranj, Nuh, Haryana is continuing. I have attached few pictures (two pictures) taken on 26/11/2022 for your kind perusal.

It is imperative to mention here that a request for redressal of grievance is pending at GRM portal of HPWWMA regarding which a letter was also issued by Hon'ble Member Secretary (copy attached) for expediting the process. Also, an email was forwarding regarding the same by Hon'ble CM Haryana to Chief Secretary Sir but no concrete action has been taken. Also, the Block Development and Panchayat Officer, Indri, Nuh has also issued a notice regarding the same to NHAI (copy attached) but the grievance stands as it is and the work at site is continuing creating an irrreversible situation.

Request you to kindly do the needful.

Thanks & Regards,
Prem Mohan Gaur
M: 7838492947

9

On Mon, Oct 3, 2022 at 4:54 PM Haryana Pond Authority <haryanapondauthority@gmail.com> wrote:

> *Please find attachment(s) on the subject noted above.*
>
> हरियाणा तालाब एवं अपशिष्ट जल प्रबंधन प्राधिकरण, हरियाणा
>
> The Haryana Pond and Waste Water Management Authority, Haryana
>
> Plot No. 9, DHL Square, 3rd Floor, IT Park, Sector-22, Panchkula- 134109
>
> Phone No. 0172-2992847
>
> E-Mail: haryanapondauthority@gmail.com
>
> Website: www.hpwwma.org.in

4 attachments

WhatsApp Image 2022-11-28 at 12.22.59.jpeg
176K

WhatsApp Image 2022-11-28 at 12.23.52.jpeg
161K

52862 (1).pdf
95K

Encroachment of panchayat rasta of kiranj of 3 karam from NH 91 (1).pdf
3141K

ANNEXURE-A49

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 436 OF 2011
[Arising out of SLP [C] No.20203 of 2007]

State of Jharkhand & Ors. … Appellants

Vs.

Pakur Jagran Manch & Ors. … Respondents

WITH

CIVIL APPEAL No. 437 of 2011
[Arising out of SLP [C] No.20636/2007]

Rocky Murmu … Appellant

Vs.

Pakur Jagran Manch … Respondent

J U D G M E N T

R.V.RAVEENDRAN, J.

Leave granted.

2. The Settlement Officer notified and published a record of rights under section 24 of the Santhal Parganas Settlement Regulations, 1872 ('Regulations' for short) under which land measuring 4.40 acres in Thana

No.24, Plot No.1061, Mouza Solagaria, Circle and District Pakur, Jharkhand, was recorded as *gochar* (village grazing land) for the said village Solagaria.

3. In a public interest litigation (W.P. No.5332/2001), the High Court of Jharkhand issued certain directions for effective implementation of national leprosy eradication programme and for improving the standards of health of the tribal residents of the area. In pursuance of it, the Department of Health & Family Welfare, Government of Jharkhand and the Deputy Commissioner, Pakur, on 21.12.2005, authorized the Executive Engineer, Rural Development, Special Division, Pakur, to construct a hospital building. The said *gochar* was identified as being suitable for construction of the Hospital with the consent of village headman and village community (all the Jamabandi Raiyats of the village), vide consent letter dated 10.11.2006.

4. When the construction commenced, the first respondent filed a public interest litigation [W.P. (PIL) No.6779/2006] in the Jharkhand High Court inter alia contending that the grazing land (*gochar*) could not be used for any other purpose and seeking prohibition of construction of a hospital in the said *gochar*.

5. On 31.5.2007, the State government issued a notification denotifying releasing the said 4.44 acres of *gochar* in Plot No.1061 and in its place declaring an extent of 4.44 acres of Gairmajarua (Government) Khas land in Khata No.44, Plot Nos. 62, 199 and 427 as *gochar* under section 38(2) of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 ('Tenancy Act' for short). On the basis of the said notification it was contended by the appellants in the two appeals before the High Court that the land in question had ceased to be *gochar* and therefore, there was no impediment for using the said land for construction of an hospital. The High Court by the impugned order dated 17.8.2007 allowed the said writ petition holding as follows : (i) The State had no authority to construct a hospital in the land earmarked as *gochar* meant for grazing of cattle. (ii) The notification dated 31.5.2007, denotifying and releasing the *gochar* in order to hand over the same to the health department for construction of a hospital, was not valid in law, having regard to the bar contained in section 38(1) read with sections 67 and 69 of the Tenancy Act.

6. The said order of the High Court is challenged by the State of Jharkhand and by the village headman in these two appeals by special leave. The contentions of the appellants, in brief, are as under:

(i) Having regard to section 2(1) read with section 38(2) of the Tenancy Act, the State Government had the authority to denotify/release/withdraw any land from its status as *gochar*, provided other suitable land is set apart as *gochar* to make up 5% of the total area of the village as required under section 38(2) of the Tenancy Act.

