



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

S.B. Civil Writ Petition No. 3445/2026
CNR: RJHC010154002026 | URN: CW / 6345U / 2026

Smt. Kiran W/o Shri Jethu Singh Ji, Aged About 52 Years, R/o Jodhpur, Sodho Ki Dhani, Kaliberi, Soorsagar, Jodhpur.

-----Petitioner

Versus

1. Municipal Corporation, Jodhpur Through, Commissioner, Office Of Municipal Corporation, Jodhpur Metropolitan.
2. Rajasthan State, Through District Collector, Jodhpur Metropolitan.

-----Respondents

Connected With

S.B. Civil Writ Petition No. 3443/2026
CNR: RJHC010153092026 | URN: CW / 6341U / 2026

Santosh Singh S/o Kesa Ram Ji, Aged About 50 Years, R/o Jodhpur, Sodho Ki Dhani, Kaliberi, Soorsagar, Jodhpur.

-----Petitioner

Versus

1. Municipal Corporation, Jodhpur Through Commissioner, Office Of Municipal Corporation, Jodhpur Metropolitan.
2. Rajasthan State, Through District Collector, Jodhpur Metropolitan.

-----Respondents

Connected with

S.B. Civil Writ Petition No. 16463/2026
CNR: RJHC010728132026 | URN: CW / 29113U / 2026

Mohammed Aslam S/o Mohammed Rafique, Aged About 46 Years, Resident Of Viyapariyo Ka Mohalla, Soorsagar, Jodhpur.

-----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Department Of Local Self, Government Of Rajasthan, Secretariat, Jaipur.
2. Director, Department Of Local Bodies, Rajasthan, Jaipur.



- 3. Municipal Corporation, Jodhpur, Through Commissioner.
- 4. Dy. Commissioner Zone-I And Ii, Municipal Corporation, Jodhpur.
- 5. Incharge Ward No.27/encroachment Incharge, Municipal Corporation, Jodhpur.

-----Respondents



For Petitioner(s) : Mr. Ramavatar Singh
Mr. Rishi Soni
For Respondent(s) : Mr. Sunil Purohit
Mr. Kshitij Vyas
Mr. Shreedhar Purohit

JUSTICE ANOOP KUMAR DHAND

Order

1.	Date of conclusion of arguments	12.08.2026
2.	Date on which the order was reserved	12.08.2026
3.	Whether the full order or only the operative part is pronounced	Full Judgment
4.	Date of pronouncement	18.08.2026

Reportable

- 1. Since common question of law and facts are involved in these writ petitions, therefore, with the consent of counsel for the parties, arguments have been finally heard together and the instant writ petitions are being decided by this common order.
- 2. For the sake of convenience, S.B. Civil Writ Petition No.3445/2026 is taken as a lead case, whose prayer is reproduced as under:-

"(a) issue an appropriate writ, order or direction directing the respondents to forthwith hand over vacant and peaceful possession of the commercial plot no. 8 kabir nagar Commercial Scheme in question thereof to the petitioner;
(b) issue an appropriate writ, order or direction directing the respondents to complete all consequential formalities,



including giving full effect to the lease deed issued in favour of the petitioner;

(c) issue an appropriate writ, order or direction directing the respondents to consider and decide the petitioner's representation (Anx-81 dated 31.05.2025 strictly in accordance with law and in terms of the directions issued by this Hon'ble Court in S.B. Civil Writ Petition No. 8041/2017, expeditiously and within a time-bound period;

(d) declare the action and inaction of the respondents in not handing over possession of the subject plot as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India;

(f) pass any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice"

3. By way of filing S.B. Civil Writ Petition No.3445/2026, multiple prayers have been made including the prayer for issuing directions to the respondents to hand over the vacant & peaceful possession of commercial Plot No.8, situated at Kabir Nagar, Commercial Scheme, Jodhpur (hereinafter, "Plot No.8") to the petitioner-Smt. Kiran.

4. Similarly, in S.B. Civil Writ Petition No.3443/2026, a prayer has been made for issuing directions to the respondents to handover the vacant & peaceful possession of commercial Plot No.10, situated at Kabir Nagar, Commercial Scheme, Jodhpur (hereinafter, "Plot No.10") to the petitioner-Santosh Singh.

