

THE STATE OF RAJASTHAN AND ANOTHER

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v.

ULTRATECH CEMENT LTD.

(Civil Appeal No. 5841 of 2022)

AUGUST 26, 2022

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**[N. V. RAMANA, CJI, HIMA KOHLI AND
C. T. RAVIKUMAR, JJ.]**

Allotment of Land – For setting up a cement plant – Respondent-company was asked to produce NOC/orders for allocation of ‘Johad’ land from the High Court – The respondent-company approached the High Court by filing writ petition – Accompanying the said writ petition were several documents pertaining to the spot inspection of the site, the reports of the Tehsildar and the correspondence between the parties to demonstrate that the subject land that had been classified as ‘Johad’, neither fell in the catchment area, nor did water gather there and there did not exist any natural source of water on the subject land and therefore, classification of the subject land could be converted to ‘Siwai Chak’ land – Single Judge of the High Court dismissed the writ petition – Division Bench of the High Court directed the appellant-State Government to consider the respondent’s representations – Appellant-State Government passed an order dated 25.01.2016, holding, inter alia, that the subject land having been recorded in the revenue record as ‘Johad’, no allotment could be made in favour of the respondent-company – Thereafter, the Division Bench proceeded to hear the respondent’s appeal on merits and allowed the same, directed the appellant-State Government to allot the subject land in question to the respondent-company and take consequential steps – Before the Supreme Court, appellant-State by relying on a letter of Tehsildar stated that in some khasra numbers of the said village, there exists a pucca pond which acts as a catchment area of rain water – Held: The aforesaid communication by Tehsildar was not filed by the appellant-State Government before the High Court at the appropriate stage, well before the date of passing of the impugned judgment – Nothing prevented the appellant-State Government from producing the relevant photographs of the purported pucca pond existing at some spots

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- A *within village Baswa – It is not the case of the appellant-State Government that the earlier reports submitted by the Tehsildar after conducting a physical spot inspection were manipulated or prepared in a mala fide manner; nor is there any averment made in the appeal that departmental action was initiated against the then Tehsildar for having prepared incorrect reports of the spot inspection –*
- B *Given the said position, there is no reason to discard the two Inspection reports prepared by the Tehsildar that form a part of the record – Both the said reports have stated in clear terms that there is no natural water body on the subject land and the ‘Gair-Mumkin Johad’ falling under the proposed mining lease area does not fall within*
- C *the water logging area or the catchment area – Therefore, the appellant-State Government directed to take necessary steps to process the allotment of the subject land in favour of the respondent-company.*

Dismissing the appeal, the Court

- D **HELD: 1. It is a matter of record that the appellant–State Government has not questioned the Reports prepared by the Tehsildar, Nawalgarh after making spot inspection on two occasions. The position remains the same even as of now. The first Report was prepared by the Tehsildar on 19th/27th April, 2011 and the second one on 25th November, 2012/05th December,**
- E **2012. Both the Reports were categorical in their findings that there was no natural water body on the subject land classified as a ‘Johad’ and that the subject land neither fell in the catchment area, nor did water ever collect there and there was no natural source of water that existed on the subject land. That being the**
- F **position, we see no reason to permit learned counsel for the appellant–State Government to rely on a communication addressed by the Tehsildar to the District Collector, in respect of a part of the subject land falling in village Baswa to urge that there exists a *pucca* pond at some spots, more so when there is**
- G **no explanation for not filing the documents. The aforesaid communication could have easily been filed by the appellant–State Government before the High Court at the appropriate stage, well before the date of passing of the impugned judgment. Nothing prevented the appellant–State Government from producing the relevant photographs of the purported *pucca* pond existing at**
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some spots within village Baswa. It is not the case of the appellant–State Government that the earlier Reports submitted by the Tehsildar, Nawalgarh after conducting a physical spot inspection had been manipulated or prepared in a *mala fide* manner, nor is there any averment made in the appeal that departmental action was initiated against the then Tehsildar, Nawalgarh for having prepared incorrect Reports of the spot inspection. Given the said position, there is no reason to discard the two Inspection Reports prepared by the Tehsildar, Nawalgarh that form a part of the record. Both the said Reports have stated in clear terms that there is no natural water body on the subject land and the ‘*Gair–Mumkin Johad*’ falling under the proposed mining lease area does not fall within the water logging area or the catchment area. This Court, therefore, decline to give any weightage to the letter dated 07th July, 2014 addressed by the Tehsildar, Nawalgarh to the District Collector, Jhunjhunu. [Para 8][14-A-G]