(ii) As the State had settled the said land as *gochar* for cattle grazing in the settlement made in 1932, it had the implied authority to denotify/de-reserve the said land from its status as *gochar* having regard to section 24 of the Bihar and Orissa General Clauses Act (for short 'General Clauses Act') subject to compliance with section 38(2) of the Tenancy Act.

(iii) Only the raiyats of the village Solagaria have the right to graze their cattle in the said *gochar*. The village headman and the entire village community (all the Jamabandi raiyats) have given their consent in writing on 10.11.2006 for the land in question being used for construction of a hospital. None else had any right to use the said land and therefore, the first respondent (writ petitioner) was not a person aggrieved.

(iv) Large amounts had already been invested for construction of a huge hospital building. If at this stage the said land is to be declared or confirmed or restored as *gochar*, it would result in irreparable financial loss to the Government as it would involve demolition of the recently constructed huge structure and construction of another building for the hospital at some other place. Such an exercise would also delay in extending health facilities to the residents/ tribals who are in dire need of the same.

(v) Having regard to the declaration of an alternative area of 4.44 acres in the same village as *gochar* under section 38(2) of the Tenancy Act, there was no reduction in the village *gochar* nor violation of the provisions of the Tenancy Act.

(vi) In several other cases, the Jharkhand High Court had accepted and recognized the denotification of the *gochar* to enable the use thereof for other purposes and therefore the Government bonafide proceeded on the basis that such a procedure of denotification was permissible.

7. The first respondent on the other hand, supported the decision of the High Court. It contended that having regard to the bar contained in section 38(1) of the Tenancy Act, the land earmarked and settled as *gochar* could not be used for any other purpose (including the use as a hospital) under any circumstances. They relied upon the following passage from the final Report on "Revision Survey and Settlement Operations in the District of Santhal Parganas" submitted by Mr. J.F. Gantzer in 1935 (vide Para 63) to highlight the object of setting apart some Government land as *gochar* :

> "Gochar and its Object
>
> 63. That there are mainly two objects of *gochar* or grazing land :
>
> (a) It provides rights to Jamabandi Raiyats (Poor Tribal Agriculturist) to graze their cattle free of cost, and without any money. These tribal people are very poor and illiterate, and they cannot afford to purchase expensive feed and fodder for their domestic animals to provide them good health and nutrient foods. Grazing lands provides economic support

> to these indigent people, and it is a very source and means of livelihood for them.
>
> (b) Grazing land is a part of our ecology, and helps a lot in maintaining our ecological balance by providing domestic animals of the tribes, their natural habitation, natural home and natural environmental and natural vegetation, where they eat food (grass), drink water, get pure air, sunlight, rest, move and enjoy freedom, freedom from the shackles of farm-house, freedom from the fetters of rope, and freedom from every iron bar. Their habitats are necessary, and necessary to be preserved, as otherwise it would be a perpetration of cruelty, torture, exploitation and degrading treatment of domestic animals unbalancing our ecological system."

Whether section 2(1) of the Tenancy Act has any bearing ?

8. The appellants relied upon section 2(1) of the Tenancy Act, as the source of power, to support the validity of the notification dated 31.5.2007 and the said section is extracted below :

> "2. **Power to vary local extent of the Act and effect of the withdrawal of the Act from any area**.—(1) The State Government may, by notification withdraw this Act, or any part thereof, from any portion of the Santhal Parganas Division and may likewise extend this Act, or any part thereof to the area from which the same has been so withdrawn."

Sub-section (1) of section 2 of the Tenancy Act enables the state Government to re-organise or delimit any portion of the Santhal Parganas Division for convenient revenue administration. De-reserving certain land which has been recorded as *gochar* in the record-of-rights in pursuance of a settlement under the Settlement Regulations, has nothing to do with withdrawing the applicability of the Tenancy Act or any part thereof from

any portion of Santhal Parganas Division. De-reservation or re-categorisation of a land recorded as *gochar* in the record-of-rights is not within the scope of the Tenancy Act. We are therefore, of the view that section 2(1) of the Tenancy Act has no relevance and cannot be treated as the source of power to issue a notification de-reserving *gochar*.

Whether the Notification dated 31.5.2007 is valid?

9. The core issue is whether section 38(1) of the Tenancy Act was violated by the State Government, in using the *gochar* for constructing a hospital, after de-reserving it from its status as *gochar*. Section 38 of the Tenancy Act reads thus :

> **"38. Grazing land shall not be cultivated**.—(1) No land recorded as village grazing land or gochar shall be settled or brought under cultivation or utilized for any purpose other than grazing by any one.
>
> (2) If the area recorded as grazing land or *gochar* be less than five per centum of the total area of the village, the Deputy Commissioner may, in consultation with the landlord, village headman or mulraiyat, and raiyats, set apart suitable area of village waste land for grazing. Such land when so set apart shall be governed by the provision of sub-section (1)."

Sub-section (1) of section 38 prohibits any land *recorded as village grazing land or gochar* being (i) settled or (ii) brought under cultivation or (iii) utilized for any purpose other than grazing, by anyone.

