

A THE RAJASTHAN STATE INDUSTRIAL DEVELOPMENT
AND INVESTMENT CORPORATION

v.

SUBHASH SINDHI COOPERATIVE HOUSING SOCIETY
JAIPUR & ORS.

B (Civil Appeal No. 7254 of 2003 etc.)

FEBRUARY 12, 2013

[DR. B.S. CHAUHAN AND V. GOPALA GOWDA, JJ.]

C *Land Acquisition - Release of Land from acquisition -*
Agreement for sale of land, after it was notified u/s.4 of Land
Acquisition Act - Challenge to the acquisition proceedings by
the vendor and vendee dismissed with liberty to ask for
release of the land on the ground of parity - Writ petition by
D *vendee for release of the land allowed - Held: High Court*
wrongly directed release of the land - The agreement to sell,
entered into subsequent to the Notification under Land
Acquisition Act, did not create any title in favour of the vendee
- Rajasthan Land Acquisition Act, 1953 - s.4.

E *Estoppel - There can be no estoppel against the law or*
public policy - A statutory body cannot be estopped from
denying that it had entered into a contract which was ultra
vires.

F *Circulars/Notice/Guidelines - Executive instructions*
which have no statutory force, cannot override law - Therefore,
any notice, circular, guidelines, etc. which run contrary to
statutory laws, cannot be enforced - In the instant case,
circulars issued by State Government, being inconsistent with
G *the policy and law regarding acquisition, cannot be taken note*
of - Issuance of such circulars amounts to committing fraud
upon statutes and also tantamounts to colourable exercise of
power.

Constitution of India, 1950 - Article 14 - Doctrine of discrimination - Held: Article 14 does not envisage negative equality - Doctrine of discrimination is applicable only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis or to relationship that would warrant such discrimination. A B

Writs: Purpose, nature and grant of - Held: Primary purpose of writ is to protect and establish rights and to impose corresponding imperative duty existing in law - It cannot be granted unless an existing legal right of the applicant and existent duty of the respondent is established - Writ does not create or establish a legal right, but enforces one which stood already established - The writ is equitable in nature and thus its issuance is governed by equitable principles - Grant of writ is at the discretion of the Court - The Courts to exercise such discretion on the ground of public policy, public interest and public good. C D

Writ of Mandamus - Grant of - Criteria discussed.

Words and Phrases: E

'Void' - Meaning of.

'Discrimination' - Meaning of.

A large area of land, including the land in question, was notified u/s. 4(1) of Rajasthan Land Acquisition Act, 1953 for the purpose of industrial development, to be executed by the appellant-Corporation. Immediately thereafter, the respondent-Society entered into an agreement to sell, with the khatedars of the land in question. Subsequently, on declaration u/s. 6 of the Act, possession of the notified land, including the land in question, was taken by the Government, which was handed-over to the appellant-Corporation. The land in question, alongwith other piece of land was further allotted by the appellant-Corporation to respondent No.37 F G H

A (a Company).

B The acquisition proceedings were challenged by the khatedars of the land in question and the respondent-Society jointly in writ petition before High Court of Rajasthan at Jodhpur which was dismissed on the ground of delay and laches. SLP against the same was also dismissed, but with the observation that the dismissal would not operate as res-judicata if the society approached the Court for release of the land on the ground that land of similarly situated persons were released from acquisition.

D The respondent-Society filed writ petition, praying for release of the land in question. The petition was allowed with direction to release the land in question in favour of the respondent-Society. Hence the present appeals.

Allowing the appeals, the Court

E HELD: 1. Acquisition proceedings cannot be challenged at a belated stage. In the instant case, the earlier writ petition filed by the society and the khatedars jointly, was dismissed by the High Court only on the ground of delay. This Court upheld the said judgment and order, while granting the said parties liberty to challenge the acquisition afresh, on the ground of discrimination alone. [Para 6] [998-C-D]

G 2.1. A purchaser, subsequent to the issuance of a Section 4 Notification under Land Acquisition Act, in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the

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Government. In the instant case, the society members had entered into an agreement to sell, even though a Notification under Section 4 to carry out acquisition had been issued by the Government fully knowing the legal consequences that may arise. The agreement to sell did not create any title in favour of the society. (Paras 7 and 33) [998-D-F; 1015-D-E]

Gian Chand v. Gopala and Ors. (1995) 2 SCC 528: 1995 (1) SCR 412; *Yadu Nandan Garg v. State of Rajasthan and Ors.* AIR 1996 SC 520: 1995 (4) Suppl. SCR 710; *Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur and Ors.* (1996) 11 SCC 229: 1996 (6) Suppl. SCR 491; *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Ors.* (1997) 1 SCC 35: 1996 (6) Suppl. SCR 584; *Meera Sahni v. Lieutenant Governor of Delhi and Ors.* (2008) 9 SCC 177: 2008 (10) SCR 1012; *Har Narain (Dead) by Lrs. v. Mam Chand (Dead) by LRs. and Ors.* (2010) 13 SCC 128: 2010 (12) SCR 974; *V. Chandrasekaran and Anr. v. The Administrative Officer and Ors.* JT 2012 (9) SC 260: 2012 (12) SCC 133 - relied on.

2.2. The word, "void" has been defined as: ineffectual; nugatory; having no legal force or legal effect; unable in law to support the purpose for which it was intended. It also means merely a nullity, invalid; null; worthless; sipher; useless and ineffectual and may be ignored even in collateral proceeding as if it never were. The word "void" is used in the sense of incapable of ratification. A thing which is found non-est and not required to be set aside though, it is sometimes convenient to do so. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because no one can continue a nullity. [Para 11] [999-E-G]

Smt. Kalawati v. Bisheshwar AIR 1968 SC 261: 1968

- A **SCR 223**; *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and Ors.* **AIR 1996 SC 906: 1995 (6) Suppl. SCR 139**; *Behram Khurshid Pesikaka v. State of Bombay* **AIR 1955 SC 123: 1955 SCR 613**; *Pankaj Mehra and Anr. v. State of Maharashtra and Ors.* **AIR 2000 SC 1953: 2000 (1) SCR 825**; *Dhurandhar Prasad Singh v. Jai Prakash University and Ors.* **AIR 2001 SC 2552: 2001 (3) SCR 1129**; *Government of Orissa v. Ashok Transport Agency and Ors.* **(2002) 9 SCC 28: 2002 (3) SCR 632** - relied on.

