Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1527-1536 OF 2013

Rajasthan Housing Board ... Appellant

- Vs –

New Pink City Nirman Sahkari Samiti Ltd.
& Anr. ... Respondents

WITH
Civil Appeal Nos.1557-1566/2013, 1577-1586/2013, 1597-1606/2013, 1537-1546/2013, 1547-1556/2013, 1567-1576/2013, 1587-1596/2013, 1607-1608/2013, 1609-1610/2013, 1611-1612/2013, 1613-1614/2013, 1615-1616/2013, 1617-1618/2013, 1619-1620/2013, 1621-1622/2013, 1623-1624/2013, 1625-1626/2013, 1627-1628/2013, 1629-1630/2013, 1631-1632/2013, 1633-1634/2013 and CA Nos.4183-4192/2015 @ SLP (C) Nos. 21344-21353/2013.

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted in SLP [C] Nos.21344-21353/2015.

2. The appeals arise out of a common judgment and order dated 29.10.2009 passed by a Division Bench of the High Court of Rajasthan in Special Appeal No.13/2001 and other connected matters. The Rajasthan Housing Board, original Khatedars and the New Pink City Housing Construction Co-operative Society Ltd. (transferee) (hereinafter referred to as the Society') have assailed the impugned judgment and order on different grounds. The Rajasthan Housing Board has prayed for setting aside direction to consider 25% of developed land and compensation, whereas the original khatedars have prayed for payment of compensation to them. Similarly, the Rajasthan Housing Board has also questioned the entitlement of the Society to claim compensation. The Society has also claimed for more value of land.

3. The State Government issued a notification under section 4 of the Rajasthan Land Acquisition Act, 1953 (for short 'the Act of 1953') on 12.1.1982. The land had been acquired for the purpose of housing scheme of Rajasthan Housing Board. On 22.5.1982 the possession had been handed over to Rajasthan Housing Board under section 9 of the Act of 1953. The Society preferred objections before the Land Acquisition Officer (LAO). The objections preferred by the Society were rejected vide order dated 4.9.1982.

Thereafter, Award was passed with respect to four cases by the LAO on 30.11.1982 in favour of Khatedars. With respect to the remaining cases the award was passed on 2.1.1989 by the LAO. Notice under section 12(2) of the Act of 1953 was issued to the Society with respect to the award of 30.11.1982 on 31.12.1988.

4. The Society applied for reference under section 18 of the Act of 1953. On 17.4.1989, the reference was made to the Civil Court. One of the Khatedars namely Prabhu also sought reference registered as Case No.43/1989. The Civil Court answered the reference on 23.1.1994 determining the compensation at Rs.260 per sq.yd. The objection raised by the Housing Board with respect to the entitlement of Society under section 42 of the Rajasthan Tenancy Act, was brushed aside. On appeal to the High Court, the single Bench vide impugned judgment and order dated 22.3.1999 reduced the compensation to Rs.100 per sq.yd. The Division Bench has not only affirmed the aforesaid award but has additionally directed to consider allotment of 25% of developed land in view of circular dated 27.10.2005 in terms of the order passed by a Division Bench in Special Appeal No.697/1995.

5. The Khatedars have claimed that they are 'Bairwa' by caste which is a Scheduled Caste notified under the Constitution Scheduled Castes Order, 1950.

6. The Society has claimed that it had entered into an agreement to sell with Khatedars of the land on 15.2.1974, 17.2.1974, 21.2.1974 and 22.1.1976. The Society has also claimed that it had applied to the Rajasthan Housing Finance Society Ltd. for financial assistance for construction of houses and an NOC dated 7.6.1982 was issued to it by the Urban Improvement Trust, Jaipur. The Society objected to the acquisition but objections were rejected on 3.9.1982 in four cases out of which Reference Case No.1989, 2089, 3089 and 4089 arose. The award was passed on 30.11.1982. Later on, the Society appears to have filed a civil suit for specific performance of agreement to sell in the year 1986 against the Khatedars and compromise decrees are said to have been passed on 2.10.1986, 3.10.1986 and 24.1.1988 thereby decreeing the suit in favour of the Society.

7. It was submitted on behalf of the State Government, Rajasthan Housing Board and also by the Khatedars that the transactions between the Society and Khatedars, if any, were ab initio void in view of the provisions contained in section 42 of the Rajasthan

Tenancy Act. Thus, decree obtained on the basis of void transaction is a nullity and no right had accrued to the Society to claim compensation.

8. It was urged before us on behalf of the Society that the compensation determined is inadequate. Oral evidence has been ignored by the High Court while reducing the quantum of compensation determined by Reference Court. The Society has a right to claim compensation on the basis of the agreement which has been culminated into a decree passed by the civil court. No action has been taken by Khatedars to take back the possession under section 175 of the Rajasthan Tenancy Act within the period of limitation of 30 years which is prescribed therein. The High Court has rightly ordered allotment of 25% of the developed land to the Society. The Society is a person interested to receive the compensation on the strength of the judgment and decree of civil court. It has developed the land and has spent certain amount on development and the right to hold the property cannot be taken away except in accordance with the provisions of a statute. In order to claim superior right to hold the property the procedure prescribed in a statute must be complied with as provided in Article 300A of the Constitution of India. The State is bound to treat various incumbents similarly as others have been

allotted the land. It is bound to act upon its decision and allot the 25% of the developed land to the Society. The plea based upon the bar created by section 42 of the Rajasthan Tenancy Act has not been substantiated by adducing the evidence.

9. It was contended on behalf of the Khatedars that though the civil court's decrees are fraudulent and bogus even otherwise the decrees are a nullity and opposed to public policy on the strength of provisions contained in section 42 of the Rajasthan Tenancy Act; Transaction being void, the Society has no locus standi, right, title or interest to claim the enhanced compensation; more so, in view of the rejection of its objection vide order dated 4.9.1982. The award in 1982 was passed by Land Acquisition Officer in favour of Khatedars. They are entitled to enhanced compensation and not the Society. The land was recorded in the names of Khatedars in the revenue records. The agreements of 1974 and 1976 have not been produced and once the transaction is void, it can be questioned in the instant proceedings. They are entitled to compensation and also to obtain developed land, as and when allotted.

10. It was contended on behalf of the State Government as well as the Rajasthan Housing Board that the Society is not entitled to any compensation as such transactions are declared void by section 42

of the Rajasthan Tenancy Act. The reference sought in the year 1989 with respect to the lands covered by the award dated 30.11.1982 was clearly barred by limitation. The objection had been raised before the Reference Court based upon section 42 of the Rajasthan Tenancy Act and it has not been disputed at any stage that Khatedars belong to "Bairwa" caste which is a Scheduled Caste. Thus, the bar enacted under section 42 on transfer of such land is clearly attracted. The judgments passed by the High Court and the Reference Court deserve to be set aside. On merits, no case for enhancement of compensation was made out. The Society has no right, title or interest in the land. The Division Bench of the High Court had gravely erred in law in directing allotment of 25% of the developed land. The prayer made by the Society for allotment of the developed land was rejected by the Rajasthan Housing Board on 14.5.2009 and 16.9.2009. The said orders were not questioned. Even otherwise the Circulars dated 13.11.2001 and that of 27.10.2005 are not applicable and not enforceable as held by this Court. The direction to allot the developed land deserves to be set aside.