5. Likewise, in S.B. Civil Writ Petition No.16463/2026, a prayer has been made for issuing directions to the respondents to handover the vacant & peaceful possession of commercial Plot No.7, situated at Kabir Nagar, Commercial Scheme, Jodhpur (hereinafter, "Plot No.7") to the petitioner-Mohammed Aslam.

6. It is a common case of all the petitioners that during the auction proceedings, conducted by the respondents, for certain



commercial plots situated at Kabir Nagar, Commercial Scheme, Jodhpur, Plot No.8 was allotted to the petitioner-Smt. Kiran, Plot No.10 was allotted to the petitioner-Santosh Singh and Plot No.7 was allotted to one Usha Sharda, who subsequently sold the same to the petitioner-Mohammed Aslam.

7. It is the case of the petitioners, namely, Smt. Kiran and Santosh Singh that in spite of depositing the entire consideration amount, possession of the aforesaid plots has not been handed over to them till date, whereas, it is the case of the petitioner-Mohammed Aslam, on the basis of the transfer certificate issued in his favour in respect of the Plot No.7, that originally the Plot No.7 was allotted to the erstwhile allottee-Usha Sharda, who sold the same to the petitioner-Mohammed Aslam after receiving the sale consideration. Thereafter, permission was granted to him by the Municipal Council for raising construction on the said Plot No.7. But, the respondents are now levelling allegation against the petitioner-Mohammed Aslam that he is sitting over either Plot No.9 or Plot No.10. However, they are not so sure about their own stand. Hence, all the petitioners have approached this Court by way of filing the instant writ petitions seeking appropriate directions.

8. Two different applications have also been submitted by two different applicants for their impleadment as parties in these writ petitions.

9. It is the case of the applicant-Jagmal Singh that he was in possession of a plot situated at a *kachhi basti* and the same was allotted to him in the year 1999. However, on account of construction of a road over the said *kachhi basti*, under the



rehabilitation scheme, the respondents have allotted a plot of land admeasuring 20x40 sq. ft. in favour of the applicant-Jagmal Singh on the western side of Plot No.7. Learned counsel appearing for the applicant-Jagmal Singh submitted that the applicant-Jagmal Singh has not encroached upon any land, rather he is in legal possession of the land allotted to him by the respondents.

10. Similarly, it is the case of the applicant-Umrao Khan that he was in possession of certain land situated at Chandana Bhakar. However, on account of construction of a road over the said land, he too was shifted and rehabilitated to the site in question in the year 1996 and since then, he has been in peaceful possession of the said land, however, the respondents are bent upon to declare the applicant-Umrao Khan as sencroacher upon the subject land. He submitted that on the basis of adverse possession over the subject land, he has filed a civil suit before the competent Civil Court, wherein temporary injunction order has been passed in his favour, protecting his rights over the subject land.

11. Learned counsel appearing on behalf of the petitioners-Smt. Kiran and Santosh Singh have raised alternative argument that in case, because of any technical reason, the possession of Plot Nos.8 and 10 is not given to them, then alternative plots of the same measurement can be allotted to them in the same scheme, in terms of the judgment passed by the Division Bench of this Court at Jaipur Bench in the case of **Urban Improvement Trust, Jodhpur Vs. Lakshmi Chand Bhaodari** reported in **AIR 1992 Raj 153**.

12. Per contra, learned counsel appearing on behalf of the respondents has opposed the arguments raised by the counsel for



the petitioners as well as counsel for the applicants and submitted that in order to have clarity with regard to possession of incumbents on the subject lands, a public notice was issued by the respondent-Municipal Corporation on 05.07.2026, inviting objections from all the concerned parties. Counsel submitted that a survey of the Plot Nos.7, 8, 9 and 10 was conducted by a committee, constituted by the respondent-Municipal Corporation and it was found that the applicant-Umrao Khan has encroached upon Plot Nos.7 and 8, while the applicant-Jagmal Singh was found to be encroached upon Plot No.9 and similarly, the petitioner-Mohammed Aslam was found to be encroached upon Plot No.10. Learned counsel appearing for the respondent-Municipal Corporation further submitted that the applicants-Jagmal Singh and Umrao Khan were never allotted any land in the aforesaid scheme and they were encroachers in the earlier scheme and their status in the instant scheme is also of an encroacher.