10. The appellants seek to support the notification dated 31.5.2007 with reference to section 24 of the State General Clauses Act (corresponding to section 21 of the Central Act) which provides that where by any State Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to like sanction and conditions if any, to add to, amend, vary or rescind any notification, orders, rules or bye-laws so issued. The power implied from the said provision of General Clauses Act would be available only to add, amend, vary or rescind a notification issued in exercise of power conferred by a State Act or Regulation (which does not specifically confer the power to add, amend, vary or rescind such notification). It is not the case of the appellants that the lands in question were declared reserved or notified as *gochar* by issue of a notification under any State Act or Regulation. The notification dated 31.5.2007 was not issued to add, amend, vary or rescind any notification issued in exercise of power under a State Act or Regulations. Therefore, the implied power to rescind, vary or amend an existing notification, recognised by section 24 of the State General Clauses Act is of no assistance to support the power to issue a notification de-reserving a land recorded as *gochar*.

11. The High Court has erroneously assumed that as there is no provision in the Tenancy Act for dereserving *gochar* for other uses, the State Government has no power to dereserve any land recorded as *gochar,* under any circumstances and therefore the notification dated 31.5.2007 was invalid. The High Court has also erroneously assumed that once a land is recorded as *gochar,* such land should forever be *gochar*. The prohibition under section 38(1) of the Tenancy Act in regard to settlement, cultivation or utilization for non-grazing purposes *is applicable only to land recorded as village grazing land or gochar*. If the land is not recorded as *gochar* or village grazing land, or if the land ceases to be shown as *gochar* or village grazing land in the Record-of-Rights for valid reasons, then the bar under section 38(1) will not apply. The manner of recording a land as *gochar* (or village grazing land), or the manner of de-reserving any land recorded as *gochar* (or village grazing land) is not governed or regulated by section 38 of the Tenancy Act. If the State Government has the power to dereserve or denotify *gochar* (village grazing land) under any other law, and such power is validly exercised, then the land will cease to be *gochar* and the prohibition under section 38(1) of the Tenancy Act in regard to non-grazing use will not apply.

12. Let us now consider whether the State Government has the power to de-reserve or de-notify *gochar* (village grazing land). We find that appropriate provision therefor is found in the Regulations. The preamble of the Regulations make it clear that it was made for securing the peace and good governance of the territory known as Santhal Parganas (as contrasted from the preamble to the Tenancy Act which shows that the Act was made to amend and supplement certain laws relating to landlords and tenants in Santhal Parganas).

12.1) Regulation 10 empowers the state government to appoint the officers by whom the settlement is to be made and make rules for the procedure of such officers in the investigation into rights in the land and hearing of suits, and generally for the guidance of such officers.

12.2) Regulation 13 provides that the record of rights to be prepared by a settlement officer shall show the nature and incidents of each rights and interest held by each class of occupiers or owners in a village and if need be, of each individual owner, occupier or headman in a village. The second part of Regulation 14 provides that the Settlement Officer shall inquire into, settle and record all rights in, or claims to, the lands of a village of which he

is preparing a record-of-rights, even though such claims or rights may not be urged by the parties interested.

12.3) Regulation 24 relates to publication or record of rights and it is extracted below :

> "Publication or record-of-rights – After the Settlement the Settlement Officer shall have made the record-of-rights for any village, he shall notify and publish the contents of such record to the persons interested by posting it conspicuously in the village and otherwise in such manner as may be convenient.
>
> Objections against such record – Any person interested shall thereupon be allowed to bring forward (in the Settlement Courts) within a period of six months from the date of publication of such record-of-rights, any objection he may desire to make to any part of such record; and the objection so made shall be inquired into and disposed of by a decision in writing under the hand of the officer presiding in the court."

12.4) Regulation 25 provides when and how the record-of-rights of any village becomes final. Sub-sections (1) and (3) thereof which are relevant for our purpose are extracted below :

> "25. Record to be final after six months publication : (1) After a period of six months from the date of the publication of the record-of-rights of any village, such records shall be conclusive proof of the rights and customs therein recorded, other than the rights mentioned in section 25-A, except so far as concerns entries in such record regarding which objections by parties interested may still be pending in the Original or Appellate Courts, or may still be open to appeal.
>
> xxxxxxx
>
> (3) When a record-of-rights has become final, or any objection to any entry in a record-of-rights has been finally disposed of in the Settlement Courts, and when all final decisions and orders, including such as may have been passed on revision as provided in sub-section (2), have been correctly embodied therein, such record shall not, until a fresh settlement

> is made or a new table of rates and rent-rols are prepared, be re-opened without the previous sanction of the State government."