11. First, we advert to the question whether reference, with respect to the four cases in which award was passed on 30.11.1982, was within period of limitation. Admittedly, possession from the

Society had been taken on 22.5.1982. The Society submitted the objections before the LAO on 20.7.1982. While rejecting the objections on 4.9.1982, the Special Officer, Urban Development Authority, LAO, had unilaterally observed that the acquisition cannot be said to be in violation of the provisions contained in Article 300A of the Constitution of India, the Society has no ownership of the land, it has no interest in the land. Thus, it has no right to raise the objection. The said order had attained finality and the award was passed on 30.11.1982. In the award so passed, it has also been mentioned that an Advocate had appeared on behalf of the Khatedars and wanted to file objections regarding compensation. The said Advocate appeared on behalf of some of the Khatedars and stated that they had sold the land to the Society. However, no claim petition was filed on their behalf. There is also a reference in the award dated 30.11.1982 as to the objection filed by the Society had been rejected on 4.9.1982. It is apparent from the award that it was passed after rejecting the objections raised by the Society in favour of Khatedars.

12. The provisions of Rajasthan Land Acquisition Act are in *pari materia* with the provisions of the Land Acquisition Act, 1894 and section 12 of the Act of 1953 is extracted hereinbelow :

> "12. Award of Collector when to be final.—(1) Such award shall be filed in the Collector's officer and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.
>
> (2) The Collector shall give immediate notice of his award or the amendment thereof to such of the persons interested as are not present personally or by their representatives when the award or the amendment thereof is made."

13. Section 12(2) requires immediate notice to be given of the award to such of the persons interested as are not present personally or by their representative/s when the award is made. Section 18(2) of the Act of 1953 requires to file the objections within six weeks from the date of the award if the person or the representative was present when the award was made. In other cases, within six weeks of the receipt of notice from the Collector under section 12(2) or within six months from the date of the award whichever period shall first expire.

14. In the instant case, notice under section 12(2) was issued to the Society by the Special Officer on 31.12.1988, treating the Society as 'person interested' and informing that an award had been passed on 30.11.1982 in accordance with section 11 of the Land

Acquisition Act. On the strength of the aforesaid notices it was urged on behalf of the Society that the limitation to seek the reference would commence from the date of receipt of the notices issued and received on 31.12.1988. The reference sought was within the period of limitation.

15. Reliance has been placed on the decision of this Court in *Madan & Anr. v. State of Maharashtra* [(2014) 2 SCC 720] and in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer & Anr*. [AIR 1961 SC 1500] in which it has been laid down that the party must have either actual or constructive communication of the order which is an essential requirement of fair play and natural justice. The date of award used in proviso (b) to section 18(2) of the Act must be the date when the award is either communicated to the party or known by him either actually or constructively. The award in the said case was passed on 25.3.1951. Notice of the award was however given to the appellant as required by section 12(2) on 13.1.1953 by which he received information about making of the said award. It was observed that it was necessary for the Collector to give immediate notice of his award under section 12(2) of the Act. This Court has laid down in *Raja Harish Chandra* (supra) with respect to the knowledge of the award by a party thus :

> "6 ..... The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector, it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to s. 18 in a literal or mechanical way."

16. The decision of the Madras High Court in *Muthia Chettiar v. Commissioner of Income Tax, Madras* [AIR 1951 Mad. 204] had been

considered and approved by this Court in *Harish Chandra* (supra) thus:

> "10 It may, however, be pertinent to point out that the Bombay High Court has taken a somewhat different view in dealing with the effect of the provision as to limitation prescribed by s. 33A(2) of the Indian Income-tax Act. This provision prescribes limitation for an application by an assessee for the revision of the specified class of orders, and it says that such an application should be made within one year from the date of the order. It is significant that while providing for a similar period of limitation s. 33(1) specifically lays down that the limitation of sixty days therein prescribed is to be calculated from the date on which the order in question is communicated to the assessee. In other words, in prescribing limitation s. 33(1)expressly provides for the commencement of the period from the date of the communication of the order, whereas s. 33A(2) does not refer to any such communication; and naturally the argument was that communication was irrelevant under s. 33A(2) and limitation would commence as from the making of the order without reference to its communication. This argument was rejected by the Bombay High Court and it was held that it would be a reasonable interpretation to hold that the making of the order implies notice of the said order, either actual or constructive, to the party affected by it. It would not be easy to reconcile this decision and particularly the reasons given in its support with the decision of the same High Court in the case of *Jehangir Bomanji* AIR 1954 Bom. 419. The relevant clause under s. 33A(2) of the Indian Income-tax Act has also been similarly construed by the Madras High Court in O.A.O.A.M. *Muthia Chettiar v. The Commissioner of Income-tax, Madras*

> [I.L.R. 1951 Mad. 815.]. "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time", observed Rajamannar, C.J., "limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have the knowledge of the order". In other words the Madras High Court has taken the view that the omission to use the words "from the date of communication" in s. 33A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right."

It is thus clear that either party should have actual knowledge or constructive notice i.e., should have known about the said order.

17. In the instant case it is apparent that the Housing Society had preferred objections and was aware of the land acquisition process and determination of compensation and has filed objections which stood rejected on 4.9.1982. Thus, the constructive knowledge of the award is fairly attributable to it when it was so passed. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstension from inquiry or search which he ought to

have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. The concept of constructive notice has been upheld by this Court in *Harish Chandra* (supra).

18. It is also apparent that the Society had actively participated in the other pending cases with respect to determination of compensation in which award had been passed on 2.1.1989. Thus the reference sought on the strength of the notice under section 12(2) issued and received on 31.12.1988 would not provide limitation to the Society for seeking reference with respect to the four cases in which the award was passed on 30.11.1982 as notice to it was wholly unnecessary in view of rejection of its objection on the ground that it was not having right, title or interest in the land. Thus it could not be said to be 'person interested' in view of the order dated 4.9.1982. The notice was issued for reasons best known to the Special Officer. It is surprising how and for what reasons notice was issued after six years. We need not go into this aspect any further as we are of the opinion that in the facts and circumstances, the Society had a constructive notice of the award dated 30.11.1982. Thus, in view of the conjoint reading of sections 12(2) and 18(2) of the Rajasthan Land Acquisition

Act, it was not open to the LAO to refer the case to the civil court on the basis of the time barred application.