2. The High Court has also taken note of the Resolution passed by the Gram Panchayat, village Baswa and the certificate issued by the Gram Panchayat which records that no water had ever accumulated on the subject land and the Gram Panchayat did not have any objection to the said land being granted to the respondent–Company for mining lease purpose subject to the condition that it would be receiving an equal measure of developed land in the same village from the respondent–Company in view of the land being consumed for mining lease purpose. The respondent–Company has also given undertakings to the High Court that the environment of the village will not be adversely impacted and the ecological balance shall be maintained. One of the undertakings given by the respondent–Company is that the site identified for development of an alternate ‘*Johad*’ would be identified and developed in a planned manner, so as to create a catchment area, water harvesting structure and cattle grazing land. [Para 11][16-F-H; 17-A]

3. This Court concur with the findings returned in the impugned judgment which is upheld. The appellant–State Government is directed to take necessary steps to process the allotment of the subject land in favour of the respondent–

- A **Company. The respondent–Company shall file a fresh undertaking with the State Government, within the same timeline, as was filed by it before the High Court, for initiating time bound activities for the benefit of the surrounding villages, as compensatory measures for the allocation of the subject land. The appeal is dismissed while leaving the parties to bear their own expenses. [Para 19][19-H; 20-A-B]**

- C *Abdul Rahman v. State of Rajasthan and Others* **2004 (4) WLC (Raj.) 435**; *Director General, Research and Development v. State of Rajasthan & Others* **211 SCC Online Raj 3197**; *Vellore Citizens' Welfare Forum v. Union of India and Others* **(1996) 5 SCC 647 : [1996] 5 Suppl. SCR 241**; *A. P Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Others* **(1999) 2 SCC 718 : [1999] 1 SCR 235**; *Lafarge Umiam Mining Private Limited (Applicant) in T. N. Godarvarman Thirumulpad v. Union of India and Others* **(2011) 7 SCC 338 : [2011] 7 SCR 954**; *Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai and Others* **(2016) 9 SCC 300 : 2016 (7) JT 487**; *Common Cause v. Union of India* **(2017) 9 SCC 499 : [2017] 13 SCR 361**; *Alembic Pharmaceuticals Limited v. Rohit Prajapati and Others* **(2020) 17 SCC 157**; *Jagpal Singh and Others v. State of Punjab and Others* **(2011) 11 SCC 396 : [2011] 2 SCR 250**; *Narmada Bachao Andolan v. Union of India* **(2000) 10 SCC 664 : [2000] 4 Suppl. SCR 94 – referred to.**

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Case Law Reference

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|---|--------------------------------|--------------------|----------------|
| | [1996] 5 Suppl. SCR 241 | referred to | Para 4 |
| | [1999] 1 SCR 235 | referred to | Para 4 |
| | [2011] 7 SCR 954 | referred to | Para 4 |
| G | [2017] 13 SCR 361 | referred to | Para 4 |
| | [2011] 2 SCR 250 | referred to | Para 4 |
| | [2000] 4 Suppl. SCR 94 | referred to | Para 13 |

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THE STATE OF RAJASTHAN AND ANOTHER v. ULTRATECH CEMENT LTD. 5

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5841 of 2022. A

From the Judgment and Order dated 26.02.2016 of the High Court of Judicature for Rajasthan at Jaipur Bench in D.B. Civil Special Appeal (Writ) No. 73 of 2013.

Dr. Manish Singhvi, Sr. Adv., Arpit Parkash, Vikalp Sharma, Milind Kumar, Advs. for the Appellants. B

Haren Raval, Sr. Adv., Ujjawal Sharma, Mahesh Agarwal, E. C. Agrawala, Advs. for the Respondent.

The Judgment of the Court was delivered by
HIMA KOHLI, J. C

1. Leave granted.

2. The appellant–State of Rajasthan¹ has assailed the judgment dated 26th February, 2016, passed by a Division Bench of the High Court of Judicature for Rajasthan Bench at Jaipur whereby the order dated 05th October, 2012, passed by the learned Single Judge dismissing a writ petition preferred by the respondent–Ultratech Cement Ltd.² (S.B. Civil Writ Petition No. 15416 of 2012) was set aside and its appeal allowed with a direction to the appellant–State Government to process the allotment of the land in favour of the respondent–Company for setting up a cement plant in Tehsil Nawalgarh, District Jhunjhunu, in terms of the letter of allotment dated 23rd February, 2012. D E

3. A brief overview of the facts of the case is necessary.

3.1 With the idea of setting up a Cement plant having the capacity of 3 million tons of cement per annum in four villages situated in Tehsil Nawalgarh, District Jhunjhunu, spreading over 1000 hectares of land, the respondent–Company purchased/acquired 400 hectares of land through direct negotiations and took steps to acquire the remaining part of land through private negotiations, as also by way of allotment through RIICO. For executing the project of cement manufacturing, the respondent–Company applied to the appellant–State Government in the year 2000 – 2001 for grant of adjoining mining leases for mineral lime stone (cement grade) in Tehsil Nawalgarh, District Jhunjhunu. A letter F G