C *Black's Law Dictionary* - referred to.

- D **2.3. The policies of the Government, which allowed the exemption of land upon which construction existed on the date of issuance of Section 4 Notification, is not applicable in the instant case. In the instant case, the respondent society entered into an agreement to sell, subsequent to the issuance of the Section 4 Notification, and therefore, the question of the existence of any construction on the said land by any of its members on the date of Section 4 Notification does not arise. The aforesaid policy decision therefore, must be implemented, while strictly adhering to the terms incorporated therein. [Para 13] [1000-D-F]**

F *Bondu Ramaswamy and Ors. v. Bangalore Development Authority and Ors.* **(2010) 7 SCC 129: 2010 (6) SCR 29** - relied on.

- G **3.1. Even if the lands of other similarly situated persons has been released, the society must satisfy the court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to**
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equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Para 12] [1000-A-C]

Smt. Sneh Prabha and Ors. v. State of U.P. and Anr. AIR 1996 SC 540: 1995 (5) Suppl. SCR 264; *Yogesh Kumar and Ors. v. Government of NCT Delhi and Ors.* AIR 2003 SC 1241: 2003 (2) SCR 662; *State of West Bengal and Ors. v. Debasish Mukherjee and Ors.* AIR 2011 SC 3667: 2011 (13) SCR 1077; *Priya Gupta v. State of Chhattisgarh and Ors.* (2012) 7 SCC 433: 2012 (5) SCR 768 - relied on.

3.2. A party seeking relief on the ground of discrimination must take appropriate pleadings, lay down the factual foundation and must provide details of the comparable cases, so that the court may reach a conclusion, whether the authorities have actually discriminated against that party; and whether there is in fact any justification for discrimination, assessing the facts of both sets of cases together. [Para 16] [1002-G-H; 1003-A]

3.3. There is nothing on record to show that the society had ever applied for release of the said land before the Competent Authority who had initiated the acquisition proceedings under the Act. Furthermore, the society is not in a position to show that the societies whose lands stood released, were similarly situated to itself in all respects, i.e., such Societies had no title over the land, and had in fact, entered into an agreement to sell subsequent to the issuance of the Notification under Section 4 of the Act. [Para 14] [1001-F-G]

Narmada Bachao Andolan v. State of Madhya Pradesh and Anr. AIR 2011 SC 1989: 2011 (6) SCR 443 - relied on.

3.4. The primary purpose of the writ is to protect and establish rights, and to impose a corresponding

- A imperative duty existing in law. It is designed to promote justice, (*ex debito justiceiae*) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent.
- B Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established. [Para 17] [1003-B-C]

3.5. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement

of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. Thus, it is evident that a writ is not issued merely as is legal to do so. The court must exercise its discretion after examining pros and cons of the case. [Paras 17 and 18] [1003-C-H; 1004-A-B, H; 1005-A]

Commissioner of Police, Bombay v. Govardhandas Bhanji AIR 1952 SC 16: 1952 SCR 135; *Praga Tools Corporation v. Shri C.V Imanual and Ors.* AIR 1969 SC 1306: 1969 (3) SCR 773; *Punjab Financial Corporation v. Garg Steel* (2010) 15 SCC 546; *Union of India and Ors. v. Arulmozhi Iniarasu and Ors.* AIR 2011 SC 2731: 2011 (9) SCR 1; *Khela Banerjee and Anr. v. City Montessori School and Ors.* (2012) 7 SCC 261 - relied on.

General Officer Commanding v. CBI and Anr. AIR 2012 SC 1890: 2012 (2) SCR 640 - referred to.

3.6. During the hearing of the case, if it is pointed out to the court that the party has raised the grievance before the statutory/appropriate authority and the authority has not decided the same, it is always warranted that the court may direct the said authority to decide the representation within a stipulated time by a reasoned order. However, it is not desirable that the court take upon itself the task of the statutory authority and pass an order. [Para 20] [1005-D-E]

G. Veerappa Pillai v. Raman and Raman Ltd. and Ors. AIR 1952 SC 192: 1952 SCR 583; *Life Insurance Corporation of India v. Mrs. Asha Ramchandra Ambedkar and Anr.* AIR 1994 SC 2148: 1994 (2) SCR 163; *H.P. Public Service Commission v. Mukesh Thakur and Anr.* AIR 2010 SC 2620: 2010 (7) SCR 189; *Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. and Ors.* JT 2011 (12) SC 41: 2011 SCR 634 - relied on.

A 3.7. There was correspondence between the JDA
and the appellant RIICO, and also other departments.
There were also meetings held with higher officials of the
State Government, including the Chief Minister but
despite this, the land of the appellant was not released.
B It was in fact, after the order of this Court dated 9.9.1992,
that the respondent society sent a telegram dated
17.10.1992, to the Chief Secretary demanding justice, and
there was no request made to the Competent Authority
to release the said land in its favour. Immediately
C thereafter, the second writ petition was filed. The said
telegram cannot be termed a comprehensive
representation. It does not furnish any detail, or give any
reason, with respect to how not releasing the land of the
D society could amount to violative of any provision of the
Constitution of India including Article 14. It also did not
disclose any comparable cases, where land belonging to
persons/institutions who were similarly situated to itself,
stood released. [Para 24] [1008-E-H; 1009-A]

