

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

D.B. Civil Writ Petition No. 8472/2021

Jal Grahana Vikas Sanstha, Riwadi, District Jaisalmer

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Revenue, Government Of Rajasthan, Jaipur, Rajasthan.
2. The Secretary, Energy Department Government Of Rajasthan, Secretariat, Jaipur.
3. The Rajasthan Renewable Energy, Corporation Limited (RREC), Vidhyut Bhawan, Jaipur, Raj.
4. The District Collector, Jaisalmer, Collector Office, Jaisalmer, Raj.
5. The Tehsildar (Revenue/record), Fatehgarh, Tehsil Office, Fatehgar, District Jaisalmer Raj.
6. The Director, M/s SBE, Renewables Ten Projects Private Limited, First Floor, World Mark-II, Asset Area-8, Hospitality, District Aerocity, NH8, New Delhi-110037

-----Respondents

Connected With

D.B. Civil Writ Petition No. 13818/2021

Villagers Of Gram Panchayat Circle Riwadi through Vigilant Citizens:-

1. Thakra Ram
2. Nure Khan
3. Kawaru Ram
4. Khane Khan

5. Alladin

6. Abhu Khan

7. Sawai Lal Paliwal

8. Ali Khan

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Department Of Revenue, Government Of Rajasthan, Jaipur.

2. District Collector, Jaisalmer.

3. Tehsildar, Fatehgarh.

4. M/s S.B.E. Renewable Ten Projects Private Limited, Through Its Director, 1St Floor World-Mark-2, Asset Area-8, Hospitality District, Aerocity, NH-8, New Delhi 110037.

5. Rajasthan Renewable Energy Corporation Limited, Through Its Executive Director, E-167, Yudhistir Marg, C-Scheme, Jaipur.

----Respondents

For Petitioner(s) : None present.

For Respondent(s) : Mr.Sunil Beniwal, AAG
Mr.Vikas Balia, Sr.Advocate with
Mr.Akshat Verma through VC

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI

ORDER

Date of Order : 31.03.2022

BY THE COURT : (PER HON'BLE MEHTA,J.)

REPORTABLE

These two petitions termed to be Public Interest Litigation question, orders No.1307 and 1317 dated 23.4.2021 whereby, the State Government has allotted chunks of land to the respondent M/s.SBE Renewables Ten Projects Private Limited for establishing a solar project in the village Riwadi.

The Solar Energy Corporation of India (a Govt. of India enterprise) issued a Letter of Award in favour of the respondent M/s.SBE Renewables Ten Projects Private Limited (hereinafter to be referred as 'the company') for establishing Inter State Transmission System Connected Wind Solar Hybrid Power Projects (Tranche-I). In furtherance of the said Award, the State Government sanctioned allotment of lands to the company on lease basis for establishing the solar project. The petitioners are opposed to the allotment of the land so made to the company for establishing the solar power plant.

Before entering into the merits of the case, we would like to extract the quotes of world leaders, scientists and environmentalists on the aspects of climate change and its impact which, by use of renewable energy, can help in reversing the process of global warming which has started having a serious adverse impact on the world at large.

"Solar Energy is 'Sure', 'Pure' and "Secure'."

"India plans to produce 450 GWS of power through solar energy and other renewable energy sources by 2030"

"हर चीज सूर्य से पैदा हुई है, सूर्य ऊर्जा का एकमात्र स्रोत है और सौर ऊर्जा सबका ख्याल रख सकती है"

**-Hon'ble Prime Minister of India
Shri Narendra Modi**

"I'd put my money on the sun and solar energy. What a source of power! I hope we don't have to wait until oil and coal run out before we tackle that.

-Thomas Edison, 1931

"And no challenge poses a Greater threat to future generations than climate change."

"no challenge – no challenge - poses a greater threat to future generations than climate change."

**-President Barack Obama
State of the Union Address 2015**

"The time is past when humankind thought it could selfishly draw on exhaustible resources. We know now the world is not a commodity."

