HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Civil Writ Petition No. 2687/2024

1. Shyamlal S/o Motilal Rathi, aged 55 years, C/o Shop No. 4, Near Manak Chowk, Nathdwara, Rajsamand
2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai through trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

Connected With

S.B. Civil Writ Petition No. 2673/2024

1. Chandrakanta W/o Devkinandan Bhatia, aged 62 years, C/o Shop No. 1, Near Manak Chowk, Nathdwara, Rajsamand
2. Seth Jamnadas Lallubhai Charitable Trust, Mumbai, Jai Bhawani Building, Ground Floor, 3 Ratilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C-Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board, Nathdwara Through Chief Execuitve Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2691/2024

1. Sampatlal Lodha S/o Fatehlal Ji Lodha, aged 53 years, C/o Shop No. 2, Near Manak Chowk, Nathdwara, Rajsamand.
2. Seth Jamnadas Lallubhai Charitable Trust, Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Thrugh Trustee Tejas Dipal Shroff S/o Shri Dipak Bhai Shrff, aged 57 years, R/o Hari Niwas,

6th Floor, C- Rad, Churchgate, Mumbai - 20.

----Petitioners

Versus

Temple Board, Nathdwara Through Chief Executive Officer, Temple Board, Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2692/2024

1. Prahlad Kabra S/o Damodar Ji Kabra, aged 55 years, C/o Shop No. 15, Near Manak Chowk, Nathdwara, Rajsamand.
2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2693/2024

1. Vinod Kumar Sharma S/o Kishanlal Sharma, aged 42 years, C/o Shop No. 14, Near Manak Chowk, Nathdwara, Rajsamand
2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2694/2024

1. Govind S/o Shankarlal Ji Nagda, aged 55 years, C/o Shop No. 10, Near Manak Chowk, Nathdwara, Rajsamand.

2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2699/2024

1. Yogesh Purohit S/o Fatehlal Ji Purohit, aged 42 years, C/o Shop No. 7, Near Manak Chowk, Nathdwara, Rajsamand

2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2702/2024

1. Rameshchandra S/o Ratanlal Ji Parikh, aged 53 years, C/o Shop No. 16, Near Manak Chowk, Nathdwara, Rajsamand

2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2710/2024

1. Vimla Devi W/o Govindvallabh Kabra, aged 60 years, C/o Shop No. 5, Near Manak Chowk, Nathdwara, Rajsamand

2. Seth Jamnadas Lallubhai Charitable Trust, Mumbai, Jai Bhawani Building, Ground Floor, 3 Ratilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Sharoff S/o Shri Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20.

----Petitioners

Versus

Temple Board Nathdwara, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

S.B. Civil Writ Petition No. 2726/2024

1. Chetan Purohit S/o Fatehlal Ji Purohit, aged 44 years, C/o Shop No. 12, Near Manak Chowk, Nathdwara, Rajsamand.

2. Seth Jamnadas Lallubhai Charitable Trust, Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipal Shroff S/o Shri Dipal Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C- Road, Churchgate, Mumbai - 20.

----Petitioners

Versus

Temple Board, Nathdwara Through Chief Executive Officer, Temple Board, Nathdwara, Tehsil Nathdwara, District Rajsamand.

----Respondent

S.B. Civil Writ Petition No. 2729/2024

1. Giriraj S/o Ganeshvallabh Ji Rathi, aged 47 years, C/o Shop No. 3, Near Manak Chowk, Nathdwara, Rajsamand.

2. Seth Jamnadas Lallubhai Charitable Trust, Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipal Shroff S/o Shri Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C- Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board, Nathdwara Through Chief Executive Officer, Temple Board, Nathdwara, Tehsil Nathdwara, District Rajsamand.