12.5) It is evident from Regulation 25 read with Regulation 24 that though normally once the record of rights has become final, it shall not be re-opened until a fresh settlement is made, the entries in the record of rights can be re-opened and altered *with the previous sanction of the state government.* It is therefore clear that even if a land had been recorded as a *gochar* in the record-of-rights of a village in pursuance of a settlement under the Regulations, it can be re-opened and altered at any time, without waiting for the next settlement, *with the previous sanction of the state government*. Therefore the contention of the first respondent that once a *gochar*, always a *gochar,* and there is no power in any one at any time, to alter its status as *gochar* is without merit. All that the state government did by the notification dated 31.5.2007 was to dereserve *gochar* in pursuance of a proposal/request for sanction by the Deputy Commissioner so that it is no longer recorded as *gochar* (or village grazing land).

13. The Deputy Commissioner is the authority empowered to reopen the record-of-rights for the purpose of dereserving the land recorded as *gochar* by altering its use. He made a proposal seeking the sanction of the state government, for de-reserving the *gochar* in question (4.40 acres in Thane

No.24, Plot No.1061, Solagoria) and the state government by the impugned notification dated 31.5.2007 granted such approval by passing an order of de-reservation. By the very same notification, it ensured that section 38(2) of the Tenancy Act was also fulfilled by earmarking alternative land as *gochar*. The only possible objection that can be raised to the notification dated 31.5.2007 is that having regard to the Regulation 25(3), the state government had to merely sanction the dereservation and could not by itself de-reserve the land. This technical objection has no merit as de-reservation is effected by the Deputy Commissioner in pursuance of the approval granted by the state government, by making appropriate entry in the record-of-rights of the village. Therefore, the notification in question has to be read as an order granting reopening of the final record of rights of the village Solgaria for the purpose of dereserving the *gochar* of 4.40 acres for the purpose of constructing a hospital with the consent of the village headman and Jamabhandi Raiyats and at the same time instructing and directing the Deputy Commissioner to ensure that appropriate suitable land is set aside for grazing so as to make up 5% of the total land of the village as required under section 38(2) of the Act.

14. The notification no doubt does not refer to Regulations 24 and 25(3). But it is now well settled the omission to refer to the provision of law which is the source of power, or the mentioning of a wrong provision, will not by itself render an order of the government invalid or illegal, if the government had the power under an appropriate provision of law -- vide *K.K. Parmar vs. High Court of Gujart* – 2006 (5) SCC 789 and *Kedar Shashikant Deshpande vs. Bhor Municipal Council* (CA Nos.10452-457/2010 dated 10.12.2010).

15. We should however note that such de-reservation of any government land reserved as *gochar*, should only be in exceptional circumstances and for valid reasons, having regard to the importance of *gochar* in every village. Any attempt by either the villagers or others to encroach upon or illegaly convert the *gochar* to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not *gochar*. Whenever it becomes inevitable or necessary to de-reserve any *gochar* for any public purpose (which as stated above should be as a last resort), the following procedure contemplated in Regulations 24 and 25 and section 38(2) should be strictly followed :

(a) The jurisdictional Deputy Commissioner shall prepare a note/report giving the reasons why the *gochar* had been identified for any non-grazing public purpose and record the non-availability of other suitable land for such public purpose. Deputy Commissioner shall send the said proposal for de-reservation to the State government for its previous sanction.

(b) The state government should consider the request for sanction keeping in view the object of *gochar* and the need for maintaining a minimum of five percent of village area as *gochar*, and call for suggestions/objections from the villagers before granting sanction.

(c) If the state Government grants the sanction, the Deputy Commissioner should proceed to make an order de-reserving, the *gochar* by making appropriate entries in the record-of-rights and re-classifying the same for the purpose for which it was de-reserved.

(d) Whenever the *gochar* in a village is de-reserved and diverted to non-grazing use, simultaneously or at least immediately thereafter the State should make available alternative land as *gochar*, in a manner and to an extent that the *gochar* continues to be not less than 5% of the total extent of the village as provided under section 38(2) of the Tenancy Act.

When the *gochar* is not government land, but is *village common land* vesting in the villagers and not the government, the consent of village headman and the Jamabandi Raiyats/villagers in whom the land vests shall have to be obtained, before de-reservation and diversion of use of *gochar*.

16. In this case the urgent need for de-reserving the *gochar* of 4.40 acres and diversion of its use for the public purpose of hospital is not in dispute. The village headman and all the Jamabandi Raiyats have consented to the de-reservation and use of the land in question for hospital. The land in question was found to be most suitable for housing the hospital. Alternative land was immediately notified as *gochar*. The Hospital has already been constructed in the land. Any delay would come in the way of health care of the villagers/tribals. In the circumstances, the notification dated 31.5.2007 of the Government is upheld. It is needless to say that respondents 6 and 9 will carry out necessary amendments in the Record of Rights of the village, showing Plot No.1061 as used non-grazing public purpose and record Plot Nos.62, 199 and 427 as *gochar*.