E 3.8. The High Court entertained the writ petition,
without comparing the actual facts of the respondent
society qua other societies. The High Court has not
recorded any finding to the effect that the land which
stood released from acquisition proceedings, was also
acquired by group housing societies subsequent to the
F issuance of the Section 4 Notification, or the society had
acquired interest in the same on the basis of an
agreement to sell, or on any other ground similar to those
raised by the respondent society. The situation of
G societies whose land stood released, was not compared
with the case of the respondent society. [Paras 30 and
33] [1013-H; 1014-A-C; 1016-F-G]

H 4.1. Executive instructions which have no statutory
force, cannot override the law. Therefore, any notice,
circular, guidelines etc. which run contrary to statutory
laws cannot be enforced. [Para 19] [1005-B]

B.N. Nagarajan and Ors. etc. v. State of Mysore and Ors. etc. AIR 1966 SC 1942; *Sant Ram Sharma v. State of Rajasthan and Ors.* AIR 1967 SC 1910: 1968 SCR 111; *Secretary, State of Karnataka and Ors. v. Umadevi and Ors.* AIR 2006 SC 1806: 2006 (3) SCR 953; *Mahadeo Bhau Khilare (Mane) and Ors. v. State of Maharashtra and Ors.* (2007) 5 SCC 524: 2007 (6) SCR 244 - relied on.

4.2. The material on record revealed, that after entering into an agreement to sell just after the Section 4 Notification in respect of the suit land was issued, the respondent society submitted a plan for approval before the JDA, and also applied for conversion of the user of the land before the Revenue Authority. In relation to this, it also deposited requisite conversion charges on 13.8.1986. However, as certain developments took place in the interim period, and the State Government made a public advertisement dated 27.2.1982, asking people to get their agricultural land converted to land to be used for non-agricultural purposes. Circular dated 1.3.1982 issued by the State Government enabled the persons/tenure holders seeking conversion and regularization. The Circular also provided that land covered by buildings or by any constructed area as on the cut-off date, i.e. 20.8.1981 would also be exempted from acquisition proceedings, if any. Similar benefits were conferred upon those who were purchasers of land subsequent to the issuance of a Section 4 Notification, though such transfer was void. The benefit was also extended to cooperative housing societies, which had made certain developments and constructions prior to the said cut-off date i.e. 20.8.1981, and even to those areas where no construction was made or even where no sale deed had been executed, but there existed an agreement to sell prior to 20.8.1981. It is also evident from the Circular that even if the Government wanted to exempt the land, it would require a notification by the Government. Law provides

A a notification under Section 48 of the Land Acquisition Act, 1894, or abandonment of the land acquisition proceedings by the State but it is permissible only prior to taking possession of the land. Once the land is vested in the State free from all encumbrances, it cannot be
 B divested. Therefore, it cannot be said that the respondent-society was entitled for release of the land. [Paras 21, 22] [1005-G-H; 1006-A-D, F-H; 1007-A]

4.3. The object and purpose of issuing such circulars could be to regularise the construction of residential
 C houses where the land was sought to be acquired for residential purposes. Various states have issued circulars to meet such a situation. However, such a construction should be in consonance with the development scheme, or may be compatible with certain modification. Even in
 D absence of such schemes, this Court has dealt with the issue and held that where the land is acquired for establishing residential, commercial, or industrial area and the application for release of the land reveal that the land has been used for the same purpose, the
 E Government may release the land, if its existence does not by any means hinder development as per the notification for acquisition. In the instant case land has been acquired for industrial development. The respondent-society wants the said land for developing the
 F residential houses. The land cannot be permitted to be used for residential purposes. Therefore, demand of respondent-society cannot be accepted. [Paras 22 and 33] [1007-B-D; 1017-F]

4.4. The circulars issued by the State Government,
 G being inconsistent with the policy and the law regarding acquisition, cannot be taken note of. Issuance of such circulars amounts to committing fraud upon statutes, and further, tantamounts to colourable exercise of power. The State in exercise of eminent domain acquires the
 H land. Thus, before completing the acquisition

proceedings, it should not release the land in favour of some other person who could not have acquired title over it at any point of time. [Para 33] [1017-D-E]

Union of India and Anr. v. Bal Ram Singh and Anr. 1992 Suppl (2) SCC 136; *Sube Singh and Ors. v. State of Haryana and Ors.* (2001) 7 SCC 545; *Jagdish Chand and Anr. v. State of Haryana and Anr.* (2005) 10 SCC 162; *Dharam Pal v. State of Haryana and Ors.* (2009) 2 SCC 397; 2008 (17) SCR 564 - relied on.

4.5. There can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law. "The statutory body cannot be estopped from denying that it has entered into a contract which was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do." Even an offer or concession made by the public authority can always be withdrawn in public interest. Thus, the respondent-society is not entitled to take any advantage of those illegal circulars. [Para 23] [1007-F-H; 1008-A, D-E]

State of Madras and Anr. v. K.M. Rajagopalan AIR 1955 SC 817; 1955 SCR 541; *Badri Prasad and Ors. v. Nagarmal and Ors.* AIR 1959 SC 559; 1959 Suppl. SCR 709; *Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee* AIR 1962 SC 554; 1962 Suppl. SCR 604; *Surajmull Nagoremull v. Triton Insurance Co. Ltd.* AIR 1925 PC 83; *Shiba Prasad Singh v. Srish Chandra Nandi* AIR 1949 PC 297 - relied on.

5. In the instant case, the Government itself labeled the safe-deeds, executed after issuance of s.4 Notification as void. Therefore, the State authorities could not have regularised such orders. The schemes floated by the

- A State Government (knowing well that acquiring land after the issuance of Section 4 Notification would be void), indicates a sorry state of affairs. Such orders have been passed without realizing that administration does not include mal-administration. [Paras 32 and 33] [1014-H; B 1015-A, 1017-B-C]

The Kerala Education Bill 1957 AIR 1958 SC 956: 1959 SCR 995 - followed.