19. Coming to the question whether in view of section 42 of the Rajasthan Tenancy Act, the transaction entered into by the Society with the original Khatedars are void and whether on that basis, it had a right to maintain the reference and to claim compensation? The Society is said to have entered into agreements to sell on 17.2.1974, 21.2.1974 and 21.2.1976. These agreements have not been placed on record by the Society. It was incumbent upon the Society to file these agreements. Be that as it may. The Society has filed certain affidavits of Khatedars along with counter affidavits filed by it. In the case of Ram Pyari and others, the affidavits of various Khatedars have been filed by the Societey in which their caste has been mentioned as 'Bairwa'. The caste of the original Khatedars has never been disputed. 'Bairwa' caste is a Scheduled Caste. Before this Court also in the case of Ram Pyari in the SLP preferred, averments have been made to the effect that the original Khatedars belong to Scheduled Caste and the sale in favour of a person not belonging to Scheduled Caste is void as per the mandate of section 42 of the Rajasthan Tenancy Act. In the counter affidavit filed on behalf of the Society, the factum that Khatedars are 'Bairwa' and belongs to Scheduled Caste, has not been

denied. Before the Reference Court also, the stand of the State Government was that as the Khatedars belong to Scheduled Caste, the transaction was prohibited by section 42 of the Rajasthan Tenancy Act. On behalf of the Society, it was submitted in counter affidavit that as it is a Society, the rigor of provisions of section 42 is not attracted and it had relied upon the circular dated 1.9.1984 issued by the Government of Rajasthan for regularisation of the land sold in violation of section 42 of the Rajasthan Tenancy Act. The Society has failed to deny clear and categorical averments, non-denial makes the aforesaid facts undisputed one. There is not even an evasive denial that Khatedars do not belong to Scheduled Caste. Even in the additional affidavit filed on behalf of the Society in the wake of the rejoinder filed by the petitioner in reply to the counter affidavit of respondent No.2, the caste of the original Khatedars has not been disputed. Thus, we are of the considered opinion that the original Khatedars are 'Bairwa' by caste which is a Scheduled Caste and they are entitled to the protection of the provisions contained in section 42 of the Rajasthan Tenancy Act.

20. The provisions of section 42 of the Rajasthan Tenancy Act declare the transaction entered into by a Scheduled Caste with any person other than a person of a Scheduled Caste or by a Scheduled

Tribe with any other tribe to be void. Section 42 of the Rajasthan Tenancy Act is extracted hereunder :

> "Section 42 - General restrictions on sale, gift & bequest
>
> [1][The sale, gift or bequest by a Khatedar tenants of his interest in the whole or part of his holding shall be void, if
>
> [2][***]
>
> (b) such sale, gift or bequest is by a number of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who in not a member of the Scheduled Tribe.
>
> [3][***]
>
> "[(bb) such sale, gift or bequest, notwithstanding anything contained in clause (b), is by a member of Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia tribe."][4]

21. The so-called agreements dated 15.2.1974, 17.2.1974, 21.2.1974 and 21.2.1976 which were purportedly entered into by the Society with the Khatedars were thus clearly void as per the mandate of section 42 of the Rajasthan Tenancy Act. The notification in the instant case under section 4 was issued on 12.1.1982. The plea of part-performance under section 53A of Transfer of Property Act was also not available to the Society as transaction is void.

22. The equally futile is the submission that since the Society is a juristic person, sale cannot be said to be in contravention of section 42 of the Rajasthan Tenancy Act. 'Sale' is permitted by a person of Scheduled Caste to another person of Scheduled Caste. The Society cannot be said to be a person of 'Scheduled Caste'. The Society cannot be said to be a person included in the notification issued under Article 341 of the Constitution of India. Article 341 of the Constitution envisages notification to be issued for inclusion of Scheduled Caste in relation to a State or Union Territory. The expression 'person' in section 42(b) of the Rajasthan Tenancy Act is to a natural person and not a juristic person and the mere fact that some of the persons of the Society belong to Scheduled Caste would not make the transaction with such a Housing Society valid one. This Court in *State of Rajasthan & Ors. v. Aanjaney Organic Herbal Pvt. Ltd*. [(2012) 10 SCC 283] has considered the question of provisions of section 42 of the Rajasthan Tenancy Act and held that bar is attracted to a juristic person :

> **"**12. The expressions "Scheduled Castes" and "Scheduled Tribes", we find in Section 42(*b*) of the Act have to be read along with the constitutional provisions and, if so read, the expression "who is not a member of the Scheduled Caste or Scheduled Tribe" would mean a person other than those who have been included in the public notification as per Articles 341 and 342 of the Constitution. The expression "person" used in

> Section 42(*b*) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the Company is accepted, it can purchase land from Scheduled Caste/Scheduled Tribe and then sell it to a non-Scheduled Caste and Scheduled Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly cannot be done indirectly overreaching the statutory restriction.
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> 13. We are, therefore, of the view that the reasoning of the High Court that the respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which does not have a caste, is not hit by Section 42 of the Act, is untenable and gives a wrong interpretation to the abovementioned provision."

In view of the aforesaid dictum it is crystal clear that the sale to the Society which is a juristic person is *ab initio* void and not recognisable in the eye of law.

23. This Court in *Manchegowda & Ors. v. State of Karnataka & Ors*. [(1984) 3 SCC 301] has considered the validity of sections 3, 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 which prohibited transfer of granted lands and provided for resumption thereof, it was held that even the prohibited transaction effected prior to commencement of the Act can be nullified and sections 4 and 5 are not violative of Article 19(1)(f) as it stood prior to its omission in 1978. Neither the provision is violative of Articles 31 and 31A of the

Constitution of India and a transferee shall have no property right and recovery of such property would not attract Article 31 or 31A. This Court also held that the provisions have reasonable nexus with the object sought to be achieved. The Scheduled Castes and Scheduled Tribes form a distinctive class. Exclusion of other communities from the provision is not discriminatory. The right of the Legislature to declare such transactions to be void has been upheld by this Court in following manner :

> "12. In pursuance of this policy, the Legislature is undoubtedly competent to pass an enactment providing that transfers of such granted lands will be void and not merely voidable for properly safeguarding and protecting the interests of the Scheduled Castes and Scheduled Tribes for whose benefit only these lands had been granted. Even in the absence of any such statutory provisions, the transfer of granted lands in contravention of the terms of the grant or in breach of any law, rule or regulation covering such grant will clearly be voidable and the resumption of such granted lands after avoiding the voidable transfers in accordance with law will be permitted. Avoidance of such voidable transfers and resumption of the granted lands through process of law is hound to take time. Any negligence and delay on the part of the authorities entitled to take action to avoid such transfers through appropriate legal process for resumption of such grant may be further impediments in the matter of avoiding such transfers and resumption of possession of the granted lands. Prolonged legal proceedings will undoubtedly be prejudicial to the interests of the members of the Scheduled Caste and Scheduled Tribe

> for whose benefit the granted lands are intended to be resumed. As transfers of granted lands in contravention of the terms of the grant or any law, regulation or rule governing such grants can be legally avoided and possession of such lands can be recovered through process of law, it must be held that the Legislature for the purpose of avoiding delay and harassment of protracted litigation and in furthering its object of speedy restoration of these granted lands to the members of the weaker communities is perfectly competent to make suitable provision for resumption of such granted lands by stipulating in the enactment that transfers of such lands in contravention of the terms of the grant or any regulation, rule or law regulating such grant will be void and in providing a suitable procedure consistent with the principles of natural justice for achieving this purpose without recourse to prolonged litigation in Court in the larger interests of benefiting the members of the Scheduled Castes and Scheduled Tribes."