Other objections of first respondent

17. Learned counsel for the first respondent submitted that the hospital could have as well been put up in Plot Nos.62, 199 and 427 measuring 4.44 acres which has now been declared as alternative *gochar*. The *gochar* measuring 4.40 acres in plot No.1061 was chosen for the hospital having regard to its easy accessibility as it adjoins a main road. Any interior land would be disadvantageous for construction of a hospital but will not be

disadvantageous for being used as a grazing land. Therefore the decision of the authorities to locate the hospital in Plot No.1061 in question cannot be faulted with.

18. The first respondent next submitted that Plot Nos.62, 199 and 427 are rocky land and not suitable for grazing land for being declared/earmarked as *gochar*. But such an objection has not been raised by the village community who are entitled to use the *gochar*. If the alternative lands notified as *gochar* were unsuitable, they would have raised the objection. When the village headman and Raiyats have agreed for the alternative area as *gochar*, such a contention is not available to the first respondent.

19. The first respondent lastly submitted that there were some irregularities and misuse of funds in the construction of the hospital building, during the pendency of the litigation, as it was done without inviting tenders. That is a separate issue. If there is any irregularity in regard to construction, the first respondent may agitate the issue by lodging a complaint with appropriate authorities.

20. We therefore allow these appeals, set aside the impugned order of the High Court and dismiss the public interest litigation (W.P. (PIL)

No. 6779/2006) and permit the hospital to function in ex-*gochar* land namely Plot No.1061, Mohza Solagaria.

……J.
(R V Raveendran)

New Delhi;
January , 2011.

……..J.
(H L Gokhale)

ANNEXURE-A50

ANIMAL WELFARE BOARD OF INDIA
Ministry of Fisheries, Animal Husbandry and Dairying, Govt. of India
(Department of Animal Husbandry and Dairying)
NIAW Campus, 42 Mile Stone, Delhi-Agra Highway
NH-2, Ballabhgarh, Haryana-121004
Email: animalwelfareboard@gmail.com : Website: www.awbi.in

No. 9-1/2017-18/PCA/SAWB

Date: 23.02.2021

To,

1. All the Chief Secretaries of State/UT
2. All the Director, Animal Husbandry Department.
3. All the District Corporation.
4. All the Municipal Corporation.

Sub: Request for disclose the particulars of Gochar/grazing land available in each village and make the same available for gazing of cows in respective States. -reg.

Ref: 1) This office letter no. 9-1/2017-18/PCA/SAWB dated 02.02.2018 addressed to Chief Secretary of all States/UTs (Copy enclosed)

2) This office letter no. 3-1/2017-18/Estt dated 05.03.2018 addressed to Chief Secretary of all States/Uts (Copy enclosed)

Sir,

With reference to the above-captioned subject, it is stated the Board have receives various representations to provide the details to Gochar/grazing land available in each village and make the same available for gazing of cows in the country.

2. It is submitted, that as per the Hon'ble Supreme Court of India judgement dated 12.01.2011 passed in the matter of "State of Jharkhand & Ors. Vs Pakur Jagran Manch & Ors." The Board had sent a letter dated 02.02.2018 & 05.03.2018 to all the Chief Secretaries of the States/UTs and sought information regarding Fochar Land to form the uniform national policy for "Gochar Land". The said Gochar Land was to be made available for gazing of the cows.

3. It is stated that the judgment passed on 28.01.2011 in civil Appeal no. 1132/2011 in the matter "Jagpal Singh & Ors. Vs. State of Punjab & Ors, it was decided that the land for common use of the villagers of the village cannot be allowed to be encroached upon and allotted to anybody and such common use of the village must be restored for the purpose. Also, in Civil Appeal No. 43/2011, any attempt either the village or other to encroach uopon or illegally convert the Gochar for non-gazing use should be resisted and delt with.

4. Therefore, in the view of the above, the AWBI requests you to kindly provide the details of Gochar/grazing land available in each and every village to public and the same may be made readily available for gazing of cows in your respective States.

5. Kindly treat this as most urgent and intimate the Board on the action taken at earliest.

Yours Sincerely,

(Dr. S.K Dutta)
Secretary

Encl : as above

ANIMAL WELFARE BOARD OF INDIA
(Ministry of Environment, Forest & Climate Change, Govt. Of India)
National Institute of Animal Welfare Campus
42 KM Mile Stone, Delhi-Agra Highway
NH-2, Ballabhgarh, Haryana - 121004
E-mail: awbi@md3.vsnl.net.in; animalwelfareboard@gmail.com
Website: www.awbi.org

M. RAVIKUMAR, IFS
Secretary
No.3-1/2017-18/Estt Date : 05.03.2018

To
The Chief Secretary / Additional Chief Secretary (Revenue)
of All States / UTs

Sir,

Sub.: **Information regarding Gochar Land**

With reference to the captioned subject, I am directed to bring it to your kind notice the judgment dated 12th January 2011 of Hon'ble Supreme Court in the matter titled State of Jharkhand & Ors. V. Pakur Jagran Manch & Ors, Civil Appeal No. 436 of 2011 (copy enclosed). In view of this judgment, you are requested to kindly furnish the following information on or before 30th April 2018 for devising Uniform National Policy for Gochar land and further appropriate necessary action:

1. The legal provisions regarding Gochar / Grazing land in your State, if any, please furnish the provision of the relevant Acts / Rules;

2. The extent of Gochar / Grazing land available on or before 26th January 1950 as per revenue records in a village (block wise / tehsil wise / district wise);

3. The area of above Gochar land converted / de-reserved to Panchyat land or house plots or for non-grazing use and the reason thereof;

4. The area of Gochar land which is under encroachment / illegal possession up to 31st December 2017;

5. The area of Gochar land which is on lease, the duration of lease and its purpose;

6. The area of Gochar land available in a village and the present status of the same;

7. The area of total Gochlar land as per the revenue records in a village (block wise / tehsil wise / district wise) up to 31st December 2017;

8. The area of Bunjar / uncultivated land in a village (block wise / tehsil wise / district wise) up to 31st December 2017;

9. Details of the available Gochar/ Grazing land with particulars of actual use by the owners of chattels.

10. Additional remarks and information of importance, if any.

In view of the above judgment and dire need to have the provision for the stray animals and also their welfare as well as control on the accidents and other nuisance, immediate report and action is required from your side and the report and requested details to be submitted before stipulated date as above to avoid any delay in action.

Kindly treat this as most urgent and provide the information by e-mail : animalwelfareboard@gmail.com / awbi@md3.vsnl.net.in or fax no. 044-24571016.

Yours faithfully,

(M. Ravikumar, IFS)
Secretary, AWBI

Copies to;
1. Chairman, AWBI for information.
2. Chairman, Gauseva Aayog of concerned states for information and appropriate action.

"15. We should however note that such de-reservation of any government land reserved as gochar, should only be in exceptional circumstances and for valid reasons, having regard to the importance of gochar in every village. Any attempt by either the villagers or others to encroach upon or illegaly convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar. Whenever it becomes inevitable or necessary to de-reserve any gochar for any public purpose (which as stated above should be as a last resort), the following procedure contemplated in Regulations 24 and 25 and section 38(2) should be strictly followed :

(a) The jurisdictional Deputy Commissioner shall prepare a note/report giving the reasons why the gochar had been identified for any non- grazing public purpose and record the non-availability of other suitable land for such public purpose. Deputy Commissioner shall send the said proposal for de-reservation to the State government for its previous sanction.

(b) The state government should consider the request for sanction keeping in view the object of gochar and the need for maintaining a minimum of five percent of village area as gochar, and call for suggestions/objections from the villagers before granting sanction.

(c) If the state Government grants the sanction, the Deputy Commissioner should proceed to make an order de-reserving, the gochar by making appropriate entries in the record-of-rights and re-classifying the same for the purpose for which it was de-reserved.

(d) Whenever the gochar in a village is de-reserved and diverted to non-grazing use, simultaneously or at least immediately thereafter the State should make available alternative land as gochar, in a manner and to an extent that the gochar continues to be not less than 5% of the total extent of the village as provided under section 38(2) of the Tenancy Act.

When the gochar is not government land, but is village common land vesting in the villagers and not the government, the consent of village headman and the Jamabandi Raiyats/villagers in whom the land vests shall have to be obtained, before de-reservation and diversion of use of gochar."

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/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for 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.

Animal Welfare Board of India

(Ministry of Environment, Forest and Climate Change, Govt. of India)
13/1, Third Seaward Road, Valmiki Nagar, Thiruvanmiyur,
Chennai - 600 041 PostBoxNo.8672 Email: awbi@md3.vsnl.net.in,
animalwelfareboard@gmail.com website:www.awbi.org,
Phone:044-24571025, 24571024, Fax: 044-24571016.

M. RAVIKUMAR, I.F.S
Secretary

No.9-1/2017-18/PCA/SAWB Dt.02.02.2018

The Chief Secretary/Additional
Chief Secretary,
Of all States/UTs

Sir,

Sub: Request to furnish the information regarding Gochar land – Reg.

With reference to the above cited subject, I am directed to bring it to your notice that the Hon'ble Supreme Court of India has directed to implement the order passed in January, 2011 in Civil Appeal No.436 of 20011, State of Jharkhand & Ors Vs Pakur Jagran Manch & Ors and in the case Civil Appeal No.1131 of 2011, Jagpal Singh & Ors Vs State of Punjab & Ors (copy enclosed). In this connection, it is requested to kindly furnish the following information for taking further appropriate action as per the details given below:-

1. Legal provisions regarding Gochar/Grazing land. Give the name and details of relevant Act/Rules.
2. Total Gochar Land as per the revenue records in a village (Block wise/Tehsil wise/ District wise)
3. How much land out of 2 under encroachment / illegal possession
4. How much land on the lease and duration of lease and purpose.
5. How much land available for Gochar in a village and present status of the sme.
6. How much land is Bunjar/uncultivated in a village (block wise/Tehsil wise/District wise)
7. Remarks, if any / additional information of importance, if any.