- C *All Bihar Christian Schools Association and Anr. vs. State of Bihar and Ors.* AIR 1988 SC 305: 1988 (2) SCR 49; *Sindhi Education Society and Anr. vs. The Chief Secretary, Govt. of NCT of Delhi and Ors.* (2010) 8 SCC 49: 2010 (8) SCR 81; *State of Gujarat and Anr. vs. Hon'ble Mr. Justice R.A. Mehra (Retd.) and Ors.* JT 2013 (1) SC 276: 2013 (3) D SCC 1 - relied on.

6. In the instant case, at the initial stage, the writ petition was filed before the High Court at Jodhpur, while, the land is situated in the heart of the Jaipur city, and all relevant orders including notifications for acquisition were issued at Jaipur. The writ petition ought to have been filed before the Jaipur Bench as per the statutory requirements therein. No explanation was furnished, as under what circumstances the first writ petition had been filed by the society alongwith tenure-holders at Jodhpur. Therefore, the sanctity of the order passed by the High Court is rather doubtful and it creates doubt about the bonafides of the parties and further, as to whether such a move could have been made in good faith. [Para 31] [1014-D-F]

- G *Sri Nasiruddin vs. State Transport Appellate Tribunal* AIR 1976 SC 331: 1976 (1) SCR 505; *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow vs. State of U.P. and Ors.* AIR 1995 SC 2148: 1995 (1) Suppl. SCR 733; *Rajasthan High Court Advocates Association vs. Union of India and Ors.* AIR H 2001 SC 416: 2000 (5) Suppl. SCR 743; *Dr. Manju Verma*

vs. *State of U.P. and Ors.* (2005) 1 SCC 73: 2004 (6) Suppl. A
SCR 22 - relied on.

Case Law Reference:

1995 (1) SCR 412	relied on	Para 7	B
1995 (4) Suppl. SCR 710	relied on	Para 7	
1996 (6) Suppl. SCR 491	relied on	Para 7	
1996 (6) Suppl. SCR 584	relied on	Para 7	
2008 (10) SCR 1012	relied on	Para 7	C
2010 (12) SCR 974	relied on	Para 7	
2012 (12) SCC 133	relied on	Para 7	
1968 SCR 223	relied on	Para 9	D
1995 (6) Suppl. SCR 139	relied on	Para 9	
1955 SCR 613	relied on	Para 11	
2000 (1) SCR 825	relied on	Para 11	E
2002 (3) SCR 632	relied on	Para 11	
1995 (5) Suppl. SCR 264	relied on	Para 12	
2003 (2) SCR 662	relied on	Para 12	
2011 (13) SCR 1077	relied on	Para 12	F
2012 (5) SCR 768	relied on	Para 12	
2010 (6) SCR 29	relied on	Para 13	
2011 (6) SCR 443	relied on	Para 15	G
1952 SCR 135	relied on	Para 17	
1969 (3) SCR 773	relied on	Para 17	
(2010) 15 SCC 546	relied on	Para 17	H

A	2011 (9) SCR 1	relied on	Para 17
	(2012) 7 SCC 261	relied on	Para 17
	2012 (2) SCR 640	referred to	Para 17
B	AIR 1966 SC 1942	relied on	Para 19
	1968 SCR 111	relied on	Para 19
	2006 (3) SCR 953	relied on	Para 19
C	2007 (6) SCR 244	relied on	Para 19
	1952 SCR 583	relied on	Para 20
	1994 (2) SCR 163	relied on	Para 20
	2010 (7) SCR 189	relied on	Para 20
D	2011 SCR 634	relied on	Para 20
	1992 Suppl (2) SCC 136	relied on	Para 22
	(2001) 7 SCC 545	relied on	Para 22
E	(2005) 10 SCC 162	relied on	Para 22
	2008 (17) SCR 564	relied on	Para 22
	1955 SCR 541	relied on	Para 23
F	1959 Suppl. SCR 709	relied on	Para 23
	1962 Suppl. SCR 604	relied on	Para 23
	AIR 1925 PC 83	relied on	Para 23
	AIR 1949 PC 297	relied on	Para 23
G	1976 (1) SCR 505	relied on	Para 31
	1995 (1) Suppl. SCR 733	relied on	Para 31
	2000 (5) Suppl. SCR 743	relied on	Para 31
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2004 (6) Suppl. SCR 22	relied on	Para 31	A
1959 SCR 995	followed	Para 32	
1988 (2) SCR 49	relied on	Para 32	
2010 (8) SCR 81	relied on	Para 32	B
2013 (3) SCC 1	relied on	Para 32	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7254 of 2003.

From the Judgment & Order dated 30.07.2002 of the High Court of Judicature at Jaipur Bench, Jaipur in D.B. Civil Writ Petition No. No. 454 of 1993.

WITH

C.A. No. 853 of 2013.

Dhruv Mehta, Dr., Manish Singhvi, AAG, Milind Kumar, Amit Lubhaya, Pragati Neekhra for the Appellant.

P.S. Patwalia, Rakesh Dwivedi, M.N. Krishnamani, Ajay Singh, Ashok K. Mahajan, Shibashish Misra, Sanskriti Pathak, P.V. Yogeswaran, R. Gopalankrishnan, Sanjay Parikh, Mamta Saxena, Bushra Parveen, A.N. Singh, Aruneshwar Gupta for the Respondents.

The Judgment of the Court was delivered by

DR. B. S. CHAUHAN, J. 1. These appeals have been preferred against the impugned judgment and order dated 30.7.2002 passed by the High Court of Rajasthan (Jaipur Bench) in Civil Writ Petition No. 454 of 1993, by which the High Court has issued directions to the Rajasthan State Industrial Development and Investment Corporation (in short 'RIICO'), the appellant herein, to release the land in dispute from land acquisition in favour of respondent No.1 - housing society (hereinafter referred to as 'the society').