13. Counsel further submitted that for removing their encroachments from the aforesaid plots, notices have been issued to them, under the provisions of the Rajasthan Municipalities Act, 2009 (in short "the Act of 2009") vide office order dated 15.07.2026. He submitted that, in fact, Plot No.7 was allotted to one-Kiran Sharda and the said Kiran Sharda sold the said plot to one-Usha Sharda, and thereafter, the petitioner-Mohammed Aslam was supposed to remain in possession of the said plot on account of transfer of property Usha Sharda to him instead of the Plot No.10. He submitted that so far as the applicant-Umrao Khan is concerned, he has approached this Court by way of filing S.B. Civil Writ Petition No.16678/2026 and the same was disposed of by this



Court vide order dated 03.08.2026, relegating him to avail the remedy of filing an appeal under Section 194(12) of the Act of 2009. Counsel submitted that since while disposing of the above Writ Petition, a direction has been issued by this Court not to take any coercive action against the petitioner therein, the respondents are not in a position to take any action against him for the intervening period. Learned counsel submitted that under these circumstances, appropriate orders may be passed by this Court.

14. In rebuttal, learned counsel appearing on behalf of the applicants-Jagmal Singh and Umrao Khan submitted that an incorrect report has been prepared by the concerned authorities with regard to their possession over the Plot Nos.7, 8 and 9. According to them, they are in possession of their respective lands, which were allotted to them by the respondent-Municipal Corporation and this fact is also evident from the documents, issued by the respondent-Municipal Corporation to the applicants in this regard. Hence, under these circumstances, by no stretch of imagination, it can be said that the applicants-Jagmal Singh and Umrao Khan are encroachers over the Plot Nos.7, 8 and 9.

15. Heard and considered the submissions made at the Bar and perused the material available on record.

16. This fact is not in dispute that the petitioners-Smt. Kiran and Santosh Singh have purchased the Plot Nos.8 & 10 respectively, while the Plot No.7 was purchased by the erstwhile owner Usha Sharda, who sold it to the petitioner-Mohammed Aslam.

17. It is the case of the petitioners-Smt. Kiran and Santosh Singh that inspite of depositing the entire consideration amount, against their respective plots in the year 2011 and issuance of



patta in their favour, till date, possession of the aforesaid plots has not been handed over to them inspite of passing of more than 15 years.

18. Whereas, it is the case of the petitioner-Mohammed Aslam that he is the purchaser of Plot No.7 but the respondent-Municipal Corporation are alleging him to be an encroacher upon Plot No.10. But in any case, the respondent-Municipal Corporation has not opposed his entitlement for Plot No.7.

19. It appears that the lands pertaining to Plot Nos.7, 8, 9 & 10 are in possession of some persons who are also claiming their right, title and interest thereupon on the basis of their possession over the aforesaid plots. The respondent-Municipal Corporation is also treating them as encroachers, on the basis of the report prepared by the Joint Committee dated 10.07.2026 and as per the said report, the applicant-Umrao Khan is in unauthorized occupation of the Plot Nos.7 and 8 while the applicant-Jagmal Singh is in unauthorized occupation of Plot No.9 and the petitioner-Mohammed Aslam is in unauthorized occupation of Plot No.10. Hence, notices have been issued to them on 15.07.2026 calling upon to remove their unauthorized occupation/encroachment from the said plots.

20. It appears that the respondent-Municipal Corporation is showing its inability in handing over the possession of the aforesaid plots to the petitioners due to encroachment on the same.

21. The respondent-Municipal Corporation, being a part of the Government is bound to act in a manner which would hold out ideal conduct for citizens and it cannot undertake performance of



its functions in a manner which would lead to litigations and drive law-abiding citizens to raise dispute for enforcing their admitted rights. By its conduct and performance, the State must create a sense of security in the mind of the citizens and citizens while dealing with the State must be in a position to rely upon the representations made by it. A special sanctity attaches to its acts; a presumption of correctness is available in respect of them and a sense of security is assumed in relation thereto.

22. Fair play and justice ought to be the basic criterion on which a government agency should act. The concept of justice and rule of law is not, however, a static one, but it ought to keep pace with the socio-economic changes in the country. Doctrine of promissory estoppel ought to be applied against the government or its instrumentalities where the interest of justice, morality and common fairness clearly dictate such a course. It is, however, also true that the doctrine of promissory estoppels is an equitable doctrine and it must yield when the equity so requires.