¹ In short ‘State Government’

² In short ‘Company’ H

A of intent³ was issued by the appellant–State Government on 16th March, 2002 in respect of two mining leases, but due to non-availability of environment clearance within the stipulated time, the said LOI was cancelled by the State Government by order dated 07th February, 2005. The said order was challenged by the respondent–Company by preferring a revision petition before the Mines Tribunal which was allowed vide order dated 19th July, 2007 and the matter was remitted back to the State Government for fresh examination in accordance with law. The appellant–State Government vide order dated 22nd November, 2007, restored the LOI subject to compliance of certain conditions and on an undertaking to be furnished by the respondent–Company. The said LOI was however, cancelled by the Mines Tribunal vide order dated 29th July, 2009. Aggrieved by the said cancellation order, the respondent–Company approached the High Court by filing a writ petition which was allowed vide order dated 19th August, 2010 and the appellant–State Government finally issued a LOI on 28th October, 2010.

D **3.2** This time, the District Collector, Jhunjhunu issued an approval letter dated 23rd February, 2012, for allocation of Government land falling under mining lease area to the respondent–Company for setting up a cement plant subject to the fulfillment of certain conditions stipulated therein. The captioned letter issued by the District Collector, Jhunjhunu is extracted hereinbelow:

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“Sir,

F Vide above referred letter under above mentioned subject, the State Government has granted approval for reservation and allocation of land falling under mining lease area for setting up a cement plant is granted under Section 92 of the L.R. Act which shall be subject to the fulfillment of the below mentioned conditions:-

G (i) Approval for allocation of the land recorded as pasture land in the mining leased area is given in favour of the applicant company subject to the condition that the company shall surrender the land equivalent to the allocated land after purchasing it in the same village and after developing it as grazing land and will also make it available to the concerned Gram Panchayat after doing fencing of the four walls of the land.

H ³ In short ‘LOI’

- (ii) In-principle consent for allocation of the gair-mumkin johad land falling under mining lease area, as applied for by the company, is given in favour of the company subject to the condition that company shall purchase other land and develop it as Johad and surrender it to the Gram Panchayat. The company shall also produce NOC/orders for allocation of Johad land obtained from Hon'ble High Court. A B
- (iii) Company's application for allocation will be considered only after producing permission/NOC of the competent authority of Panchayat Raj Vibhag and Education Department for gair-mumkin abadi school, graveyard, maszid etc. situated on the mining lease area. C
- (iv) 0.32 Hectare land in the mining lease area is recorded in the name of Ajmer Electricity Distribution Corporation Ltd. Above land shall be allocated in favour of the applicant-company on producing NOC from the Ajmer Electricity Distribution Corporation Ltd. D
- (v) Consent is issued for allocation of the classified land of gair-mumkin Bani & gair-mumkin passage as per your proposal which falls under mining lease area for the purpose in accordance with rules. E

Therefore, kindly ensure action as above.

Encl: as above.

Sd/-

District Collector, Jhunjhunu"

3.3 In view of condition No.(iii) contained in the captioned letter which called upon the respondent–Company to produce NOC/orders for allocation of 'Johad' land from the High Court, the respondent–Company approached the High Court by filing S.B. Civil Writ Petition No.15416/2012. Accompanying the said writ petition were several documents pertaining to the spot inspection of the site, the Reports of the Tehsildar and the correspondence between the parties to demonstrate that the subject land that had been classified as 'Johad', neither fell in the catchment area, nor did water gather there and there did not exist any natural source of water on the subject land and therefore, classification of the subject land could be converted to 'Siwai Chak' F G H

A land. Not persuaded by the averments made in the writ petition, the learned Single Judge dismissed the writ petition at the stage of admission itself with an observation that it is for the State Government to decide whether the disputed land is ‘Johad’ land or not and that the Court was bound by the judgment of the Division Bench of the High Court in the case of *Abdul Rahman v. State of Rajasthan and Others*⁴.

B 3.4 Dissatisfied with the *in limine* dismissal of its writ petition, the respondent–Company preferred an appeal before the Division Bench of the High Court registered as D.B.Special Appeal (Writ) No. 73/2013. Noting that several representations submitted by the respondent–Company to the appellant–State Government for examining the matter afresh and for making necessary corrections in the revenue records were pending, *vide* order dated 23rd November, 2015, the Division Bench directed the appellant–State Government to consider the respondent’s representations in the light of the observations made in the case of *Director General, Research and Development v. State of Rajasthan & Others*⁵, in particular, para 3 thereof, that is extracted hereinbelow:

E “It is conceded on facts that in fact there is no Gair Mumkin Nadi existing on the spot, therefore the decision rendered by the Division Bench of this court in (*Abdul Rahman Vs. State of Rajasthan & Ors.*) shall not come in the way of the respondents in making the allotment. In view of aforesaid factual matrix and considering the nature of requirement, we direct that let the allotment be • processed as assured within six weeks from today”.