A 2. As both the appeals have been preferred against the common impugned judgment, for convenience, Civil Appeal No. 7254 of 2003 is taken to be the leading case. The facts and circumstances giving rise to this appeal are:

B A. That, a huge area of land admeasuring 607 Bighas and 5 Biswas situate in the revenue estate of villages Durgapura, Jhalan Chod, Sanganer and Dhol-ka-Bad in District Jaipur, including the suit land measuring about 17 Bighas and 9 Biswas in village Durgapura stood notified under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as the 'Act') on 18.7.1979, for a public purpose i.e. industrial development, to be executed by the RIICO.

C B. The respondent society claims to have entered into an agreement to sell with the Khatedars of the suit land on D 21.7.1981.

E C. Declaration under Section 6 of the Act was made on 22.6.1982 for the land admeasuring 591 Bighas and 17 Biswas. After meeting all requisite statutory requirements contained in the Act, possession of the land, including the land in dispute was taken by the Government and was subsequently handed over to RIICO, on 18.10.1982 and 17.11.1983. The Land Acquisition Collector assessed the market value of the land of the Khatedars, and made an award on 14.5.1984. Vide F allotment letter dated 10.3.1988, RIICO, made allotment of land admeasuring 105 acres of the land, out of the total acquired land measuring 591 Bighas, to Diamond & Gem Development Corporation Ltd., a Private Ltd. Company (hereinafter referred to as the 'Company'), respondent no. 37, to facilitate the G establishment of a Gem Industrial Estate for the manufacturing of Gem stones. This piece of land included within it, the land which was subject matter of an agreement to sell between the respondent society and the original khatedars.

H D. Acquisition proceedings emanating from the Section 4 Notification dated 18.7.1979, were challenged by the

respondent society, as well as by the khatedars jointly in 1989, A
by filing of Writ Petitions before the High Court of Rajasthan at
Jodhpur. A lease deed was executed by appellant-RIICO in
favour of the company-respondent No.37 in relation to 105
acres of land on 22.5.1989, including the land in question, which B
is comprised of Khasra Nos. 226 to 230 in village Durgapura.
The aforementioned writ petitions filed by the respondent
society and the original khatedars, challenging the land
acquisition proceedings stood dismissed on the ground of
delay and laches, vide judgment and order dated 21.8.1990
passed by the High Court. C

E. Aggrieved, the respondent society and one khatedar
filed SLPs before this Court challenging the judgment and order
dated 21.8.1990. This Court vide order dated 9.9.1992
dismissed the said SLPs, however, while doing so, the Court D
made an observation that the dismissal of the said SLPs, would
not operate as res-judicata if the society approaches the court
for release of their land on the ground that lands owned by
similar set of individuals or institutions, if any, has been
released from acquisition. Such a direction was issued in view E
of the submissions made by the respondent society, stating that
allotment of the said land in favour of the Company had been
made fraudulently.

F. In view thereof, the society filed a Writ Petition No. 454
of 1993 praying for release of the land admeasuring 17 Bighas
and 9 Biswas in Khasra Nos. 226 to 230, in revenue estate of F
village Durgapura or in the alternative, for the allotment of
equivalent suitable land, and also for the cancellation of the
allotment of 105 acres of land in favour of the Company. The
writ petition was contested by the appellants on the grounds G
that the respondent society had no locus standi to challenge
the acquisition proceedings which had attained finality upto this
Court; the transfer of land by the khatedars to the respondent
society was void; the respondent society could not claim parity
with other persons/societies, whose land stood released for H

A bonafide reasons on good grounds. The High Court heard the said writ petition alongwith another writ petition that had been filed by the Company, which will be dealt with separately. During the pendency of the writ petition, certain other developments took place, that is, the allotment of land made in favour of the Company, was cancelled by the appellant vide order dated 1.10.1996, and possession of the same was taken over from it on 3.10.1996.

C G. The Division Bench of the High Court allowed the said writ petition vide judgment and order dated 30.7.2002, thereby releasing land admeasuring 17 Bighas and 9 Biswas in favour of the respondent society.

Hence, this appeal.

D 3. Shri Dhruv Mehta, learned senior counsel appearing on behalf of the appellant-RIICO, and Shri Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, have submitted that challenge to the acquisition proceedings emanating from the Section 4 Notification dated 18.7.1979 had attained finality upto this Court. However, this Court vide order dated 9.9.1999 had granted very limited relief to the respondent-society, to the extent that it could approach the court for release of its land only on the ground of discrimination qua other tenure holders, whose land stood released and that the dismissal of the SLP would not operate as res-judicata. The society had not made any representation before the filing of the first or the second writ petition, before any appropriate authority for release of the said land, nor had it raised issue with respect to any form of discrimination suffered by it. The High Court also did not consider the case on the basis of any ground of discrimination whatsoever, rather made a bald observation, stating that as the land of the other tenure holders had been released, the society too, was entitled for similar relief. Such an order is not justified for the reason that court did not compare the facts of two sets of the parties.

H

Article 14 is not meant to perpetuate an illegality or fraud. Moreover, it is to be established that discrimination was made cautiously. The agreement to sell dated 21.7.1981 in favour of the respondent-society did not create any title in favour of the society. Furthermore, any sale subsequent to a Section 4 Notification with respect to the said land, is void. An agreement to sell, or to execute any transfer of such land is barred by the Rajasthan Lands (Restrictions on Transfer) Act, 1976 (hereinafter referred to as, the 'Act 1976'). At the most, the High Court could have directed consideration of the representation of the society, if there was any, but it most certainly could not have issued direction to release the said land itself. The Society had approached the High Court, Jodhpur (main seat) though, petition could be filed only before the Jaipur Bench as the suit land situate at Jaipur and all relevant orders/notifications were issued at Jaipur. Thus, the present appeals deserve to be allowed.

4. Per contra, Shri Rakesh Dwivedi, learned senior counsel appearing on behalf of the respondent - society and its members, has submitted that a representation was in fact made by the society, but the same was not considered by the State Government, and that the award made in respect of the land itself, clearly revealed that some land was released by the government, in favour of various persons and institutions. The respondent society had therefore, been discriminated against, by the State authorities. The respondent-society is entitled for the relief on the basis of the Government Orders, (hereinafter referred to as G.Os.) provided for release of the land of Group Housing Societies, if under acquisition. Technical issue must not be entertained by this Court, as the second writ petition has been filed under the liberty granted by this Court. Thus, the present appeals lack merit and are liable to be dismissed.

5. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the Company, respondent no. 37, has submitted that the High Court has directed to release the land in favour of the respondent - society, from the land which was allotted to the

A Company, and that Company has no objection to the order passed by the High Court, releasing a particular piece of land in favour of the society. Thus, the appeals are liable to be dismissed.

B 6. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

C It is a settled legal proposition that acquisition proceedings cannot be challenged at a belated stage. In the instant case, the earlier writ petition filed by the society and the khatedars jointly, was dismissed by the High Court only on the ground of delay. This Court upheld the said judgment and order, while granting the said parties liberty to challenge the acquisition afresh, on the ground of discrimination alone.

D 7. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government. (Vide: *Gian Chand v. Gopala & Ors.*, (1995) 2 SCC 528; *Yadu Nandan Garg v. State of Rajasthan & Ors.*, AIR 1996 SC 520; *Jaipur Development Authority v. Mahavir Housing Coop. Society, Jaipur & Ors.* (1996) 11 SCC 229; *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors.*, (1997) 1 SCC 35; *Meera Sahni v. Lieutenant Governor of Delhi & Ors.*, (2008) 9 SCC 177; *Har Narain (Dead) by Lrs. v. Mam Chand (Dead) by LRs. & Ors.*, (2010) 13 SCC 128; and *V. Chandrasekaran & Anr. v. The Administrative Officer & Ors.*, JT 2012 (9) SC 260).

H 8. Thus, in the instant case, the respondent-society, and its members, have to satisfy the court as regards their locus

standi with respect to maintenance of the writ petition on any ground whatsoever, as none of the original khatedars has joined the society in subsequent petition.

A

9. In *Smt. Kalawati v. Bisheshwar*, AIR 1968 SC 261, this Court held:

B

"Void means non-existent from its very inception."

10. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) & Ors.*, AIR 1996 SC 906, this Court held:

C

"The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity or the infirmity, as to whether it is, fundamental or otherwise."

D

11. The word, "void" has been defined as: ineffectual; nugatory; having no legal force or legal effect; unable in law to support the purpose for which it was intended. (Vide: Black's Law Dictionary). It also means merely a nullity, invalid; null; worthless; sipher; useless and ineffectual and may be ignored even in collateral proceeding as if it never were.

E

The word "void" is used in the sense of incapable of ratification. A thing which is found non-est and not required to be set aside though, it is sometimes convenient to do so. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because no one can continue a nullity. (Vide: *Behram Khurshid Pesikaka v. State of Bombay*, AIR 1955 SC 123; *Pankaj Mehra & Anr. v. State of Maharashtra & Ors.*, AIR 2000 SC 1953; *Dhurandhar Prasad Singh v. Jai Prakash University & Ors.*, AIR 2001 SC 2552; and *Government of Orissa v. Ashok Transport Agency & Ors.*, (2002) 9 SCC 28).

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A 12. Even if the lands of other similarly situated persons has
been released, the society must satisfy the court that it is
similarly situated in all respects, and has an independent right
to get the land released. Article 14 of the Constitution does not
envisage negative equality, and it cannot be used to perpetuate
B any illegality. The doctrine of discrimination based upon the
existence of an enforceable right, and Article 14 would hence
apply, only when invidious discrimination is meted out to equals,
similarly circumstanced without any rational basis, or to
relationship that would warrant such discrimination. (Vide: *Smt.*
C *Sneh Prabha & Ors. v. State of U.P. & Anr.*, AIR 1996 SC 540;
Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors.,
AIR 2003 SC 1241; *State of West Bengal & Ors. v. Debasish
Mukherjee & Ors.*, AIR 2011 SC 3667; and *Priya Gupta v.
State of Chhattisgarh & Ors.*, (2012) 7 SCC 433).

D 13. The respondent society has placed reliance upon
various policies of the Government, which allowed the
exemption of land upon which construction existed on the date
of issuance of Section 4 Notification. In the instant case, the
respondent society entered into an agreement to sell,
E subsequent to the issuance of the Section 4 Notification, and
therefore, the question of the existence of any construction on
the said land by any of its members on the date of Section 4
Notification does not arise. The aforesaid policy decision
therefore, must be implemented, while strictly adhering to the
F terms incorporated therein, as has been held by this Court in
*Bondu Ramaswamy & Ors. v. Bangalore Development
Authority & Ors.*, (2010) 7 SCC 129. In the said case, this
Court examined the issue of discrimination with respect to
releasing land belonging to one set of interested persons, while
G rejecting the release of land belonging to other similarly situated
persons, whose land was situated in close vicinity to the land
released. The Court held:

H *"We are conscious of the fact that when a person
subjected to blatant discrimination, approaches a court*

*seeking equal treatment, he expects relief similar to what others have been granted. All that he is interested is getting relief for himself, as others. **He is not interested in getting the relief illegally granted to others, quashed.** Nor is he interested in knowing whether others were granted relief legally or about the distinction between positive equality and negative equality. In fact **he will be reluctant to approach courts for quashing the relief granted to others on the ground that it is illegal,** as he does not want to incur the wrath of those who have benefited from the wrong action. As a result, in most cases those who benefit by the illegal grants/actions by authorities, get away with the benefit, while others who are not fortunate to have "connections" or "money power" suffer. But these are not the grounds for courts to enforce negative equality and perpetuate the illegality"*

(Emphasis added)

14. The Respondent society claims to have applied before the Jaipur Development Authority (hereinafter referred to as the 'JDA') and deposited requisite charges etc. for regularisation of their proposed scheme as per G.Os. issued by the State Government, also for providing relief to the societies that had no construction on the land which belonged to them, on the date of initiation of acquisition proceedings. However, there is nothing on record to show that the society had ever applied for release of the said land before the Competent Authority i.e. Secretary to the Department of Industries, Rajasthan, who had initiated the acquisition proceedings under the Act. Furthermore, the society is not in a position to show that the societies whose lands stood released, were similarly situated to itself in all respects, i.e., such Societies had no title over the land, and had in fact, entered into an agreement to sell subsequent to the issuance of the Notification under Section 4 of the Act.