23. The Calcutta High Court, in the case of **Surendra Prasad Mishra Vs. O.N.G.C.** reported in **AIR 1987 Cal 1** has held that where Govt. or Governmental agency makes a promise knowing or intending that it could be acted upon by the promisee and if the promisee acting in accordance therewith and thereby alters his position, the Govt. or the Governmental agency would be held to be bound by the promise and the promise would be enforceable against the Govt. or the Governmental agency at the instance of the promisee, notwithstanding that there is no consideration for the promise or that the promise has not been reduced to writing in



the form of a contract, as required under Article 299 of the Constitution of India.

24. It appears that on account of unauthorized occupancy of Plot Nos.7 to 10, hence, these plots are not available for their possession to be handed over to the petitioners. There is no fault of the petitioners, hence, they cannot be allowed to suffer due to the negligence, callousness and non-maintenance of the essential record by the respondent-Municipal Corporation.

25. In the case of **Haryana Urban Development Authority Vs. Sunita**, reported in **AIR 1989 SC 1137**, the Hon'ble Apex Court has observed as follows:

"certain plots were allotted to certain persons in a particular scheme but the land on which those plots were situated was not available for allotment on account of certain factors which were beyond the control of the HUDA and, therefore alternate plots were offered and out of 306 drawees, 278 persons accepted that alternate offer but the rest of the persons claimed that certain plots are still available in those very scheme and, therefore, they should be allotted plots in those very schemes for which they applied for and, therefore, their lordships of the Supreme Court were pleased to hold that when plots are available in those schemes and they are being advertised for sale by auction, the petitioners are entitled to claim allotment of those plots."

26. Hence, the respondents cannot be allowed to sit over the matter or take any excuse regarding handing over possession of the plots to the allottees/purchasers. They are duty bound to handover the possession of the respective plots to the petitioners.

27. The respondent-Municipal Corporation is treating the applicants as encroachers upon the subject land, on the basis of the report submitted by the Joint Committee Enquiry dated 10.07.2026 and subsequent notices issued to them by the





respondent-Jodhpur Municipal Corporation to remove their unauthorized occupation/encroachment vide office order dated 15.07.2026 are nothing but simply an eyewash to satisfy this Court. It appears that no proper enquiry has been conducted in this matter. The representations submitted by the applicants-Umrao Khan and Jagmal Singh and the petitioner-Mohammed Aslam have not been considered by the respondent-Municipal Corporation in a proper way and a very casual approach has been adopted by the respondent-Municipal Corporation in addressing the situation. In fact, the record of respondent-Municipal Corporation itself has not been taken into account before passing the aforesaid order.

28. It would be difficult for this Court to examine the case of each and every individual petitioner and come to the conclusion as to whether the applicants and the petitioner-Mohammed Aslam are the rightful occupants of their respective plots or not. Since it is a disputed question of fact raised by the respondent-Jodhpur Municipal Corporation and the applicants-Umrao Khan and Jagmal Singh as well as the petitioners-Mohammed Aslam, Smt. Kiran and Santosh Singh, the same cannot be adjudicated by this Court, while exercising its writ jurisdiction, conferred under Article 226 of the Constitution of India.

29. The Rajasthan Municipalities Act, 2009 (for short, 'the Act of 2009') provides various provisions that prohibits encroachment on public roads and footpaths. Before taking any action, the municipal authorities are usually required to issue notice to the individuals or establishments, involved in creating illegal encroachments.



It is settled proposition of law that before taking any action against any individual or establishment, due process of law is required to be followed. Due process of law means that proper notice and opportunity to be heard must be provided to the affected parties, before any adverse action is taken against them.

30. Article 21 of the Constitution of India mandates that no person shall be deprived of his life and personal liberty, except according to the procedure established by law. In the case of **Maneka Gandhi Vs. Union of India** reported in **AIR 1978 SC 597**, the Hon'ble Apex Court has expanded the scope of procedure established by law by ruling that such procedure has to be "fair", "just" and "reasonable" and not fanciful, oppressive or arbitrary, thereby introducing the principle of "procedural due process".

31. Even, in the case of **Municipal Corporation, Ludhiana Vs. Inderjeet Singh**, reported in **2008 (13) SCC 506**, the Hon'ble Apex Court has ruled out that if the requirement is provided under the municipal legislation, then this requirement must necessarily be complied with. No authority can directly proceed with the adverse action without providing notice or any opportunity of being heard to the occupant.

32. The only objection of the occupants is that before taking an adverse action, an opportunity of hearing was required to be given to them and the stand taken by them was required to be considered and in case, they have any rightful claim on the plots in dispute, then either their possession ought to have been protected or they should have been rehabilitated or appropriate compensation should have been granted to them in lieu of their



respective plots, if required for the purpose of allotment to the allottees.