24. Without payment of compensation, land can be resumed has also been held by this Court and even in a case when grant was for a certain period, the land could be resumed. The vires of the provisions contained in sections 4 and 5 resuming the land without compensation has been upheld. In *Manchegowda* (supra), this Court has laid down thus :

> "19. We have earlier noticed that the title which is acquired by a transferee in the granted lands, transferred in contravention of the prohibition against the transfer of the granted lands, is a voidable title

which in law is liable to be defeated through appropriate action and possession of such granted lands transferred in breach of the condition of prohibition could be recovered by the grantor. The right or property which a transferee acquires in the granted lands, is a defeasible right and the transferee renders himself liable to lose his right or property at the instance of the grantor. We have further observed that by the enactment of this Act and particularly Section 4 and Section 5 thereof the Legislature is seeking to defeat the defeasible right of the transferee in such lands without the process of a prolonged legal action with a view to speedy resumption of such granted lands for distribution thereof the original grantee or their legal representatives and in their absence to other members of the Scheduled Castes and Scheduled Tribes Communities. In our opinion, this kind of defeasible right of the transferee in the granted lands cannot be considered to be property as contemplated in Article 31 and 31A. The nature of the right of the transferee in the granted land on transfer of such lands in breach of the condition of prohibition relating to such transfer, the object of such grant and the terms thereof, also the law governing such grants and the object and the scheme of the present Act enacted for the benefit of weaker sections of our community, clearly go to indicate that there is in this case no deprivation of such right or property as may attract the provisions of Articles 31 and 31A of the Constitution.

20. In the case of *Amar Singh v. Custodian, Evacuee Property, Punjab* (1957) S.C.R. 801, this Court while considering the provisions of Administration of Evacuee Property Act 1930 (XXXI of 1950) and the nature of right in the property allotted to a quasi-permanent allottee held that the interests of a quasi-permanent allottee did not constitute property within the meaning of Articles 19(1)

(f), 31(1) and 31(2) of the Constitution. This Court observed at p. 834:

> "Learned Counsel for the Petitioners has strenuously urged that under the quasi-permanent allotment scheme the allottee is entitled to a right to possession within the limits of the relevant notification and that such right to possession is itself 'property'. That may be so in a sense. But it does not affect the question whether it is property as to attract the protection of fundamental rights under the Constitution. If the totality of the bundle of rights of the quasi-permanent allottee in the evacuee land constituting an interest in such land, is not property entitled to protection of fundamental rights, mere possession of the land by virtue of such interest is not on any higher footing."

25. In the instant case, the transaction is *ab initio* void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When

such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.

26. In *State of Madhya Pradesh v. Babu Lal & Ors*. [1977 (2) SCC 435] the provisions contained in section 165(6) of M.P. Land Revenue Code, 1959 came up for consideration before this Court. The High Court directed the State to file a suit for declaring the decree null and void. The decision was set aside. It was held that the case was a glaring instance of violation of law as such the High Court erred in not issuing a writ. The decision of the High Court was set aside. The transfer which was in violation of proviso to section 165(6) transferring the right of Bhuswami belonging to a tribe, was set aside.

27. This Court in *Lincal Gamango & Ors. v. Dayanidhi Jena & Ors*. [AIR 2004 SC 3457] while considering the provisions of Orissa

Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 which prohibited alienation of rural property by a tribal to a non-tribal, declared such transaction to be null and void. This Court while relying upon the decision in *Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors*. [AIR 2004 SC 3782] has laid down that no right can be acquired by adverse possession on such inalienable property. Adverse possession operates on an alienable right. It was held that non-tribal would not acquire a right or title on the basis of adverse possession. Relevant discussion is extracted hereunder :

> "7. We find both these reasons given by the High Court are not sustainable. Coming first to the second point, we find that there is a decision of this Court direct on the point. It is reported in AIR 2004 SC 3782, *Amrendra Pratap Singh* v. *Tej Bahadur Prajapati and Ors.* The matter related to transfer of land falling in tribal area belonging to the Scheduled Tribes. The matter was governed by Regulations 2, 3 and 7-D of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956 viz. the same Regulations which govern this case also. The question involved was also regarding acquisition of right by adverse possession. Considering the matter in detail, in the light of the provisions of the aforesaid Regulation, this Court found that one of the questions which falls for consideration was "whether right by adverse possession can be acquired by a non-aboriginal on the property belonging to a member of aboriginal tribe"?

(para 14 of the judgment). In context with the above question posed, this Court observed in para 23 of the judgment as follows :

> ".....The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognized by doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant....."

"This Court then noticed two decisions one that of the Privy Council reported in AIR 1923 P.C. 205 *Madhavrao Woman Saundalgekar and Ors.* v. *Raghunath Venkatesh Deshpande and Ors., and Karimullakhan s/o. Mohd Ishaqkhan and Anr. v. Bhanupratapsingh,* holding that title by adverse possession on inam lands, Watan lands and Debutter was incapable of acquisition since alienation of such land was prohibited in the interest of the State. We further find that the decision in the case of *Madhiya Nayak* (supra) relied upon by the High Court was referred to before this Court and it is observed that the question as to whether a non-tribal could at all commence prescribing acquisition of title by adverse possession over the land belonging to a tribal which is situated in a tribal area, was neither raised nor that point had arisen in the case of *Madhiya Nayak*. It is further observed that the provisions of Section 7-D of the Regulations are to be read in the light of the fact that the acquisition of right and title by adverse possession is claimed by a tribal over the immovable property of another tribal but not where the question is in regard to a non-tribal claiming title by adverse possession over the land belonging to a tribal situate in a tribal area. It is, therefore, clear in view of the decision in the case of *Amrendra Pratap Singh* (supra) that a non-tribal would not acquire right and title on the basis of adverse possession. Therefore, the second

> ground for setting aside the order passed by the appellate court falls through. Therefore, the other factual aspect about the possession of the respondents over the disputed land and entries in their favour may also not be of much consequence, in any case, this aspect of the matter has to be seen and considered afresh in the light of other facts and circumstances of the case."

28. This Court in *Amrendra Pratap* (supra) has laid down that the expression 'transfer' would include any dealing with the property when the word 'deal with' has not been defined in the statute. Dictionary meaning as the safe guide can be extended to achieve the intended object of the Act. The transaction or the dealing with alienable property to transfer title of an aboriginal tribe and vesting the same in non-tribal was construed as transfer of immovable property. Extending the meaning of the expression 'transfer of immovable property' would include dealing with such property as would have the effect of causing or resulting in transfer of interest in immovable property. When the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. When the intendment of the Act is that the property should remain so confined in

its operation in relation to tribals that the immovable property to one tribal may come but the title in immovable property is not to come to vest in a non-tribal the intendment is to be taken care by the protective arm of the law and be saved from falling prey to unscrupulous devices, and this Court concluded any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of 'transfer of immovable property'.

29. It was further submitted on behalf of the Society that though a purchaser after issuance of notification under section 4(1) of the Land Acquisition Act cannot question the legality of the notification, but, can lay a claim for payment of compensation. Reliance has been placed on *U.P.Jal Nigam, Lucknow through its Chairman & Anr. v. Kalra Properties (P) Ltd., Lucknow & Ors*. [1996 (3) SCC 124]. When we consider the aforesaid dictum, this Court has laid down that after notification under section 4(1) was published, sale of land is void against the State and M/s. Kalra Properties acquired no right, title or interest in the land and it is a settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under section 6. M/s. Kalra

Properties, though acquired no title to the land, at best would be entitled to step into the shoes of the owner and claim compensation. However, in the instant case, it was a transaction which was not only void against the State but also void inter se vendor and vendee.