F While passing the aforesaid order, it was made clear that in the event the appellant– State Government does not decide the representation of the respondent–Company, the appeal will be decided on merits.

G 3.5 In compliance of the aforesaid order, the appellant–State Government passed an order dated 25th January, 2016, holding *inter alia* that the subject land having been recorded in the revenue record as ‘Johad’, no allotment could be made in favour of the respondent–Company. In view of the aforesaid stand taken by the appellant–State Government, the Division Bench proceeded to hear the respondent’s appeal on merits and allowed the same by virtue of the impugned judgment whereunder the appellant–State Government has been directed to allot

⁴ 2004(4) WLC (Raj.) 435

H ⁵ 211 SCC Online Raj 3197

the subject land in question to the respondent–Company and take A
consequential steps in the matter.

3.6 The High Court has specifically recorded in the impugned judgment that learned counsel for the appellant–State Government did not dispute the fact even before the Court that though the subject land in question was classified as ‘*Johad*’, it neither fell within any catchment B
area, nor did water ever collect there and there was no natural water reservoir on the subject land. The court opined that looking at the topography of the area, the site in question did not have use for any other purpose at all. In fact, the said site selected for mining, had commercially viable lime stone deposits and the selection was made after due consultation with the Gram Panchayat, Baswa. Thus, there C
was no justification for turning down the fact-finding Reports filed by the Tehsildar, Land Records, Nawalgarh, regarding the status of the land. In fact, the said Reports had been duly accepted by the appellant–State Government.

3.7 The impugned judgment went on to record that in *Abdul Rahman’s case*⁴, referred to by the learned Single Judge, the Court had only directed the State Government to chalk out a plan for restoration of the catchment areas to their original shape. The said judgment did not prohibit alienation of the property held as a public trust except for highlighting the fact that any such alienation would require a higher degree E
of judicial scrutiny, thus creating a balance between the Doctrine of Public Trust and the Doctrine of Sustainable Development. It was observed that a pragmatic view ought to be taken in the matter, more so, when the area classified as ‘*Johad*’, did not fall in any catchment area, nor was there any natural water reservoir for it to be declassified from the category of ‘*Johad*’ to ‘*Sawai Chak*’ land. F