----Respondent

S.B. Civil Writ Petition No. 2792/2024

1. Govindlal S/o Hemnarayan Ji Sanadhya, aged 45 years, C/o Shop No. 13, Near Manak Chowk, Nathdwara, Rajsamand.
2. Jamnadas Lallubhai Charitable Trust, Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marag, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Shri Dipal Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C-Road, Churchgate, Mumbai - 20.

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board, Nathdwara, Tehsil Nathdwara, District Rajsamand.

----Respondent

S.B. Civil Writ Petition No. 2796/2024

1. Shri Prakash Devpura S/o Pushkarlal Devpura, aged 54 years, C/o Shop No. 11, Near Manak Chowk, Nathdwara, Rajsamand.
2. Seth Jamnadas Lallubhai Charitable Trust Mumbai, Jai Bhawani Building, Ground Floor, 3 Rattilal Thakkar Marg, Malabar Hills, Mumbai Through Trustee Tejas Dipak Shroff S/o Dipak Bhai Shroff, aged 57 years, R/o Hari Niwas, 6th Floor, C - Road, Churchgate, Mumbai - 20

----Petitioners

Versus

Temple Board Nathdwara, Through Chief Executive Officer, Temple Board Nathdwara, Tehsil Nathdwara, District Rajsamand

----Respondent

For Petitioner(s)	:	Mr. Akshay Nagori.
For Respondent(s)	:	Mr. Vineet Dave & Mr. Kaushik Dave.

HON'BLE DR. JUSTICE NUPUR BHATI

Order

04/04/2024

1. These writ petitions have been filed by the petitioners assailing the validity of the orders passed by Additional District Judge, Rajsamand ('Trial Court'), whereby the learned Trial Court has rejected the application(s) preferred by the petitioners under Order 41 Rule 27 (1) and Order 11 Rule 12 read with Section 151 CPC. Since, the controversy involved in this batch of writ petition is common, these writ petitions are being decided by this common order, however, facts of SBCWP No.2687/2024 are taken into consideration illustratively.

2. Briefly stated, the facts of the case are that the respondent Temple Board, Nathdwara preferred an application seeking eviction of the petitioner No.1/tenant from the suit shop No.4 in question situation in an inn (धर्मशाला) under the provisions of Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964 ('Act of 1964'). In the application, it was inter-alia alleged that the inn (धर्मशाला) was in the ownership of the Temple Board and non-applicant No.1/petitioner No.1 was the tenant and the non-application No.2/petitioner No.2, Seth Jamnadas Lallubhai Charitable Trust, Mumbai ('Trust') was authorized agent to collect the rent. When the tenant failed to pay the rent, a notice dated 27.03.2008 was issued by the Temple Board terminating the tenancy. A prayer was thus made that the Temple Board is entitled to get vacant possession and due rent alongwith mesne profit.

3. After service of the summons, a reply to application seeking eviction was filed by applicant No.1/petitioner No.1 while denying ownership of the Temple Board as also landlord-tenant relationship and in fact the owner of the inn (धर्मशाला) including the shop in question was the applicant No.2- Trust. It was thus averred in the reply that the applicant- Temple Board has no right to terminate the tenancy. Reply was also filed by applicant No.2- Trust questioning the maintainability of the application under the Act of 1964, inasmuch as it was the public premises. It was further alleged that the suit property was purchased by the Trust the inn was constructed by the Trust.

4. Both the parties led their respective oral as well as documentary evidence in support of their case.

5. After hearing the parties, the Estate Officer vide its order dated 20.04.2019 (Annex.1) proceeded to allow the application filed by the respondent- Trust and directed eviction of the petitioners from the suit shop in question. The petitioners were also directed to pay due rent and mesne profit.

6. Being aggrieved by order dated 20.04.2019 (Annex.1), the petitioners preferred appeal before the District Judge, Rajsamand, which is pending adjudication before the appellate court.