30. The right to claim compensation cannot be enforced by the Society on the basis of such transaction as that would defeat the very object of the Act and the constitutional provisions including such castes and tribes under the protective umbrella of the Schedules to Articles 341 and 342, they cannot be deprived of right to obtain the compensation of the land legally held by them and they cannot be made to fall prey to unscrupulous devices of land grabbers. The right to claim compensation is based on right, title or interest in the land, cannot be transferred by virtue of the mandate of section 42 to a juristic person like the Society. It is the duty of the State to ensure that the benefit reaches to such persons directly and not usurped by intermeddlers as what is intended by the protection of the right to hold property of SC/ST, cannot be taken away by disbursing the compensation to Society. Persons of SC/ST, as the case may be, are the only rightful claimants to disbursal of compensation and such right cannot be tinkered with by void transaction as the purpose of compensation is the re-settlement of Scheduled Castes or tribes.

31. The other decision relied upon by the Society is *V.Chandrasekaran & Anr. v. Administrative Officer & Ors*. [2012 (12) SCC 133] wherein this Court laid down thus :

> "15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again.
>
> In *Pandit Leela Ram v. Union of India* AIR 1975 SC 2112, this Court held that, any one who deals with the land subsequent to a Section 4 notification being issued, does so, at his own peril. In *Sneh Prabha v. State of Uttar Pradesh* AIR 1996 SC 540, this Court held that a Section 4 notification gives a notice to the public at large that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be "an impediment to any one to encumber the land acquired thereunder." The alienation thereafter does not bind the State or the beneficiary under the acquisition. The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in *Union of India v. Shri Shiv Kumar Bhargava and Ors.*: JT (1995) 6 SC 274.
>
> 16. Similarly, in *U.P. Jal Nigam v. Kalra Properties Pvt. Ltd.* AIR 1996 SC 1170, this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person-interested in compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. (See also: *Star Wire (India) Ltd. v. State of Haryana and Ors.*
>
> 17. In *Ajay Kishan Singhal v. Union of India* AIR 1996 SC 2677; *Mahavir and Anr. v. Rural Institute, Amravati and Anr.* (1995) 5 SCC 335; *Gian Chand v. Gopala and Ors.* (1995) 2 SCC 528; and *Meera Sahni*

> *v. Lieutenant Governor of Delhi and Ors.* (2008) 9 SCC 177, this Court categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also: *Tika Ram v. State of U.P.* (2009) 10 SCC 689).
>
> 18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title."

32. Reliance has been placed on *Dossibai Nanabhoy Jeejeebhoy v. P.M.Bharucha* [1958 (60) Bom.LR 1208] so as to contend that the 'person interested' in the land under section 9 of the Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land and the interest contemplated under section 9 is not restricted to legal or proprietary estate or interest in the land but such interest as will sustain a claim to apportionment, is the owner of the land. In our opinion, the decision is of no avail. The instant transaction being void as per section 42 of the Rajasthan Tenancy Act and the property was inalienable to non-SC. Obviously,

the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society.

33. In *Himalayan Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (dead) by LRs*. [1980 (3) SCC 223), it was laid down that 'person interested' within the meaning of section 18 of the Land Acquisition Act would include a body, local authority, or a company for whose benefit the land is acquired . The company for whose benefit the land had been acquired was liable to pay compensation, was held to be a 'person interested'. The decision is of no help to the cause espoused by the Society and the reliance on same is misplaced.

34. It was vehemently urged on behalf of the Society that having failed to take recourse to the provisions of section 175 of the Rajasthan Tenancy Act, the Khatedars have lost their remedy for ignoring the title acquired by the Society which has been perfected by the compromise decrees passed by the civil court. Section 175 of the Rajasthan Tenancy Act is extracted below :

> "Section 175 - Ejectment for illegal transfer or sub-letting
>
> [1][(1)] If a tenant transfers or sub-lets, or executes an instrument purporting to transfer or sublet, the whole or any part of his holding otherwise than in accordance with the provisions of this Act and the transferee or sub-lessee or the purported such part in pursuance of such transfer or sub lease, both the tenant and any person who may have thus obtained or may thus be in

possession of the holding or any part of the holding, shall on the application of the land holder, be liable to ejectment from the area so transferred or sub-let or purported to be transferred or sub-let.

(2) To every application, under this Section the transferee or the sub-tenant or the purported transferee or the sub-tenant, as the case may be, shall be joined as a party.

(3) On an application being made under this section, the court shall issue a notice to the opposite party to appear within such time as may be specified therein and show cause why he should not be ejected from the area so transferred or sublet or purported to be transferred or sub-let.]

(4) If appearance is made within the time specified in the notice and the liability to ejectment is contested, the court shall, on payment of the proper court fees, treat the application to be a suit and proceed with the case as a suit:

Provided that in the event of the application having been made by a tehsildar in respect of land held directly from the State Government no court-fee shall be payable.

[1][4(a) Notwithstanding anything to the contrary contained in sub-section (4), if the application is in respect of contravention of the provision contained in section 42 or the proviso to sub-section (2) of section 43 or section 49A, the court shall, after giving a reasonable opportunity to the parties of being heard, conclude the enquiry in a summary manner and pass order, as far as may be practicable within a period of three months from the date of the appearance of the non-applicants before it, directing ejectment of the tenant and his transferee or sub-lessee from the area transferred or sub-let in contravention of the said provisions.]

(5) If no such appearance is made or if appearance is made but the liability to ejectment is not contested the

court shall pass order on the application as it may deem proper."

35. There is no doubt about it that section 175 provides for ejectment for illegal transfer or subletting in contravention of the provisions of the said Act. However, there is no question of ejectment proceedings being filed in the instant case under the aforesaid provision that would have been exercised in futility as admittedly the possession has already been taken by the State on 22.5.1982. Apart from that, voidity of the transaction can be looked into in these proceedings also when right to claim compensation is asserted by the Society and from factual conspectus of the instant case it is apparent that Khatedars belong to Scheduled Castes and they cannot be deprived of their right to claim compensation, intendment of section 42 can be effectuated in these proceedings.

36. On behalf of the Society, reliance has been placed on a decision of this Court In *Nathu Ram (dead) by LRs. & Ors. v. State of Rajasthan & Ors*. [2004 (13) SCC 585] in which this Court has considered the provisions of the Rajasthan Tenancy Act as it stood prior to its amendment made in the Act. The limitation prescribed was 12 years from the date of transfer. After the amendment, it is thirty years. It was also laid down that though the transfer was by itself void

but the period of limitation would be applicable. In the instant case, there is no question of initiating the process under section 175 of the Rajasthan Tenancy Act as much before passing of the decrees by the civil court in the year 1986, possession had been taken by the State in May, 1982 much before limitation lapsed. Thus, institution of proceedings for ejectment was not warranted.

37. In *Ram Karan (dead) through LR & Ors. v. State of Rajasthan & Ors*. [2014 (8) SCC 282], this Court has laid down that transfer of holding by a member of Scheduled Caste to a member not belonging to Scheduled Caste by virtue of section 42 of the Rajasthan Tenancy Act is forbidden and unenforceable. Such a transaction is unlawful even under section 23 of the Contract Act and an agreement or such transfer would be void under section 2(g) of the Contract Act. This Court also considered limitation for filing ejectment under section 175. The proceeding filed after 31 years was held to be barred by limitation. The decision is distinguishable for aforesaid reasons.

38. It was next contended on behalf of the Society that the Society has acquired a right and such right to hold property cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold the property is claimed, the due procedure must be complied with. Reliance has been placed on *Lachhman Dass v.*

Jagat Ram & Ors. [2007 (10) SCC 448], in which this Court has laid down thus:

> "16. Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been taken away without giving him an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefore must be complied with. The conditions precedent therefore must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The Court, while granting a relief in favour of a pre-emptor, must bear it in mind about the character of the right, vis-a-vis, the constitutional and human right of the owner thereof."