4. Mr. Milind Kumar, learned Standing Counsel appearing for the appellant–State Government has assailed the impugned judgment by submitting that the same runs contrary to the judgment of the High Court in *Abdul Rehman’s case*⁴ where it has been held by the Division Bench that no right can be given to use *Nadi* land or other water bodies for construction activity and that catchment of pond/water reservoir shall not be allotted for any personal/commercial purposes; that utilizing the ‘*Johad*’ land for commercial purpose may cause environmental damage; that the High Court has erred in placing reliance on *Director General, Research and Development*⁵; that there are decisions of this Court as G
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- A in *Vellore Citizens' Welfare Forum v. Union of India and Others*⁶, *A.P. Pollution Control Board v. Prof. M. V. Nayudu (Retd.) And Others*⁷, *Lafarge Umiam Mining Private Limited (Applicant) in T.N. Godarvarman Thirumulpad v. Union of India and Others*⁸, *Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai and others*⁹, *Common Cause v. Union of India*¹⁰, *Alembic Pharmaceuticals Limited v. Rohit Prajapati and Others*¹¹ that have highlighted the use of precautionary principle in environmental matters and held that the burden of proof is on the project proponent who is proposing to alter the status quo or impact the environment. Reference was also sought to be placed on the judgment of this Court in *Jagpal Singh and Others v. State of Punjab and Others*¹², where directions were issued to all State Governments to prepare schemes for eviction of illegal occupants of Gram Sabha land and for restoration of the said land for common use of the villagers of the area. Learned counsel for the appellant—State Government went on to refer some additional documents filed recently, in particular, letter dated 07th July, 2014, addressed by the Tehsildar, Nawalgarh to the District Collector which mentioned the status of land in one of the four villages identified as mining area in district Jhunjhunu, namely Village Baswa and stated that in some khasra numbers of the said village, there exists a *pucca* pond which acts as a catchment area of rain water. Some circulars issued by the State Government have also been cited which state that all the allotments which were recorded in the revenue records as nala, river, pond, dam or embankment after 1955 and were converted by changing the land classification from agricultural purpose to non-agricultural purpose, be referred to the competent Court with the relevant facts for classification of allotment.
- F 5. The aforesaid submissions have been repelled by Mr. Hiren P. Raval, Senior Advocate appearing for the respondent—Company who submitted that the present appeal is not maintainable when the appellant—State Government has already given its in-principle consent for the respondent—Company to use the subject land for mining purpose subject
- G _____
- ⁶ (1996) 5 SCC 647
⁷ (1999) 2 SCC 718
⁸ (2011) 7 SCC 338
⁹ (2016) 9 SCC 300
¹⁰ (2017) 9 SCC 499
¹¹ (2020) 17 SCC 157
¹² (2011) 11 SCC 396
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to obtaining a No Objection Certificate from the High Court. Once the High Court has given a No Objection Certificate in terms of the view expressed in the impugned judgment, there was no occasion to file the present appeal. On merits, it was submitted that there is no good reason for the appellant–State Government to have refused to rectify the error in the revenue records in respect of the classification of the parcel of land, part of which has been wrongly classified as ‘*Gair-Mumkin Johad*’ i.e. reservoir land, despite the fact that the Tehsildar, Nawalgarh and the District Collector, Jhunjhunu submitted two Reports stating *inter alia* that there was no water reservoir on the subject land at any point in time. To substantiate the said submissions, learned counsel referred to the two Reports submitted by the Tehsildar, Nawalgarh dated 19th/27th April, 2011 and 25th November, 2012/5th December, 2012. He also took this Court through the recommendations made by the District Collector, Jhunjhunu calling upon the State Government to examine the matter and pass appropriate orders. In particular, he referred to the letters dated 19th December, 2012 and 26th, February, 2013, addressed by the District Collector, Jhunjhunu to the Deputy Secretary, Revenue Department of the State Government recommending change of class of the land in the revenue records from ‘*Gair-Mumkin Johad*’ to ‘*Sawai Chak*’ land, on the basis of the certificates issued by the Tehsildar, Nawalgarh. Learned counsel pointed out that at no stage has the appellant–State Government disputed the Reports of the Tehsildar or the recommendations made by the District Collector. Instead, it has been harping on the judgment of the Division Bench of the High Court of Rajasthan in *Abdul Rehman’s case*⁴, without appreciating that the said judgment has not declared that alienation of property held as a public trust, is totally prohibited. It was submitted that the fact situations of each case would have to be examined before taking a decision and in the instant case, it is not disputed by the appellant–State Government that the subject land does not fall in any catchment area, water does not collect there and there is no natural water reservoir on the land. In all this back and forth that commenced in the year 2000 and is continuing till now, the environment clearances issued in favour of the respondent–Company are going to lapse at the end of the year 2022, which would automatically result in cancellation of the LOI issued by the appellant–State Government, thus, leaving the respondent–Company high and dry for no fault attributable to it. It was therefore urged that the impugned judgment does not deserve to be interfered with, as it is based on fact finding Reports submitted by the

- A revenue authorities that have not been questioned by the appellant–State Government till date.

6. We have heard the arguments advanced by the learned counsel for the parties, perused the impugned judgment and the documents placed on record. The only issue that arises for the consideration of this Court is that once an in-principle consent has already been accorded by the appellant–State Government for reservation and allocation of the subject land under the mining lease in favour of the respondent–Company for it to set up a cement plant and the condition inserted in the approval letter dated 23rd February, 2012 that the respondent–Company should produce a No Objection Certificate/order from the High Court permitting allocation of ‘*Gair–Mumkin Johad*’ land stands satisfied by virtue of the impugned judgment, would a challenge still lie against the same at the instance of the appellant–State Government?

7. A perusal of the impugned judgment indicates the following factors that have weighed with the High Court for allowing the appeal preferred by the respondent–Company :-

- (a) That the Tehsildar, Nawalgarh had made a physical spot inspection of the subject land in question and submitted a detailed Report to the District Collector, Jhunjhunu on 19th April, 2011 stating that the subject land, classified as a ‘*Johad*’ neither fell in the catchment area, nor did water ever collect there and that no natural source of water existed on the subject land; That the subject land was again inspected by the Tehsildar, Land Records, Nawalgarh, who sent a Report to the District Collector, Jhunjhunu on 25th November, 2012 / 05th December, 2012 stating *inter alia* that there is no natural water body on the subject land and the ‘*Gair–Mumkin Johad*’ falling under the proposed mining lease area, does not fall within the water logging area or the catchment area. Therefore, a recommendation was made for change of the class of land and for recording it as ‘*Sawai Chak*’ land;
- (b) That the District Collector, Jhunjhunu made his recommendations on two different occasions to the State Government for issuing necessary orders to correct the revenue records and change the classification of the land to be recorded as ‘*Sawai Chak*’ land.