33. In a democratic set-up governed by the Rule of Law, the State can not deprive its citizens from their properties without following the due process of law. The Hon'ble Apex Court in the case of **State of Haryana Vs. Mukesh Kumar & Ors.**, reported in **2011 (10) SCC 404**, has held that right to property is now considered to be a human right, which includes right to shelter. Forceful dispossession of a person from his private property, without following the due process of law, was held to be violative of Article 300A of the Constitution of India.

34. The roots of the idea of 'Rule of Law' can be seen in **Article 39 of the Magna Carta, 1215** that declares that no action can be taken against a person except by a lawful act or by law of the land. The Magna Carta is a landmark document in the history of human rights and legal system. It has established that no one is above the law. It is considered as a significant step in the development of modern democracy and is seen as a foundational document for idea of liberty and human rights. It remains a symbol of liberty and a battle against oppression. It served as the foundation for legal and constitutional development around the whole world. The principles enshrined in the Magna Carta such as Rule of Law and protection of individual rights, continue to influence the legal system today. This civilizational journey has since then found its reflection in Article 21 of the Constitution of India which commands that no person shall be deprived of his life and personal liberty, except according to the procedure established by law.



At the same time, the Hon'ble Apex Court in the case of **Jagpal Singh and Ors. Vs. State of Punjab and Ors.**, reported in **2011 (11) SCC 396**, has issued directions to all the State Governments of the country to prepare schemes for eviction of illegal/unauthorized occupants. These lands should be restored to the Government authorities for the use and benefit of public at large. The said scheme should provide a speedy eviction of such illegal occupants, after giving them a show cause notice and a brief hearing. The aforesaid observations of the Apex Court leave no room for doubt that removal of encroachments from all public lands is mandated by law, and appropriate actions must be taken promptly, in accordance with the due process of law.

35. In the considered opinion of this Court, it is the right time and high time that proceedings should be brought to a logical conclusion, one way or the other. The allotment process cannot be allowed to remain stalled for an indefinite period of time. The same is required to be done in the larger interest of the public as early as possible. The respondents may proceed ahead with aforesaid purpose, after following due process of law and making compliance of the directions of this Court.

36. Considering all the facts and circumstances of the case, this Court disposes of all these writ petitions by issuing the following directions:-

- (a) The respondent-Municipal Corporation shall constitute a committee comprising of the Higher Officials of the Department of Local Self Government, District Collector, Jodhpur and Commissioner of the Jodhpur Municipal Corporation within four weeks from



today and the petitioners and the applicants shall submit their representations and objections, regarding their rights and title over the plots in question, to the said Committee within fifteen days thereafter.

(b) The Committee shall provide an opportunity of hearing to all the petitioners as well as the applicants and shall decide their representations and objections strictly in accordance with law, by passing reasoned and speaking orders in each individual case.

(c) In case, the Committee comes to the conclusion that any of the applicants/petitioner-Mohammed Aslam are in possession of the premises, based on the documents establishing their valid title, and such premises are required for allotment to the respective individual, then adequate compensation shall be awarded to them, at the appropriate level, in accordance with the prevailing DLC rates.

(d) In the alternative, in case it is found that possession of the subject plots cannot be handed over to the petitioners for any good reason then alternative plot of the similar size be allotted to them in the same scheme.

(e) In the cases, where objections are not received, the respondent-Municipal Corporation shall be at liberty to proceed further in accordance with the law.

(f) Any person aggrieved by the decision of the respondent-Municipal Corporation shall be at liberty to approach the appropriate forum of law for redressal of his/her grievances.

(g) If, during the course of allotment of the plot to the petitioners/applicants, plants or trees are required to be removed then the respondent-Municipal Corporation are directed to count such trees/plants and prepare an inventory and against every single removed tree or plant, the respondent-Municipal Corporation shall plant ten shady plants in the close vicinity and nearby public





area and shall submit a report in this regard to this Court.

37. It goes without saying that the order passed this Court would be complied with by the respondent-Corporation within a period of three months from today.

38. Stay application(s) and all pending application(s), if any, also stand disposed of.

39. Let a copy of this order be place separately in each file of the bunch of petitions.

(ANOOP KUMAR DHAND),J

3-4-21/Arjun