7. During pendency of the appeal before the District Judge, Rajsamand, the petitioners preferred an application under Order 41 Rule 27 read with Order 11 Rule 12 CPC on 03.10.2019 seeking to place on record copy of Bapi Patta dated 02.02.1925 (Samvat Year 1981) alongwith map, which were in the power and possession of the Temple Board, which were prayed to be summoned from the Temple Board.

8. A reply to the said application was filed by the respondent Temple Board while pleading that the documents sought to be summoned were not at all relevant for the purpose of deciding the appeal and a prayer for dismissing the said application was made.

9. The learned Trial Court after hearing the arguments of the parties vide order impugned dated 12.01.2024 (Annex.6) proceeded to reject the application and being appalled from the same, the present writ petitions have been preferred with a prayer to quash and set aside the order and allowing the application preferred by the petitioners under Order 41 Rule 27 (1) and Order 11 Rule 12 read with Section 151 CPC.

10. At the outset, learned counsel appearing for the petitioners submits that the learned Trial Court has failed to consider the relevancy of the documents sought to be summoned at the appellate stage, inasmuch as the petitioners have explained the relevancy of the documents sought to be summoned as the documents go to the root of the case, however, the learned Trial Court has cursorily rejected the application. Counsel for the petitioners further urges that it was only on 20.04.2019 when the eviction order was passed by the Estate Officer, the petitioners came to know about the documents and immediately thereafter the documents were sought to be filed and summoned and as such there was no delay in filing the application, however, the Trial Court has erred in observing that the application was filed belatedly and that the petitioners failed to explain the delay. Counsel for the petitioners further submits that existence and genuineness of the documents has not been denied and only relevancy of the documents was pleaded and thus when the

existence of the documents has not been questioned, the learned Trial Court seriously erred in rejecting the application preferred by the petitioners. It was thus prayed that the writ petitions be allowed and the orders impugned be quashed and set aside while allowing the application preferred by the petitioners under Order 41 Rule 27 (1) and Order 11 Rule 12 read with Section 151 CPC.

11. Learned counsel for the petitioners relied upon judgments in *Narendra Gole v. Ram Krishan Sharma* : 2011 2 CurCC 43, *Arun Kumar v. Dharmchand Jain & Anr.* : 2016 (3) WLC 338, Shri M.L. Sethi v. Shri R.P. Kapur : AIR 1972 SC 2379.

12. On the other hand, Mr. Vineet Dave, learned counsel appearing for the respondent Temple Board submits that the documents sought to be exhibited/summoned are not at all germane for deciding the appeal. He further submits that the documents sought to be summoned were very much in existence since inception, however, the petitioners without showing their relevancy and with a view to delay the proceedings, at the appellate stage, have preferred the application under Order 41 Rule 27 (1) and Order 11 Rule 12 read with Section 151 CPC. Learned counsel for the respondent submits that the document styled as 'Bapi Patta' in fact was not a Patta and it was simply a conditional construction permission for construction of inn, which has no relevancy in decision of the appeal. It was thus prayed that the writ petitions have no force and, therefore, the same be dismissed.

13. Learned counsel for the respondent Temple Board relied upon judgments in *Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil* : 2011 (1) AIR (Bom) (R) 130, *The State of Gujarat*

& Anr. v. Mahendrakumar Parshottambhai Desai (D) by LRs : 2006 (2) WLC 139. and judgment passed by this Court in *Kuldeep Kaur & Anr. v. State of Rajasthan & Ors.* : S.B. Civil Writ Petition No.13914/2019 decided on 28.02.2023. Learned counsel for the respondent Temple Board also relied upon Section 2 (e) of the Act of 1964, which inter-alia defines unauthorized occupation. Section 2 (e) of the Act of 1964 reads as infra:

> "2 (e)- "unauthorized occupation", in relation to any public premises means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other ode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

14. I have considered the submissions made by counsel for the parties and have perused the material available on record and the judgments cited at bar.