**François Hollande on Climate Change
President of the French Republic**

In this background, we are examining the challenge laid in this Court by the petitioners to the allotment of land made in favour of 'the company'.

Before proceeding to deal with the matters on merits, few important preceding facts and events as they transpired during the course of hearing need to be highlighted.

Both these writ petitions were listed in the Court on 23.03.2022 on which date, arguments were commenced in the pre-lunch session. The petitioner's counsel addressed the Court for a significant period of time. The Bench rose for lunch with a clear understanding that the arguments would be resumed in the post lunch session. However, when the arguments were resumed post-lunch, the petitioner's counsel Shri Moti Singh was not available and his associate Advocate Shri Joginder Singh persistently made a request to adjourn the matters. Since, significant judicial time had already been consumed in hearing the cases in pre-lunch session, the Court proceeded to hear the arguments of the respondents' counsel and thereafter, waited for the petitioner's counsel to appear but he did not turn up in the Court till the Board was finished and the Court rose for the day and accordingly, the

order was reserved in both the writ petitions giving liberty to the petitioner's counsel to submit written submissions. The matters were posted for dictation of order today. The Registry has apprised this Court that in the intervening period, the petitioner's counsel moved an application to Hon'ble the Acting Chief Justice alleging that the hearing of the matter was closed in an arbitrary manner and thus, the same should be listed before Hon'ble the Acting Chief Justice. The said application stands rejected by Hon'ble the Acting Chief Justice.

Shri Moti Singh, learned counsel representing the petitioner has presented written submissions in W.P. No.13818/2021 wherein, nothing significant has been stated on merits of the case and only the facts narrated above have been harped upon. The petitioner's counsel has claimed that he was busy in another Court and thus, he was bonafide prevented from appearing before the Division Bench till 3.40 pm. We are of the firm view that once the matters had been taken up by the Bench and extensive arguments had been advanced, there was no justification whatsoever for the learned counsel representing the petitioner to have left the Bench for other commitments. This was an act of rank discourtesy to the Division Bench. Alongwith the written submissions, a letter dated 28.3.2022 submitted by counsel Shri Moti Singh to the President, Rajasthan High Court Advocates Association has been annexed whereby, permission was sought by the petitioner's counsel to appear in the Court today. However, the President of the Advocates Association has purportedly denied such permission to the petitioner's counsel. There is no justification for such a course of action as other counsel have appeared to address the Court. No

such permission is required for a lawyer to appear in the Court. This is apparently a ploy adopted by the petitioner's counsel to avoid and delay decision of the matters.

Be that as it may, despite all the above circumstances, before proceeding to dictate the order, we instructed the Court Master to convey a telephonic message to the petitioner's counsel Shri Moti Singh that he is at liberty to address the Court by physical or virtual mode but he bluntly refused the opportunity so offered.

Accordingly, we propose to decide the matters on the basis of the arguments advanced at bar, pleading of the parties and the written submissions filed by Shri Moti Singh Advocate representing the petitioner.

Both these writ petitions have been filed by counsels Shri Moti Singh Rajpurohit and Shri Jogendra Singh for assailing the allotment of land made by the District Collector, Jaisalmer to the respondent No.6 for establishing a solar project thereupon. In the W.P.No.8472/2021, which came to be filed by Jal Grahana Vikas Sansthan, Riwadi, District Jaisalmer on 3.7.2021, allotment order No.1317 dated 23.4.2021 (Annex.11) has been challenged whereas, in W.P.No.13818/2021, which came to be filed by villagers of Gram Panchayat Circle Riwadi on 30.9.2021, the allotment order No.1307 (Annex.13) dated 23.4.2021 and allotment order No.1317 (Annex.14) dated 23.4.2021 made in favour of the respondent, the Director, M/s.SBE Renewable Ten Projects Pvt.Ltd. (hereinafter referred to as the solar company'), have been challenged.