It is also requested to furnish the above mentioned information at the earliest for taking further appropriate action in the matter.

Kindly treat this as most urgent and provide the information by e-mail: animalwelfareboard@gmail.com /awbi@md3.vsnl.net.in or fax no.044-24571016.

Yours faithfully,

(M. Ravikumar)
Secretary

Copy to: Chairman, AWBI

REPORTABLE

ANNEXURE-A51

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1132 /2011 @ SLP(C) No.3109/2011
(Arising out of Special Leave Petition (Civil) CC No. 19869 of 2010)

Jagpal Singh & Ors. .. **Appellant (s)**

-versus-

State of Punjab & Ors. .. **Respondent (s)**

J U D G M E N T

Markandey Katju, J.

1. Leave granted.

2. Heard learned counsel for the appellants.

3. Since time immemorial there have been common lands inhering in the village communities in India, variously called gram sabha land, gram panchayat land, (in many North Indian States), shamlat deh (in Punjab etc.),

mandaveli and poramboke land (in South India), Kalam, Maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and members of the scheduled castes/tribes, but this was only to be done in exceptional cases.

4. The protection of commons rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of villagers were lost by such vesting. Thus, in **Chigurupati Venkata Subbayya vs.**

Paladuge Anjayya, 1972(1) SCC 521 (529) this Court observed :

> "It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. The rights of the community over the suit lands were not created by the landholder. Hence those rights cannot be said to have been abrogated by Section 3© of the Estates Abolition Act."

5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.

6. This appeal has been filed against the impugned judgment of a Division Bench of the Punjab and Haryana High Court dated 21.5.2010. By that judgment the Division Bench upheld the judgment of the learned Single Judge of the High Court dated 10.2.2010.

7. It is undisputed that the appellants herein are neither the owner nor the tenants of the land in question which is recorded as a pond situated in village Rohar Jagir, Tehsil and District Patiala. They are in fact trespassers and unauthorized occupants of the land relating Khewat Khatuni No. 115/310, Khasra No. 369 (84-4) in the said village. They appear to have filled in the village pond and made constructions thereon.

8. The Gram Panchayat, Rohar Jagir filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 to evict the appellants herein who had unauthorizedly occupied the aforesaid land. In its petition the Gram Panchayat, Rohar Jagir alleged that the land in question belongs to the Gram Panchayat, Rohar as is clear from the revenue records. However, the respondents (appellants herein) forcibly occupied the said land and started making constructions thereon illegally. An application was consequently moved before the Deputy Commissioner informing him about the illegal acts of the respondents (appellants herein) and stating that the

aforesaid land is recorded in the revenue records as Gair Mumkin Toba i.e. a village pond. The villagers have been using the same, since drain water of the village falls into the pond, and it is used by the cattle of the village for drinking and bathing. Since the respondents (appellants herein) illegally occupied the said land an FIR was filed against them but to no avail. It was alleged that the respondents (appellants herein) have illegally raised constructions on the said land, and the lower officials of the department and even the Gram Panchayat colluded with them.

9. Instead of ordering the eviction of these unauthorized occupants, the Collector, Patiala surprisingly held that it would not be in the public interest to dispossess them, and instead directed the Gram Panchayat, Rohar to recover the cost of the land as per the Collector's rates from the respondents (appellants herein). Thus, the Collector colluded in regularizing this illegality on the ground that the respondents (appellants herein) have spent huge money on constructing houses on the said land.

10. Some persons then appealed to the learned Commissioner against the said order of the Collector dated 13.9.2005 and this appeal was allowed on 12.12.2007. The Learned Commissioner held that it was clear that the Gram Panchayat was colluding with these respondents (appellants herein), and it

had not even opposed the order passed by the Collector in which directions were issued to the Gram Panchayat to transfer the property to these persons, nor filed an appeal against the Collector's order.

11. The learned Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be allowed to be encroached upon by any private respondents, whether Jagirdars or anybody else. Photographs submitted before the learned Commissioner showed that recent attempts had been made to encroach into the village pond by filling it up with earth and making new constructions thereon. The matter had gone to the officials for removal of these illegal constructions, but no action was taken for reasons best known to the authorities at that time. The learned Commissioner was of the view that regularizing such kind of illegal encroachment is not in the interest of the Gram Panchayat. The learned Commissioner held that Khasra No. 369 (84-4) is a part of the village pond, and the respondents (appellants herein) illegally constructed their houses at the site without any jurisdiction and without even any resolution of the Gram Panchayat.

12. Against the order of the learned Commissioner a Writ Petition was filed before the learned Single Judge of the High Court which was dismissed

by the judgment dated 10.2.2010, and the judgment of learned Single Judge has been affirmed in appeal by the Division Bench of the High Court. Hence this appeal.