15. This Court explained the phrase "discrimination" in

A *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.*, AIR 2011 SC 1989 observing :

B "66. Unequals cannot claim equality. In *Madhu Kishwar and Ors. v. State of Bihar and Ors.*, AIR 1996 SC 1864, it has been held by this Court that every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution.

C 67. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify.
D (Vide: *Kathi Raning Rawat v. State of Saurashtra*, AIR 1952 SC 123; and *M/s Video Electronics Pvt. Ltd. and Anr. v. State of Punjab and Anr.*, AIR 1990 SC 820).

E 68. However, in *Vishundas Hundumal and Ors. v. State of Madhya Pradesh and Ors.*, AIR 1981 SC 1636; and *Eskayef Ltd. v. Collector of Central Excise*, (1990) 4 SCC 680, this Court held that when discrimination is glaring, the State cannot take recourse to inadvertence in its action resulting in discrimination. In a case where denial of equal protection is complained of and the denial flows from such action and has a direct impact on the fundamental rights of the complainant, a constructive approach to remove the discrimination by putting the complainant in the same position as others enjoying favourable treatment by inadvertence of the State authorities, is required." (Emphasis added)
F
G

H 16. Thus, a party seeking relief on the ground of discrimination must take appropriate pleadings, lay down the factual foundation and must provide details of the comparable cases, so that the court may reach a conclusion, whether the

authorities have actually discriminated against that party; and whether there is in fact any justification for discrimination, assessing the facts of both sets of cases together.

17. The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice, (*ex debito justiceiae*) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, *inter-alia*, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the

- A opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would
- B not consider the demand. (Vide: *Commissioner of Police, Bombay v. Govardhandas Bhanji*, AIR 1952 SC 16; *Praga Tools Corporation v. Shri C.V Imanual & Ors.*, AIR 1969 SC 1306; *Punjab Financial Corporation v. Garg Steel*, (2010) 15 SCC 546; *Union of India & Ors. v. Arulmozhi Iniarasu & Ors.*, AIR 2011 SC 2731; and *Khela Banerjee & Anr. v. City Montessori School & Ors.*, (2012) 7 SCC 261).
- C

18. This Court in *General Officer Commanding v. CBI & Anr.*, AIR 2012 SC 1890, explained the phrase "good faith" :

- D *"...Good faith has been defined in Section 3(22) of the General Clauses Act, 1897, to mean a thing which is, in fact, done honestly, whether it is done negligently or not. Anything done with due care and attention, which is not malafide, is presumed to have been done in good faith.*
- E *There should not be personal ill-will or malice, no intention to malign and scandalize. Good faith and public good are though the question of fact, it required to be.....In Brijendra Singh v. State of U.P. & Ors., AIR 1981 SC 636, this Court while dealing with the issue held:*

- F *"In the popular sense, the phrase 'in good faith' simply means ;honestly, without fraud, collusion, or deceit; really, actually, without pretence and without intent to assist or act in furtherance of a fraudulent or otherwise unlawful scheme..... It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context."*
- G

- H Thus, it is evident that a writ is not issued merely as is legal

to do so. The court must exercise its discretion after examining pros and cons of the case. A

19. Executive instructions which have no statutory force, cannot override the law. Therefore, any notice, circular, guidelines etc. which run contrary to statutory laws cannot be enforced. (Vide: *B.N. Nagarajan & Ors., etc. v. State of Mysore and Ors. etc.*, AIR 1966 SC 1942; *Sant Ram Sharma v. State of Rajasthan & Ors.*, AIR 1967 SC 1910; *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*, AIR 2006 SC 1806; and *Mahadeo Bhau Khilare (Mane) & Ors. v. State of Maharashtra & Ors.*, (2007) 5 SCC 524). B C

20. During the hearing of the case if it is pointed out to the court that the party has raised the grievance before the statutory/appropriate authority and the authority has not decided the same, it is always warranted that the court may direct the said authority to decide the representation within a stipulated time by a reasoned order. However, it is not desirable that the court take upon itself the task of the statutory authority and pass an order. (Vide: *G. Veerappa Pillai v. Raman and Raman Ltd. & Ors.*, AIR 1952 SC 192; *Life Insurance Corporation of India v. Mrs. Asha Ramchandra Ambedkar & Anr.*, AIR 1994 SC 2148; *H.P. Public Service Commission v. Mukesh Thakur & Anr.*, AIR 2010 SC 2620; and *Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors.*, JT 2011 (12) SC 41). D E

21. The instant case, requires to be examined in the light of aforesaid settled legal propositions. F

The material on record revealed, that after entering into an agreement to sell just after the Section 4 Notification in respect of the suit land was issued, the respondent society submitted a plan for approval before the JDA, and also applied for conversion of the user of the land before the Revenue Authority. In relation to this, it also deposited requisite conversion charges on 13.8.1986. However, as certain developments took place in the interim period, and the Government of Rajasthan made H

A a public advertisement dated 27.2.1982, asking people to get their agricultural land converted to land to be used for non-agricultural purposes. Circular dated 1.3.1982 issued by the Government of Rajasthan enabled the persons/tenure holders seeking conversion and regularization. The Circular also
 B provided that land covered by buildings or by any constructed area as on the cut-off date, i.e. 20.8.1981 would also be exempted from acquisition proceedings, if any. Similar benefits were conferred upon those who were purchasers of land subsequent to the issuance of a Section 4 Notification, though
 C such transfer was void. The benefit was also extended to cooperative housing societies, which had made certain developments and constructions prior to the said cut-off date i.e. 20.8.1981, and even to those areas where no construction was made or even where no sale deed had been executed,
 D but there existed an agreement to sell prior to 20.8.1981.