In both the writ petitions, the petitioners have alleged that the action of the District Collector, Jaisalmer in making the aforesaid allotments apart from being totally illegal, is also highly detrimental to the areas of the village Riwadi because it will adversely affect the conservation of the lands and the free flow and collection of the rain water shall be obstructed. The petitioners have tried to demonstrate that the lands in question are covered by prohibited categories under the relevant statutes and are not available for allotment and hence, the impugned allotment orders are bad in the eyes of law.

The State Government has filed pertinent reply asserting that the entire chunk of land allotted for the purpose of establishing the solar power plant is owned by the government; no part thereof is covered by any restricted category i.e. *Oran, Agore, Naadi, Canal, Talab* etc. All the lands allotted to the respondent solar company are entered as *Banjar/Barani* in the revenue records. The plea of the petitioner Jal Grahani Vikas Sansthan regarding it having undertaken duly sanctioned development works for water conservation on the lands which have been allotted in favour of the respondent solar company, has been emphatically denied in the reply of the State Government. At Para No.4(9) of the reply, it has been specifically pleaded that the project works allegedly undertaken by the petitioner Sanstha are mostly on private khatedari lands. The map submitted on record by the petitioner Sanstha has been disputed on the ground that it does not bear the signature of any revenue official.

Shri Moti Singh Rajpurohit Advocate advanced extensive arguments contending that the lands in question provide natural

flow of rain water to the water bodies which have been developed by the petitioner Sanstha. These all lands in question are recorded as water bodies and water ways etc. in the revenue record and as such, the allotment thereof is contrary to the mandatory provisions of the Land Revenue Act and the judgment rendered by this Court in the case of ***Kalyan Singh & Ors. Vs. State of Rajasthan & Ors. passed in D.B.Civil Special Appeal (Writ) No.51/2020 decided on 29.6.2021***. He vehemently and fervently contended that if the solar power project is permitted to be set up upon the lands in question, it would wreak havoc in the entire area and the vegetation existing thereupon would be destroyed and all water ways would be obstructed leading to destruction of the Naadis and other water bodies. He further submitted that the area beyond 50 acres could not have been allotted for the purposes of setting up the solar power plant and as such also, the impugned allotment orders are bad in the eyes of law.

Per contra, Shri Sunil Beniwal, learned AAG representing the State Authorities and Dr.Vikas Balia, learned Senior Counsel assisted by Shri Dharmesh Sharma and Shri Akshat Verma Advocates representing the respondent company have vehemently and fervently opposed the submissions advanced by Shri Rajpurohit.

Shri Beniwal contended that no part of the land allotted to the respondent company for the purpose of establishment of solar power plant is covered under any of the prohibited categories. All the khasras are entered in the revenue record as *Banjar* or *Barani* and hence, are available for allotment. The argument advanced by the petitioner's counsel that more than 50 acres land could not

have been allotted for the purpose of establishment of solar power plant is refuted on the strength of the notification No.F.6(28)Rev.6/2014/Par/4 dated 22.2.2017 as per which, amendment was made in the Rajasthan Land Revenue (Allotment of Land for Setting Up of Power Plant based on Renewable Energy Sources) Rules, 2007 (hereinafter referred to as 'the Rules of 2007') and now, it is permissible to allot the land for the renewable energy power plants in the following dimensions:

S.No.	Nature of power plant	Maximum area to be allotted
1	Wind Farm/Wind Power Project	3 Hectare per MW
2	Solar Power Plant using-	
	(i) Solar Photo Voltaic (SPV) on Crystalline Technology	2.5 Hectare per MW
	(ii) Solar Photo Voltaic (SPV) on Crystalline Technology with tracker	3.5 Hectare per MW
	(iii) Solar Photo Voltaic (SPV) on thin film/Amorphous Technology with or without tracker	3.5 Hectare per MW
	(iv) Solar Thermal [Concentrate Solar Power (CSP)] Parabolic Trough/Tower/other technology with and without storage	(a) upto Plant Load Factor (PLF) of 21% 3.5 Hectare per MW (b) for every 1% increase in Plant Load Factor (PLF), 0.15 Hectare per MW additional land shall be allotted.
3	Biomass Power Plant	2.5 Hectare per MW

The area of the land to be allotted is not limited to 50 acres and would have to be calculated on basis of generation capacity of the plant.