- (c) That on receiving a communication dated 01st February, 2013 from the State Government calling upon him to re-examine the matter and pass appropriate orders, the District Collector, Jhunjhunu had once again made a recommendation *vide* letter dated 26th February, 2013, that necessary orders for correction of the revenue records ought to be made in the instant case; A B
- (d) That the Gram Panchayat Baswa, Tehsil Nawalgarh, District Jhunjhunu passed Resolution No.21 dated 03rd February, 2011, stating that no water had ever accumulated in the subject land and the Gram Panchayat had no objection in granting the said land classified as ‘*Johad*’, to the respondent–Company for mining lease purposes, subject to the Company giving equal measure of developed land to the Gram Panchayat in the same village; C
- (e) the Court took note of the undertaking given by the respondent–Company in the writ proceedings for initiating the following activities for the benefit of the surrounding villages – D
 - (i) Equal and alternate land to be developed as ‘*Johad*’ in place of ‘*Johad*’ land in the mining activity area in the same village so that villagers could benefit from the basic amenities. E
 - (ii) Creation of a water reservoir in the mined out area.
 - (iii) Development of water harvesting structures for augmenting ground water recharging in the area. F
 - (iv) Initiation of CSR activities in the surrounding villages.
- (f) The respondent–Company gave an undertaking before the Court that development of the site for alternate ‘*Johad*’ would be done in a planned manner where the catchment area, water harvesting structures and cattle grazing land would be developed. The Company also undertook to convert Dug-cum-Bore Well (DCB Well) into injection wells in order to develop suitable drainage pattern for augmentation of ground water table; G

- A 8. It is a matter of record that the appellant–State Government has not questioned the Reports prepared by the Tehsildar, Nawalgarh after making spot inspection on two occasions. The position remains the same even as of now. The first Report was prepared by the Tehsildar on 19th/27th April, 2011 and the second one on 25th November, 2012/05th December, 2012. Both the Reports were categorical in their findings
- B that there was no natural water body on the subject land classified as a ‘*Johad*’ and that the subject land neither fell in the catchment area, nor did water ever collect there and there was no natural source of water that existed on the subject land. That being the position, we see no reason to permit learned counsel for the appellant–State Government to rely on
- C a communication dated 02nd July, 2014, addressed by the Tehsildar to the District Collector, in respect of a part of the subject land falling in village Baswa to urge that there exists a *pucca* pond at some spots, more so when there is no explanation for not filing the documents. The aforesaid communication could have easily been filed by the appellant–
- D State Government before the High Court at the appropriate stage, well before the date of passing of the impugned judgment. Nothing prevented the appellant–State Government from producing the relevant photographs of the purported *pucca* pond existing at some spots within village Baswa. It is not the case of the appellant–State Government that the earlier Reports submitted by the Tehsildar, Nawalgarh after conducting a
- E physical spot inspection had been manipulated or prepared in a *mala fide* manner, nor is there any averment made in the appeal that departmental action was initiated against the then Tehsildar, Nawalgarh for having prepared incorrect Reports of the spot inspection. Given the said position, there is no reason to discard the two Inspection Reports prepared by the Tehsildar, Nawalgarh that form a part of the record.
- F Both the said Reports have stated in clear terms that there is no natural water body on the subject land and the ‘*Gair–Mumkin Johad*’ falling under the proposed mining lease area does not fall within the water logging area or the catchment area. We, therefore, decline to give any weightage to the letter dated 07th July, 2014 addressed by the Tehsildar,
- G Nawalgarh to the District Collector, Jhunjhunu.

- H 9. The Circulars dated 26th June, 2012, 17th April, 2013 and 26th July, 2017 issued by the Revenue Department can also not be of any assistance to the appellant–State Government, for the simple reason that the said circulars came to be issued in compliance of the judgments of the High Court and this Court directing removal of encroachment

from the Gram Panchayat land and eviction of unauthorized occupants therefrom. The present case does not fall in the above categories for the simple reason that the respondent–Company has applied through proper channel for allotment of land for mining purpose; it has received requisite environment clearances followed by LOIs issued by the appellant–State Government. Armed with the necessary approvals from the State Government for reservation and allocation of land falling under mining lease area, the respondent–Company had approached the revenue authorities for setting up a plant on the subject land and requested that necessary changes be made in the revenue records pertaining to land described as ‘*Johad*’ at certain spots, where in fact, no ‘*Johad*’ actually existed. In this context, the recommendations made by the District Collector, Jhunjhunu gain significance. The first letter in this regard was addressed by the District Collector to the Deputy Secretary, Revenue Department of the appellant–State Government on 19th December, 2012, relevant extract whereof is reproduced hereinbelow:

“When a site inspection report in this connection was sought from Tehsildar, Nawalgarh, he informed vide his letter No.2501 dated 5.12.12 that there is a government primary school building on the *gair-mumkin Johad* land of Khasra No.493 area 3.96 hectare, Khasra No.546 raqba 16. 73 hectare, Khasra No.608 raqba 17.55 hectare, Khasra No.649 raqba 4.81 hectare, Khasra No.1304/493 raqba 0.14 hectare and Khasra No.1316/ 608 raqba 0.11 hectare land situated in village Basawa and rest of the land does not come within the catchment area. Land of the above mentioned Khasra Numbers does not have any natural water reservoir, nor it is in the catchment area. Tehsildar, Nawalgarh has recommended to change its class and declare it Sivaychak land.