15. This Court finds that by way of filing the application under Order 41 Rule 27 (1) and Order 11 Rule 12 read with Section 151 CPC at appellate stage, the petitioners sought to lead additional evidence in the form of exhibiting documents, which documents were not relevant or germane for deciding the appeal, inasmuch as the documents were not related with the suit property in question and in fact were related to some other property, for which was construction permission with certain conditions was granted to Chaturbhuj Jeevandas and, therefore, the same were not required to be summoned or allowed to be exhibited. The petitioners have miserably failed to show as to how the documents were relevant and the said documents were not produced by them initially while the matter was pending adjudication before the Estate Officer.

16. Order 41 Rule 27 of CPC reads as infra:

> "27. Production of additional evidence in Appellate Court— (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if—
>
> (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]
>
> (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
>
> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

The petitioners while invoking Order 41 Rule 27 CPC before the appellate court are required to establish the exercise of due diligence while demonstrating that such evidence was not within their knowledge or could not after exercise of due diligence produce at the time when the decree appealed against was passed. However, in the present case, the petitioners have miserably failed to demonstrate before the Court that due diligence was exercised by them and also the reason for which that such evidence could not be placed by them at the time when the decree appealed against them was passed.

17. Order 11 Rule 12 CPC reads as infra:

> "12. Application for discovery of documents— Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit :

> Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs."

Upon perusal of the provisions of Order 11 Rule 12 CPC, where application for discovery of a document is preferred, it is seen that any party may apply to the court for an order directing any other party to any suit to make discoveries on oaths of the documents, which are or have been in possession or power relating to any matter in question therein. Thus, when the petitioners have invoked the provisions of Order 11 Rule 12 CPC, they were under an obligation to demonstrate before the court the relevance of the documents to the matter subjudice before the learned Trial Court. However, the petitioners utterly failed to show the relevance or relation to the documents for which application was filed requesting the court to direct the respondent to produce the said documents, which were in its possession, and thus no indulgence could be granted to the petitioners.

18. This Court finds that in the case of Shalini Shyam Shetty (*supra*), the Hon'ble Apex Court has held that High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interference with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of the Court or tribunal subordinate to it. The Hon'ble Apex Court also held that in cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

19. Insofar as judgments relied upon by counsel for the petitioners are concerned, the same are of no avail to the petitioners.

20. In the case of Mahendrakumar Parshottambhai Desai (*supra*), the Hon'ble Apex Court as held that Order 41 Rule 27 of CPC cannot be invoked by a party to fill up the lacunae in his case. The relevant portion of the judgment reads as infra:

> "Mr. Sorabjee appearing on behalf of the respondents rightly submitted that Order XLI Rule 27 of the Code of Civil Procedure cannot be invoked by a party to fill up the lacunae in his case. The State found itself in a dilemma when confronted with two sets of documents conflicting with each other. There was no plea that the documents sought to be produced by way of additional evidence could not be produced earlier despite efforts diligently made by the State or that such evidence was not within its knowledge. In fact no ground whatsoever was made out for adducing additional evidence, and the sole purpose for which the State insisted upon adducing additional evidence was to persuade the Court to accept the point of view urged on behalf of the State, since the evidence on record did not support the case of the appellants/State. Having considered all aspects of the matter we are satisfied that the High Court rightly rejected the applications filed by the State for adducing additional evidence at the stage of appeal which was intended only to fill up the lacunae in its case."

21. This Court is satisfied that there has been no perversity in the order impugned passed by the learned Trial Court and as such no injustice has been caused to the petitioners on account of rejection of application under Order 41 Rule 27 (1) and Order 11 Rule 12 read with Section 151 CPC. In the opinion of this Court, no interference is called in the orders impugned passed by the learned Trial Court.

22. In view of above discussion, there is no substance in the writ petitions, the same are, therefore, dismissed. Stay Petitions and misc. applications, if any, also stand dismissed.

(DR. NUPUR BHATI),J

58 to 70-DJ/-