Shri Beniwal thus submitted that the plea of the petitioners regarding the lands in question were not available to be allotted for the solar power plant is misconceived.

Dr. Vikas Balia, learned senior counsel assisted by representing the respondent company to whom, the land has been allotted for setting up of the solar power plant urged that the allotment of land has been facilitated by the State Government to set up the renewable solar energy project of immense national importance under the Renewable Energy Mission of the Govt. of India. The Solar Energy Corporation of India (SECI) is the major player in the sector's development. It has been authorised by the Central Government to be the nodal agency for implementation of a number of schemes of Ministry of New and Renewable Energy (MNRE). Under this Scheme, the SECI has been implementing Grid Connected Solar PV Power Projects awarded under "Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects". The present project i.e. SECI Tranche-I Hybrid 450 MW project has been awarded to the respondent company by the SECI under transparent competitive bidding process at a very competitive price for generation of electricity from renewable energy sources. The agreement was signed on 31.12.2019 between the SECI and the respondent company and the project was to be commissioned within 18 months from 7.5.2021. This date has been extended to June 2022 because of the intervening situation created by the Covid pandemic. The delay in commissioning of the project will lead to serious adverse financial impact upon the respondent company. The power generated from the project will be supplied

to various States for meeting the renewable energy purchase obligations under the Mission. Before making the land allotment, the matter was thoroughly examined by the Rajasthan Renewable Energy Corporation, which made the recommendation for allotment of the land in favour of the respondent solar company on 28.9.2020. The approval was granted by the Cabinet on 3.4.2021 and thereafter, the government lands have been allotted to the company on lease basis for 30 years by virtue of the impugned allotment orders. Ownership of the land will continue to vest in the Government. None of lands highlighted in the petitions which are actually entered in the revenue records as public utility lands and water bodies are covered under the lands allotted to the respondent company. Regarding the applications filed by the petitioners pertaining to cutting of trees, closure of public ways etc., Shri Balia submitted that these assertions were not a part of original writ petitions and this are nothing but afterthought. The petitioners are trying to misuse the judicial process in the garb of Public Interest Litigation. Shri Balia urged that the company undertook detailed impact assessment for setting up the solar power plant regarding the environmental and social sides over the area in question and the study report concludes that the project area comprises of non-forest waste lands and fallow lands. It is sparsely covered by shrubs and thorny bushes. There are no plantations or orchards. There was no sighting of any known rare, endangered, or ecologically significant animal or plant species as reported during consultation with Forest Officials or the Desert National Park. Shri Balia further submitted that looking to the grave consequences of global warming, which the world at large is

facing, dependency on fossil fuel generated energy has to be drastically reduced. Rajasthan has the gift of highest solar radiation in the globe and proper exploitation of this endless source of renewable energy will have a great impact on reducing damage being caused to the environment owing to use of fossil fuels for generation of energy. He thus urged that larger public interest would be served by establishing such power projects for generation of renewable energy as they provide perpetual endless clean energy which in turn is of immensely benefit to the environment rather than harming the same. On these grounds, Shri Balia craves that the writ petition be dismissed.

We have heard and considered the submissions advanced at the bar and have gone through the material available on record.