39. Reliance has also been placed in *Tukaram Kana Joshi & Ors. through Power-of-Attorney holder* v. *Maharashtra Industrial Development Corpn. & Ors*. [2013 (1) SCC 353] in which it has been laid down thus :

> "8. The Appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or acquiring the property of a

citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat and Anr.* AIR 1995 SC 142, it has been held as follows: -

> *"In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.*""

40. In *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan & Ors*. [2013 (11) SCC 1] and *Mathew Varghese v. M.Amritha Kumar & Ors*. [2014 (5) SCC 610], observations as to the similar effect had been made.

41. When we consider the aforesaid submission, it is apparent that the right to hold property cannot be taken away except in accordance with the provisions of the statute but in the instant case, we are of the considered view that the right to hold property albeit had not been acquired by the Society, transction was *ab initio* void and a nullity. On the other hand, the land has been acquired by the State Government

and even the right to claim compensation was denied to the Society in the award passed on 30.11.1982 by rejecting their objections. The recourse to section 175 was not required as already held by us. The question of entitlement of the Society is involved in the cases in view of award dated 30.11.1982 rejecting right of the Society to claim compensation. Thus, it cannot be said that there is violation of the principles laid down by this Court in aforesaid cases with respect to right to hold property which cannot be taken away except as provided in the provisions of the statute.

42. Coming to the question of direction to consider allotment of land and quantum of compensation determined in the instant case, the Reference Court had determined compensation at Rs.260 per sq.yd. whereas the High Court has determined it at Rs.100 per sq.yd. and the Division Bench has in addition ventured into directing the State Government to consider the prayer for allotment of 25% of the developed land to the Society in the light of Circular dated 27.10.2005 issued by the State Government and its decision in *Smt. Ratni Devi v. State of Rajasthan & Ors.* – DB Special Appeal No.697/1995 decided on 12.4.2007.

First, we take up the question as to the legality of the direction issued by the High Court with respect to allotment of 25% of

developed land in terms of the order passed in the case of *Smt. Ratni Devi* (supra).

43. When we consider the Circular dated 27.10.2005, the State Government considered the prevalent scheme in which Khatedars could 'surrender' their land without compensation and would obtain 25% of the developed residential area in lieu thereof. Paras 1 and 4 of the Circular are relevant and are quoted below :

> "1. In the matters of land acquisition on making a surrender of the land by the Khatedar, he will be entitled for maximum 20% residential and 5% commercial land to the said person from whom the land has been acquired. But for the Khatedar no other person shall be allotted the land, even if nominated by him."
>
> x x x x x
>
> "4. These provisions shall only be applicable, in case of future acquisitions. These provisions shall be specifically be applicable, wherein the Land Acquisition Officer have already declared the award and the compensation amount has been paid/deposited in the Court or 15% land have been allowed to be allotted in the award."

44. It is apparent from para 1 that the Circular is applicable in the matter of land acquisition when the Khatedars surrendered their lands.

45. Para 4 of circular makes it clear that the provisions shall apply in case of future acquisitions and the provisions shall not apply where the Land Acquisition Officers have already passed the award/s.

46. In the instant case, even the prevalent instructions which have been modified did not confer any right on the Society or the Khatedars to claim the developed land. It was not a case of surrender of land; thus there was no question of the provisions of the circular being applied as the circular was in the form of guidelines for future acquisitions where Khatedars surrendered their lands and award has not been passed. For the aforesaid reasons, the aforesaid circular could not have been pressed into service by the Society and that too at the appellate stage before the Division Bench. The Division Bench has gravely erred in law while issuing the aforesaid directions which were wholly unwarranted and uncalled for.

47. When we consider the decision in *Smt. Ratni Devi* (supra), it was based upon a concession made by the counsel who appeared on behalf of the Jaipur Development Authority. The applicability of the Circular was not considered by the Division Bench. The matter was decided on the basis of concession and the agreement between the parties. It was submitted before us on behalf of the Rajasthan Housing Board that a review petition had been preferred for recalling the

aforesaid concession made unauthorisedly before the court. Be that as it may. In our opinion, the Circular itself is not applicable and it was clearly a misadventure on the part of the Division Bench in the instant case to rely upon the aforesaid decision in *Smt. Ratni Devi* (supra). No negative equality could be claimed.

48. Earlier Circular dated 13.12.2001 had been issued by the Deputy Secretary to the Government of Rajasthan with respect to allotment of 15% of the developed land. It has not been issued in the name of the Governor. This Court has considered the enforceability of such circulars in *Jaipur Development Authority & Ors. v. Vijay Kumar Data & Anr*. [2011 (12) SCC 94]. This Court has referred to the decision in *Jaipur Development Authority v. Radhey Shyam* [1994 (4) SCC 370] in which the decision of the LAO to allot the plots in addition to compensation was set aside and it was held that even in execution it was open to raise the question of validity or nullity of the decree. Following is the relevant discussion in *Vijay Kumar Data* (supra) :

> "12. The question whether the Land Acquisition Officer could issue direction for allotment of land to the awardees, sub-awardees and their nominees/sub-nominees was considered by this Court in *Radhey Shyam case [1994 (4) SCC 370]*. After noticing the provisions of Sections 31(3) and (4) of the 1953 Act on which reliance was placed by the Senior Counsel appearing for the respondents, this Court

held that the Land Acquisition Officer did not have the jurisdiction, power or authority to direct allotment of land to the claimants. This is clearly borne out from the following extracts of para 7 of the judgment :

> "*7. A reading of sub-section (4) of Section 31, in our considered view, indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation, it does not empower him to give any land in lieu of compensation. Sub-section (3) expressly gives power 'only to allot any other land in exchange'. In other words the land under acquisition is not liable to be allotted in lieu of compensation except under Section 31(3), that too only to a person having limited interest*. … The problem could be looked at from a different angle. Under Section 4(1), the appropriate Government notifies a particular land needed for public purpose. On publication of the declaration under Section 6, the extent of the land with specified demarcation gets crystallised as the land needed for a public purpose. If the enquiry under Section 5-A was dispensed with, exercising the power under Section 17(1), the Collector on issuance of notice under Sections 17, 9 and 10 is entitled to take possession of the acquired land for use of public purpose. Even otherwise on making the award and offering to pay compensation he is empowered under Section 16 to take possession of the land. Such land vests in the Government free from all encumbrances. The only power for the Government under Section 48 is to denotify the lands before possession is taken. *Thus, in the scheme of the Act, the Land Acquisition Officer has no power to create an encumbrance or right in the erstwhile owner to claim possession of a part of the acquired land in lieu of compensation. Such power of the Land Acquisition Officer if is exercised would be self-defeating and subversive to public purpose*."