In perspective of the above decisions of Hon’ble Rajasthan High Court and enclosing herewith the Tehsildar Report attached with letter No.2501 dated 5.12.12 (copy enclosed) and copy of the enclosed Jamabandi for Samvat 2067-2070, it is submitted that Tehsildar’s report has been analyzed and I am satisfied with the report. As per the site inspection report of the *Gair-mumkin Johad* land of Khasra No.493 area 3.96 hectare, Khasra No.546 raqba 16.73 hectare, Khasra No.608 raqba 17.55 hectare, Khasra No.649 raqba 4.81 hectare, Khasra No.1304/4 93 raqba 0.14

A hectare and Khasra No.1316/608 raqba 0.11 hectare land situated in village Basawa, there is a government primary school on 0.10 hectare land out of 16.73 hectare of Khasra No.546 it is recommended that class of the above land may be changed and allocated to M/s Ultratech Cement Limited Co. in accordance with law.”

B

10. After receiving the aforesaid letter, the Secretary, Revenue Department addressed a letter dated 1st February, 2013 to the District Collector, Jhunjhunu clearly stating *inter alia* that only he as the ‘District Collector’ must certify whether the land in question is a ‘Johad’ land or not and the said certification is not to be done by the State Government.

C Therefore, the District Collector was directed to visit the site himself and inquire into the matter and then issue appropriate orders. In compliance of the said directions, the District Collector wrote another letter dated 26th February, 2013 to the Deputy Secretary, Revenue Department, reiterating that the revenue records do not record any water

D reservoir in the relevant khasra numbers of the subject land and it was in this background that letter dated 19th December, 2012 had been issued by him recommending change of class of the land on the basis of the certification of the Tehsildar, Nawalgarh in the revenue records. It was again stated by the District Collector that in the light of the Report of the Tehsildar and the copies of old and current revenue records, orders may

E be issued by the State Government with regard to change of class of the proposed land that was entered into revenue records as ‘Johad’.

11. The aforesaid material has been examined at length in the impugned judgment. The High Court has also taken note of the Resolution passed by the Gram Panchayat, village Baswa and the certificate issued by the Gram Panchayat which records that no water had ever accumulated on the subject land and the Gram Panchayat did not have any objection to the said land being granted to the respondent–Company for mining lease purpose subject to the condition that it would be receiving an equal measure of developed land in the same village from the respondent–Company in view of the land being consumed for mining lease purpose. The respondent–Company has also given undertakings to the High Court that the environment of the village will not be adversely impacted and the ecological balance shall be maintained. One of the undertakings given by the respondent–Company is that the site identified for development of an alternate ‘Johad’ would be identified and developed

H

in a planned manner, so as to create a catchment area, water harvesting structure and cattle grazing land. A

12. Given the above background, reliance placed by learned counsel for the appellant–State Government on the judgments cited by him, is found to be misplaced. In *Vellore Citizens' Welfare Forum*⁶ and *A.P. Pollution Control Board*⁷, this Court recognized the requirement of reconciliation between the concept of development and ecology as a facet of sustainable development. The relevant Articles of the Constitution of India including Articles 21, 47, 48-A, 51-A (g) that protect and improve the environment have been highlighted and the Precautionary Principle and Polluter-Pays Principle have been declared to be a part of the environmental law of the country. It has also been accepted that the burden of proof should lie on the entity proposing an activity that is potentially harmful to the environment. There can be no quarrel with the above position, but neither of the aforesaid judgments are relevant in the facts and circumstances of the instant case, inasmuch as no burden has been placed on the respondent–Company to demonstrate that the industry proposed to be set up by it, shall not cause any serious and/or irreversible harm to the ecology of the area. On the contrary, it is the stand of the Revenue Department of the appellant–State Government itself that there is no likelihood of any damage to the ecology of the area as the spot inspections reveal that there is no pond existing on the subject land that may be impacted adversely. B C D E

13. In *Narmada Bachao Andolan v. Union of India*¹³, this Court had the occasion to discuss the Precautionary Principle and it was held that the said principle and the corresponding burden of proof on the person who wants to change the *status quo*, will ordinarily apply in the case of polluting or other projects or industry where the extent of damage likely to be inflicted, is not known. But when the effect of the project is known, then the principles of sustainable development would come into play which will ensure that mitigative steps can be taken to preserve the ecological balance. In the present case, there is no such uncertainty due to lack of availability of data or scientific material about the damage if any, likely to be caused to the ecological balance of the area. Instead, detailed spot inspections have been conducted by the revenue authorities from time to time that establish that there is no '*Johad*' existing on the subject land. Despite that, the respondent–Company has been directed F G

¹³ (2000) 10 SCC 664

- A to develop an alternate '*Johad*' in a planned manner at the same area, as a mitigative step which it has undertaken to execute.