At the outset, we are persuaded to note that there has been an intentional concealment of material fact while filing W.P.No.13818/2021. The W.P.No.8472/2021 filed by the Jal Grahani Vikas Sanstha, Riwadi through its President Mathar Khan was presented by counsels Shri Moti Singh Rajpurohit and Shri Jogendra Singh on 3.7.2021 wherein, the order No.1317 dated 23.4.2021 (Annex.11) making allotment of land to the respondent company for setting up of the solar power plant was challenged. W.P.No.13818/2021 came to be presented in this Court on 30.9.2021 by counsel Shri Moti Singh and Shri Jogendra Singh wherein, allotment orders No.1307 and 1317 dated 23.4.2021 (Annex.13 & 14) have been challenged. Significantly enough, the factum of challenge laid to the order No.1317 dated 23.4.2021 (Annex.11 in W.P.No.8472/2021) was not disclosed in this writ petition. The conduct of the concerned persons is deplorable.

The fundamental ground of challenge to the impugned allotment orders in both the writ petitions is that there is no provision for allotment of land for a power project and that the land can only be allotted for a power plant and solar park and thus, the impugned allotments are bad in the eye of law. It is also averred that as the land in question is comprised of catchment areas, water tanks and ponds and thus, by virtue of the restrictions imposed by the Rules of 2007, the land was not available for allotment.

The contention of petitioner's counsel that the lands in question are falling in the category of restricted land in terms of Rules of 2007 is totally untenable in view of the pertinent reply to the writ petition filed by the State, wherein it has been asserted that none of the lands allotted to the respondent solar company falls in the restricted categories. The assertions made by the respondents No.1, 4 and 5 at Para No.1 of the parawise reply to W.P.No.8472/2021 are reproduced hereinbelow for the sake of ready reference:

"That the contents of para 1(I)-(IV) are denied as averred. It is submitted here that a perusal of allotment Order dated 23.04.2021 (Annexure-11) clearly shows that no land which is categorized as reserved for collection of water in the revenue records has been allotted by the answering respondents to respondent no.6- Company. The proceedings undertaken by the answering respondents are completely in accordance with the Rajasthan Land Revenuer (Allotment of Land for Setting Up of Power Plant based on Renewable Energy Sources) Rules, 2007 (hereinafter referred to as 'Rules of 2007')."

This specific assertion of the respondents has not been controverted by the petitioners by filing any rejoinder etc. The

petitioners in W.P.No.8472/2021 have filed a supplementary pleading through an Interlocutory Application No.01/2021 alleging that the ecological system of the area concerned will be adversely affected by setting up of the power project because the trees etc. will be cut down. However, the said assertion is also untenable in view of the fact that the lands in question which have been allotted for setting up of the solar power project are pertinently categorized as *Banjar* or *Barani* in the revenue record. The bald plea of the petitioners that in common parlance, the allotted lands are being used as Naadis etc. is of no avail because the restrictions which have been imposed in the Rules of 2007 have to be strictly applied as per the category of lands entered in the revenue records. The specific submission of the counsel representing the respondent solar company was that no boundary wall will be erected on the area in question and that the same will be protected by a fencing which would not obstruct the natural flow of water in any manner. Therefore, the plea of the petitioner that the setting up of the solar power project would obstruct the natural water flow in the area thereby causing an adverse impact on the water bodies etc. located around the land in question is also untenable and without any foundation.

We make it clear that when the solar power project is being commissioned, as far as possible, due care shall be taken to ensure that the natural water flow through the area in question is not obstructed and the commissioning of the project does not have any adverse affect on the water flow in recorded water bodies existing in the adjoining areas. Regarding the plea of the petitioners that the ecology in the area (green trees etc.) will be