13. The Court in *Radhey Shyam case (supra)* also considered the question whether the appellant could challenge the award in the execution proceedings and answered the same in the affirmative. The reasons for this conclusion are contained in para 8 of the judgment, the relevant portion of which is extracted below :

> "*8*. … We have already said that what is executable is only an award under Section 26(2), namely, the amount awarded or the claims of the interests determined of the respective persons in the acquired lands. Therefore, the decree cannot incorporate any matter other than the matters determined under Section 11 or those referred to and determined under Section 18 and no other. *Since we have already held that the Land Acquisition Officer has no power or jurisdiction to allot land in lieu of compensation, the decree even, if any, under Section 18 to the extent of any recognition of the directions in the award for the allotment of the land given under Section 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly we hold that the execution proceedings directing delivery of possession of the land as contained in the award is, invalid, void and inexecutable*. (emphasis supplied)"

49. In *Vijay Kumar Data* (supra), this Court referred to the decision in *Jaipur Development Authority v. Daulat Mal Jain* [1997 (1) SCC 35] in following terms :

> **"**14. The legality and correctness of the order dated 24-9-1993 passed by the Division Bench of the Rajasthan High Court in DBCSAW No. 680 of 1992 was considered in *Jaipur Development Authority* v. *Daulat Mal Jain* (supra).

This Court noted that the Lokayukta of Rajasthan had severely criticised the actions of the then Minister of Urban Development and Housing Department, Commissioner, Jaipur Development Authority and Zonal Officer of the Lal Kothi Scheme, referred to the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 and held :

> "*22. Therefore, there was no policy laid by the Government and it cannot be laid contrary to the aforestated rules and no such power was given to individual Minister by executive action, as the land was already notified conclusively under Section 6(1) for public purpose, namely, earmarked scheme. Since the persons whose land was acquired were not owners having limited interest therein, qua the owners having lost right, title and interest therein, the sub-awardees or nominees, after the acquisition under Section 4(1), would acquire no title to the land nor such ultra vires acts of the Minister would bind the Government. The actions, therefore, taken by the Minister-cum-Chairman of the appellate authority and bureaucrats for obvious reasons would not clothe the respondents with any vestige of right to allotment. Acceptance of the contentions of the respondents would be fraught with dangerous consequences. It would also bear poisonous seeds to sabotage the schemes defeating the declared public purpose*. The record discloses that such allotment in many a case was in violation of the Urban Land Ceiling Act which prohibits holding the land in excess of the prescribed ceiling limit of the urban land. In some instances, a person whose land of 500 sq yd was acquired, was compensated with allotment of 2000 sq yd and above, which is against the public policy defeating even the Urban Land Ceiling Act. Would any responsible Minister or a bureaucrat, with a sense of public duty and responsibility, transfer such land to sabotage the planned development of the scheme? Answer has obviously to be in the negative. The necessary inference is that the policy does not bear any insignia of a public purpose, but appears to be a

> device to get illegal gratification or distribution of public property defeating the public purpose by misuse of public office."

15. The Court further held in *Daulat Mal Jain case (supra)* that the decision taken by the Minister and the actions of the bureaucrats were meant to benefit only those who had illegally secured transfer of land after the publication of the notification issued under Section 4 and that the so-called policy is a policy to feed corruption and to deflect the public purpose. This is evinced from para 23 of the judgment, which is extracted below:

> "*23*. There is no iota of evidence placed on record that under the so-called policy, anyone from general public could equally apply for allotment of the plots or was eligible to apply for such allotment nor any such general policy was brought to our notice. The allotment has benefited only a specified class, namely, the awardees, sub-awardees or nominees and none else. *The decision by the Minister or the actions of the bureaucrats was limited to the above class which included the respondents. Legitimacy was given to the void acts of Chottey Lal, the erstwhile owner as well as the LAO. Directions were given by the Minister and the bureaucrats acted to allot the land under the very void acts. They are ultra vires the power. These acts are in utter disregard of the statute and the rules. Therefore, by no stretch of imagination it can be said to have the stamp of public policy; rather it is a policy to feed corruption and to deflect the public purpose and to confer benefits on a specified category, as described above*."

50. The plea of discrimination was adversely commented upon by this Court in *Vijay Kumar Data* (supra) referring to the decision in *Daulat Mal Jain* (supra) thus :

"16. The plea of discrimination which found favour with the High Court was also negatived by this Court in *Daulat Mal Jain case* (supra) by making the following observations:

> "*24*. The question then is whether the action of not delivering possession of the land to the respondents on a par with other persons who had possession is an ultra vires act and violates Article 14 of the Constitution? We had directed the appellants to file an affidavit explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that behalf by Shri Pawan Arora, Deputy Commissioner, that allotments in respect of 47 persons were cancelled and possession was not given. He listed various cases pending in this Court and the High Court and executing court in respect of other cases. It is clear from the record that as and when any person had gone to the court to get the orders of the LAO enforced, the appellant Authority resisted such actions taking consistent stand and usually adverse orders have been subjected to decision in various proceedings. Therefore, no blame of inaction or favouritism to others can be laid at the door of the present set-up of the appellant Authority. When the Minister was the Chairman and had made illegal allotments following which possession was delivered, no action to unsettle any such illegal allotment could have been taken then. That apart, they were awaiting the outcome of pending cases. It would thus be clear that the present set-up of the bureaucrats has set new standards to suspend the claims and is trying to legalise the ultra vires actions of Minister and predecessor bureaucrats through the process of law so much so that illegal and ultra vires acts are not allowed to be legitimised nor are to be perpetuated by aid of Article 14. That apart, Article 14 has no application or justification to legitimise an illegal

> and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no."

51. In *Vijay Kumar* (supra), this Court after quoting circular of the State Government dated 6.12.2001 issued by the Deputy Secretary of the Administration has observed thus :

> "49. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1)). Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in the rules to be made by the President or the Governor, as the case may be (Articles 77(2) and 166(2)).
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> 52. Article 166 was interpreted in *State of Bihar* v. *Kripalu Shankar (1987 (3) SCC 34]* and it was observed:

"*14*. Now, the functioning of Government in a State is governed by Article 166 of the Constitution, which lays down that there shall be a Council of Ministers with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions except where he is required to exercise his functions under the Constitution, in his discretion. Article 166 provides for the conduct of government business. It is useful to quote this article:

'**166.** ***Conduct of business of the Government of a State***.—(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.'

15. Article 166(1) requires that all executive action of the State Government shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this article nor even noting by a Minister. Every executive decision need not be as

> laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Government. A study of this article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2)."

53. It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of the Letter dated 6-12-2001 shows that it was neither expressed in the name of the Governor nor was it authenticated in the manner prescribed by the rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution.

54. We are further of the view that even if the instructions contained in the Letter dated 6-12-2001 could be treated as policy decision of the Government, the High Court should have quashed the same because the said policy was clearly contrary to the law declared by this Court in *Radhey Shyam case (supra)* and *Daulat Mal Jain case (supra)* and was a crude attempt by the political functionaries concerned of the State to legalise what had already been declared illegal by this Court."

52. Thus, it is apparent that the circular in question cannot be pressed into service by the Society. Apart from inapplicability, it is also apparent that the very purpose of issuing such circulars is not to benefit the purchaser who has acquired the right after issuance of notification under section 4 of Rajasthan Land Acquisition Act, and in violation of mandate of section 42. Consequently, the High Court had no jurisdiction to direct allotment of land. Even Khatedars were not entitled to such direction/benefit as the circulars are not applicable in such cases.