13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

14. In **M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu**, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. In **Friends Colony Development Committee vs. State of Orissa**, 2004 (8) SCC 733 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in **Hinch Lal Tiwari vs. Kamala Devi**, AIR 2001 SC 3215 (followed by the Madras High Court in **L. Krishnan vs. State of Tamil Nadu**, 2005(4)

CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not

used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.

20. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

21. For the reasons given above there is no merit in this appeal and it is dismissed.

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/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For

this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for 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.

23. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time.

24. Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor implementation of our directions herein. List again before us on 3.5.2011 on which date all Chief Secretaries in India will submit their reports.

……..….J.
[Markandey Katju]

……..……J.
[Gyan Sudha Mishra]

New Delhi;
January 28, 2011

ANNEXURE-A52

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5135 OF 2021
(Arising out of SLP(CIVIL) No. 14222/2019)

RAMESHBHAI VIRABHAI CHAUDHARI APPELLANT(s)

VERSUS

THE STATE OF GUJARAT & ORS. RESPONDENT(S)

O R D E R

Leave granted.

The appellant seeks to assail the order dated 12.04.2019 passed by the Division Bench of the Gujarat High Court on a public interest litigation filed under Article 226 of the Constitution of India seeking removal of unauthorized encroachment on the gauchar land of Village Bhandu (Laxmipura),Taluka: Visnagar, District: Mehsana, belonging to Gram panchayat/Government. The petition was dismissed after obtaining affidavit in reply predicated on a reasoning that all the people who are unauthorizedly occupying are from the low income strata of society and are residing there since number of years and thus it would not be appropriate to direct their immediate removal unless alternative accommodation is provided to them by the State and its authorities in accordance with its policy.

On notice being issued, counter affidavit has been filed by respondent No. 6, Sarpanch of the Panchayat. No doubt a preliminary submission has been raised that even the brother of the appellant is one of the persons who has encroached in the gouchar Land but then that only implies that he has to be treated at par with anybody else who may have encroached.

In our view, what is material is that on survey being conducted, 72 persons have been found to have made encroachment in the gouchar land being Survey Nos in question bearing Nos. 1938/1, 198/2 and 1939. Out of these persons, 3 persons are included in scheduled caste category and the 2 persons are Socially Economically Backward Class. The Scheduled caste persons concerned are stated to have already got benefit of another Government Scheme namely, Amedkar Aavas Yojana. The other encroachers are having residential houses at other places along with agricultural lands adjacent thereto and are thus not entitled to get any alternative accommodation. The land in question is being used for making shelters for their cattle and not being used for residential purposes. In fact on 07.08.2019, 29 persons are

stated to have made a statement that they were keeping cattle on the land while other persons did not appear. Thus only three persons are entitled to the alternative accommodation as stated above. Out of these, one person is stated to be doing ritualistic puja called Pujari and other two persons are stated to be under SEBC category and also coming under poverty line.

In respect of user of the gouchar land it is stated that Government is running Anganvadi, school in the said premises. One cooperative society is running dairy and there is one temple of Hanumanji.

It is trite to say that gouchar land can be used only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on. Rehabilitation of persons is really not required in the present case as only three persons are entitled to an alternative site as per rules. There is of course some dispute whether the encroachers have made permanent structures or kuchha construction for keeping cattle but be that as it may, the user cannot be contrary to what is being permitted for gouchar land, which is a grazing land.

In view of the aforesaid, a direction is issued to bring the land in conformity with its use by the State Government taking appropriate action within a maximum period of three months from today.

The impugned order is set aside with the direction aforesaid and the appeal is, accordingly, allowed.

The parties to bear their own costs.

The Compliance report be filed by the State Government within two weeks thereafter, to be verified by the Registrar of this Court.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M.M. SUNDRESH]

NEW DELHI,
SEPTEMBER 06, 2021.

ITEM NO.22 Court 6 (Video Conferencing) SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 14222/2019

(Arising out of impugned final judgment and order dated 12-04-2019 in WPPIL No. 190/2017 passed by the High Court Of Gujarat At Ahmedabad)

RAMESHBHAI VIRABHAI CHAUDHARI Petitioner(s)

VERSUS

THE STATE OF GUJARAT & ORS. Respondent(s)

(FOR ADMISSION and IA No.93099/2019-EXEMPTION FROM FILING O.T.)

Date : 06-09-2021 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

For Petitioner(s) Ms. Minisha Menon, Adv.
Mr. Amarjeet Singh, AOR

For Respondent(s) Mr.Haresh Raichura, AOR
Mr. Sejal Mandavia, Adv.
Mr. Saroj Raichura, Adv.
Mr. Kalp Raichura, Adv.
Mr. Ram Bhadauria, Adv.

Ms. Aastha Mehta, Adv.
Mr. A.P. Mayee, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

The parties to bear their own costs.

Pending application stands disposed of.

[CHARANJEET KAUR] [POONAM VAID]
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)
[Signed order is placed on the file]