disturbed, this Court is of the firm opinion that if an impact assessment is done of the two situations viz. setting up of the green energy project of national importance i.e. the solar power plant vis-a-vis the possible damage which might be caused to the greenery in the area, without any doubt, the preference for the former would prevail over the latter by a great margin. It may be noted here that the village Riwadi is in the extreme western part of the State covered under the Thar Desert and as such, no significant greenery or foliage ever survives in this area. In addition thereto, this Court was informed that under the Letter of Award and the terms of the contract, the Company would have to plant a certain number of trees. Hence, the apprehension expressed by the petitioners that setting up of the solar power project would damage the ecology of the area, is misfounded. It is a scientifically established fact that Western Rajasthan is the area with highest solar radiation in the world. The use of fossil fuels for generation of electricity is having a disastrous impact on the entire globe and the ill-effects thereof are visible to one and all. There is ample scientific evidence to show that the use of fossil fuels for producing energy significantly contributes to generation of greenhouse gases which in turn, adds to the ever growing temperature levels of the mother earth and hence, any effort to offset the damage by exploiting renewable sources of power generation i.e. wind power, solar power or hydro power is the call of the day. Such efforts will have to be given precedence if the humanity is to survive. Rajasthan is strongly dependent on fossil fuel (coal) generated electricity as thermal power plants are the primary source of power supply. With the recent shortfall in the

supply of coal, the State is facing serious energy crises resulting into the power companies being compelled to procure electricity from other States by paying hefty tariffs. Thus, optimal generation of solar energy in Western Rajasthan by setting up such projects as has been awarded to the respondent company will put the State on the world map as being the leading generator of green energy through solar power. The visionary solar power generation of the Govt. of India through the Solar Energy Corporation of India (SECI) is one such initiative, which the Courts would be loathe to obstruct by invoking the Public Interest Litigation jurisdiction. Thus, a comparative analysis of the situation at hand weighs heavily in favour of facilitating the setting up of the solar power plant rather than permitting any persons with vested interests to obstruct the same.

Shri Moti Singh Rajpurohit heavily relied on the Division Bench judgment in the case of **Kalyan Singh** (*supra*) in support of the contention that land has been allotted for the solar power project in violation of the Rules of 2007 is of no avail because even in the said judgment, this Court has held that Rule 12A of the Rules of 2007 does not debar the State Government from allotting the land in favour of an entrepreneur for developing the solar park, if is otherwise permissible in terms of the Rules of 2007. As defined under Rule 2(jjj) "Solar park" is a group of solar plants/solar power plants/solar PV power plants/solar thermal power plants/solar farms in the same location used for production of electric power. In Kalyan Singh's case (*supra*), the Division Bench cancelled the allotment of lands covered by public utility for the power project in question. However, in the present case, going

by the admitted entries in the revenue record, no part of the allotted land is covered by public utilities or restricted lands and hence, the allotment order in question is perfectly in tune with the Rules of 2007. In addition thereto, we may take note of Section 20A of the Specific Relief Act, 1963 which reads as below:

“20A. Special provisions for contract relating to infrastructure project.—(1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

Explanation.—For the purposes of this section, section 20B and clause (ha) of section 41, the expression “infrastructure project” means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may

be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.”

Apparently thus, granting any injunction against the infrastructural project of great importance to the mother earth and the entire humanity would be contrary to the mandate of the statutory provision.

The plea put forth by Shri Rajpurohit that more than 50 acres land could not have been allotted for the project is also futile in view of the State Government's notification F.6(28)Rev.6/2014/Par/4 dated 22.2.2017.

As a consequence, we are of the opinion that there has been a blatant concealment of fact in W.P.No.13818/2021 regarding the previous challenge laid to the order No.1317 dated 23.4.2021 in W.P.No.8472/2021.

As a result of the above discussion, both these writ petitions (W.P.No.8472/2021 & 13818/2021) are devoid of merit and are hence, dismissed. Cost of Rs.50,000/- is imposed on the petitioners in each writ petition which shall be deposited with the Rajasthan State Legal Services Authority, within a period of 30 days from today failing which, the District Collector, Jaisalmer shall take appropriate steps for recovery thereof as per law. The District Collector, Jaisalmer and the Superintendent of Police, Jaisalmer shall ensure that no persons with vested interest obstruct commissioning of the solar plant in question.

(VINOD KUMAR BHARWANI),J

(SANDEEP MEHTA),J