53. We may refer to the decision in *Hari Ram & Anr. v. State of Haryana & Ors*. [2010 (3) SCC 621] relied upon on behalf of the Society in which this Court considered passing of different orders, in respect of persons similarly situated, relating to same acquisition proceedings. The action was held to be violative of Article 14 being discriminatory. There is no doubt about it that different standards cannot be applied for withdrawal from acquisition. The present is not such a case. The circular is not applicable. We cannot direct the State to act upon the circulars which are not applicable. Under the Code that all actions of the State are to be fair and legitimate, we cannot create negative equality and confer a benefit that too on the strength of a concessional statement which is not provided by circular. Concession

made by the counsel in *Ratni Devi*'s case (supra) cannot widen scope of circular.

54. We may also refer to other decisions relied upon in *Usha Stud and Agricultural Farms Pvt. Ltd. & Ors. v. State of Haryana & Ors*. [2013 (4) SCC 210] laying down that once a State Government has taken a conscious decision to release the land, there would be no justification whatsoever for the State for not according similar treatment to the appellants is also of no avail to the Society.

55. Coming to the quantum of compensation to be awarded in the instant case, it was submitted on behalf of the Society and Khatedars in respective appeals that the compensation determined by the High Court is on lower side. Adequate compensation has not been determined. It was submitted that oral evidence which was relied upon by the Reference Court ought to have been acted upon by the High Court. It was contended that the oral evidence cannot be ignored. By virtue of decisions in *State of Gujarat & Ors. v. Rama Rana & Ors*. [1997 (2) SCC 693], *Satyanarayana & Ors. v. Bhu Arjan Adhikari & Ors*. [2011 (15) SCC 133] and *Ramanlal Deochand Shah v. State of Maharashtra & Anr*. [2013 (14) SCC 50].

56. The price of the land per sq. yd. was determined by the Reference Court. The documentary evidence which has been referred

to by the Reference Court comprises of Ex. 1 agreement dated 26.8.1982 at the rate of Rs.135 per sq.yd., Ex. 3 agreement dated 7.1.1982 at the rate of Rs.165 per sq.yd., agreement dated 28.9.1981 at the rate of Rs.135 per sq.yd. for 244 sq.yd. and agreement dated 5.5.1979 at the rate of Rs.94 per sq.yd. Certain transactions of 1983 were also referred which have to be ignored being subsequent to the date of notification under section 4. However, referring to the oral statement of the witnesses in which value was stated to be much more, the Reference Court has arrived at the conclusion of Rs.260 per sq.yd. The Single Bench of the High Court considered and referred to both the oral and documentary evidence. Ex.1 agreement dated 26.8.1982 about the sale of plot No.55 situated in Krishna Vihar Gopalpura @ Rs.115/- per sq. yds., Ex.3 is agreement to sale of land of 200 sq. yds. Agreement dated 7.1.1982 at the rate of Rs.165/- per sq. yds. situated at Maharani Farm Duragapura. Ex.4-A agreement to sale of 244 sq. yds. dated 29.8.1981 @ Rs.135/- per sq.yds. situated at Brijalpur from Krishnapuri Housing Society, Ex.5 agreement dated 24.7.1982 of 18000 sq.yds. of land @ Rs.125/- per sq.yds. for a total amount of Rs.22,55,000/- entered between Meena Kumari Housing Society and trustee Devi Shanker Tiwari, Ex. 7 Agreement dated 16.9.1983 about the sale of land measuring 147 sq. yds. for Rs.22,100/- approx. @ Rs.150/- per sq. yds. and the land situated in gram panchayat

Bhagyawas, Ex.8 agreement dated 5.5.1979 of 34,000 sq.yds. @ Rs.90-94 per sq. yds.

57. It also considered oral evidence in detail and has not relied upon the same and has arrived at the average price to be Rs.135 per sq.yd. making certain deduction as large area has been acquired. In case area in question had been developed, certain area was bound to go in the development. Thus, deduction which has been made to arrive at the figure of Rs.100 per sq.yd. is proper. We find in the facts and circumstances of the case that the finding arrived at by the single Bench to be appropriate. No doubt about it. Oral evidence can also be taken into consideration but in the facts of this case, the best evidence is documentary evidence which has to prevail. In the face of the documentary evidence evincing the price of the land per sq.yd. the oral evidence which was based upon ipse dixit and without any sound basis, could not have been accepted by the Reference Court. Thus, the grave error which was committed had been rightly set at naught by the single Bench of the High Court, which determination of compensation has also not been interfered by a Division Bench.

58. Reliance has been placed upon *State of Gujarat & Ors. v. Rama Rana & Ors*. [1997 (2) SCC 693] with respect to acceptance of oral evidence in which case there was failure on the part of the

Agricultural Department to produce statistics as to the nature of the crops and the prices prevailing at that time. In that context, it was observed that oral evidence cannot be rejected due to such failure and the court has a duty to subject the oral evidence to great scrutiny and to evaluate the evidence objectively and dispassionately to reach a finding on compensation.

59. Reliance has also been placed on *Satyanarayana v. Bhu Arjan Adhikari & Ors*. [2011 (15) SCC 133] in which it has been laid down that an analysis of the evidence by the Reference Court has to be satisfactory. Reliance has also been placed on *Ramanlal Deochand Shah v. State of Maharashtra & Anr*. [2013 (14) SCC 50] laying down that it is for the claimant to prove that the amount awarded by the Collector needs an enhancement and for that purpose, oral and documentary evidence can be adduced and when there is non-consideration of material evidence, the case can be remanded to lead evidence. In this case, there is proper scrutiny and evaluation of oral and documentary evidence by the High Court. The decision of the High Court with respect to determination of compensation deserves to be upheld.

60. The High Court has rejected the application under Order 1 Rule 10 filed by the Khatedars. In the facts of this case, particularly when

the issue of violation of section 42 of Rajasthan Tenancy Act was raised by the State Government and reference was also as to the award passed in 1982 in favour of Khatedars in which the Society was denied the right to receive compensation. Obviously, Khatedars were required to be heard as the adjudication of their right was involved in the matter to decide to whom the compensation is payable, and whether the Society was entitled to claim compensation on the basis of void transaction. It was also submitted before us that the Khatedars have sought reference under section 30 against the Society, that question can be decided in those proceedings. However, the factual matrix and its determination of the question as to entitlement of Society is necessary in the instant case, as such we have decided it. More so, the plight of downtrodden class of the Scheduled Castes Khatedars cannot be prolonged and considering the provisions which have been enacted for their protection, and the constitutional mandate, we are inclined to exercise our power to set at rest the dispute between the parties and hold that only Khatedars, in case some of them have died, their legal representatives would be entitled to receive the compensation which has been determined in the instant case.

61. In order to protect the interest of the Scheduled Caste persons, we further direct that the Society or other intermeddler, or power of

attorney holder shall not be paid compensation on their behalf and the Collector/Land Acquisition Officer to ensure that the compensation is disbursed directly to the Khatedars or their legal representatives, as the case may be, and that they are not deprived of the same by any unscrupulous devices of land grabbers etc. Let the compensation be disbursed within a period of three months from today along with other permissible statutory benefits.

62. The direction issued by the High Court to grant 25% of the developed land is hereby set aside. The appeals preferred by the Rajasthan Housing Board and the Khatedars are allowed to the aforesaid extent and the remaining appeals are dismissed. Parties to bear their own costs as incurred.

.....CJI
(H. L. Dattu)

.....J.
(A.K. Sikri)

New Delhi;
May 1, 2015.

.....J.
(Arun Mishra)