14. In *Lafarge Umiam Mining Private Limited*⁸, this Court has recognized the fact that the environment has different facets and universal dependence of humans for the use of environmental resources for the most basic needs, inescapably requires choices to be made at different levels on environmental protection and factor in the risks which are to be regulated, as recognized by the concept of sustainable development. Conceding that it is impossible to lay down 'across-the-board' principles and much would depend on the facts of each case, this Court opined that what was required to be seen was how much protection would be sufficient and whether ends would be served by diverting resources to other uses and at the same time, strike a fine balance between environmental protection and environmental risk. No such fine balance is required to be struck in the instant case when admittedly, the spot inspections show that there does not exist any '*Johad*' on the subject land that is likely to be affected on account of the change proposed in the revenue records.

15. The directions issued in *Jagpal Singh's case*¹² calling upon State Governments to prepare a scheme for eviction of illegal/unauthorized occupants of Gram Sabha land also do not come in the way of the respondent–Company. The purpose of the said direction was to prepare a scheme for removal of illegal occupants expeditiously. This does not prevent the respondent–Company from approaching the Court for correction in the revenue records when the site inspection Reports prepared by the Revenue Authorities show that there is no water body or catchment area on the subject land.

16. The focus in the case of *Electrotherm (India) Limited*⁹ was on conducting public hearings as a mandatory requirement of the environmental clearance process and the Court has frowned upon doing away with public hearings in the course of the decision-making process. In the case of *Common Cause*¹⁰, this Court was seized of the aspect of illegal/unlawful mining in the State of Odisha and it was observed that Courts cannot interfere with the Mining Policy or lay down limits on the extent of mining activity that should be permitted by the State/Central Government. The said decision does not have any application to the facts of the instant case where the appellant–State Government has already given an in-principle consent for setting up a cement plant in

favour of the respondent–Company and the High Court was only required to examine the aspect of correction in the revenue records in relation to the subject land where a ‘*Johad*’ was mentioned, but none existed at site. A

17. In *Alembic Pharmaceuticals’ case*¹¹, the issue before this Court was with respect to the operation of industries without obtaining prior environmental clearance for a long time and their liability on account of such non-compliance. Noting that the industries had evaded the legally binding regime of obtaining environment clearance, it was held that penalty must be imposed on them for disobedience and non-compliance of the rules and regulations. Here, the respondent–Company has admittedly received environmental clearances and in spite of the same, its project has not taken off due to various hurdles created by the appellant–State Government. Clearly, the present case is not one of breach of any norms for imposition of penalty on the respondent–Company. B C

18. Even the judgment of the Division Bench of the Rajasthan High Court in the case of *Abdul Rehman*⁴ is being completely misread by the appellant–State Government. The focus in the said judgment was on the restoration of the catchment area to its original shape for which a plan was directed to be drawn up which included demarcation of the catchment areas, demarcation of drainage channels etc. Nowhere in the said judgment has it been observed that the description of a land as a pond in the revenue records, when no pond exists on site, cannot be corrected after conducting a spot inspection. We are inclined to accept the submission made by learned counsel for the respondent–Company that in the absence of any pond at the spot, the decision rendered in the case of *Abdul Rehman*⁴ cannot be an impediment for processing the application of the respondent–Company for allocation of the subject land, for setting up a cement plant. The High Court has rightly referred to the decision of this Court in *Director General, Research and Development*⁵, where noting the fact that there was no ‘*Gair-Mumkin*’ *Nadi* existing on the spot, it was observed that the decision of the High Court in *Abdul Rahman*⁴ will not come in the way of allotting the land to the petitioner. D E F G

19. For the aforesaid reasons, we concur with the findings returned in the impugned judgment which is upheld. The appellant–State Government is directed to take necessary steps to process the allotment H

- A of the subject land in favour of the respondent–Company within four weeks from today. The respondent–Company shall file a fresh undertaking with the State Government, within the same timeline, as was filed by it before the High Court, for initiating time bound activities for the benefit of the surrounding villages, as compensatory measures for the allocation of the subject land.
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The appeal is dismissed while leaving the parties to bear their own expenses.

Ankit Gyan

Appeal dismissed.