22. More so, the relevant part of the Circular dated 1.3.1982 issued by the Revenue Department, Government of Rajasthan, reads as under:

E **"...Land acquisition notifications are statutorily issued by the Administrative Department of the State Government and therefore the lands which are proposed to be de-acquired will have to be notified by the Government itself."**

F (Emphasis added)

Thus, it is evident from the Circular that even if, the Government wanted to exempt the land, it would require a notification by the Government. Law provides a notification
 G under Section 48 of the Land Acquisition Act, 1894, (hereinafter called as 'Act 1894') or abandonment of the land acquisition proceedings by the State but it is permissible only prior to taking possession of the land. Once the land is vested in the State free from all encumbrances it cannot be divested.

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Therefore, we do not find any force in the submission advanced on behalf of the respondent-society that they were entitled for release of the land.

The object and purpose of issuing such circulars could be to regularise the construction of residential houses where the land was sought to be acquired for residential purposes. Various states have issued circulars to meet such a situation. However, such a construction should be in consonance with the development scheme, or may be compatible with certain modification. Even in absence of such schemes, this Court has dealt with the issue and held that where the land is acquired for establishing residential, commercial, or industrial area and the application for release of the land reveal that the land has been used for the same purpose, the Government may release the land, if its existence does not by any means hinder development as per the notification for acquisition. (Vide : *Union of India & Anr. v. Bal Ram Singh & Anr.*, 1992 Suppl (2) SCC 136; *Sube Singh & Ors. v. State of Haryana & Ors.*, (2001) 7 SCC 545; *Jagdish Chand & Anr. v. State of Haryana & Anr.*, (2005) 10 SCC 162; and *Dharam Pal v. State of Haryana & Ors.*, (2009) 2 SCC 397).

In the instant case land has been acquired for industrial development. The respondent-society wants the said land for developing the residential houses. Therefore, such a demand is not worth acceptance.

23. Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be asked to act in contravention of law. "The statutory body cannot be estopped from denying that it has entered into a contract which was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do." Even an offer or concession made by the public authority can always be

A withdrawn in public interest. (Vide: *State of Madras & Anr. v. K.M. Rajagopalan*, AIR 1955 SC 817; *Badri Prasad & Ors. v. Nagarmal & Ors.*, AIR 1959 SC 559; and *Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee*, AIR 1962 SC 554).

B In *Surajmull Nagoremull v. Triton Insurance Co. Ltd.*, AIR 1925 PC 83, it was held as under:

C *"..No court can enforce as valid, that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a court can be dispensed by the consent of the parties or by a failure to plead or to argue the point at the outset.."*

D A similar view was re-iterated by the Privy Council in *Shiba Prasad Singh v. Srish Chandra Nandi*, AIR 1949 PC 297.

Thus, in view of the above, we are of the considered opinion that the respondent-society is not entitled to take any advantage of those illegal circulars.

E 24. There was correspondence between the JDA and the appellant RIICO, and also other departments. There were also meetings held with higher officials of the State Government, including the Chief Minister but despite this, the land of the appellant was not released.

F It was in fact, after the order of this Court dated 9.9.1992, that the respondent society sent a telegram dated 17.10.1992, to the Chief Secretary demanding justice, and there was no request made to the Competent Authority to release the said land in its favour. Immediately thereafter, the second writ petition
G was filed. It is pertinent to mention here, that the said telegram cannot be termed a comprehensive representation. It does not furnish any detail, or give any reason, with respect to how not releasing the land of the society could amount to violative of any provision of the Constitution of India including Article 14.
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also did not disclose any comparable cases, where land belonging to persons/institutions who were similarly situated to itself, stood released. The said telegram reads as under:

"Only our land Khasra Nos. 226 to 230 at village Durgapura without notice to us or Khatedar was ex-parte acquired under award dated 14.5.84 leaving all others land of Durgapura notified earlier. Perpetrating discrimination despite contrary directions by J.D.A. under Chairmanship of Chief Minister - 105 acre including our land was fraudulently and in abuse of power were allotted by RIICO to Diamond and Gem Development Corporation (DGDC) in a biggest land scandal with collusive acts of officials of RIICO. The said DGDC is in big way encroaching on our land despite the knowledge and notice of order dated 9.9.92 in SLP No. 165, 67-69/90 - *Banwarilal and Ors. v. State of Rajasthan & Ors.* Kindly quash allotment of 105 acre land to DGDC and return land Khasra Nos. 226 to 230 or equivalent land to us within seven days and meanwhile stop all encroachment on our land failing which filing writ petitions in Hon'ble High Court pursuant to Supreme Court order dated 9.9.92 at your cost and consequences.

Subhash Sindhi Housing Co-operative Society Ltd. and its Members through K.K. Khanna Advocate."

25. When the writ petition was filed, the High Court asked the respondent therein, to furnish an explanation of the alleged discrimination claimed by it. The authorities thereafter, filed affidavits, stating that the fact could be ascertained from the award dated 14.5.1984 itself. The relevant portion thereof reads as under:

"The Deputy Secretary Industries (Group I) Department Rajasthan Jaipur released from acquisition the land in Durgapura, Khasra No. 137, measuring 6 Bigha 2 Biswas in village Jaland chod, Khasra No. 124 measuring 2

A Bighas 4 Biswas, Khasra No. 2389 measuring 1 Bigha -
 2 Biswas, Khasra No. 250, measuring 0.05 Biswas, 261
 measuring 0.08 Biswas in village Dolka Abad Khasra No.
 44 measuring 1 Bigha 11 Biswas, Khasra No. 45
 measuring 2 Bigha 11 Biswas, Khasra No. 45 measuring
 B 2 Bigha, 13 Biswas, vide his order Nos. P-(4)/IND/75
 dated 19.10.1981 No. P(4)Ind/1/79 dated 1.1.1982 and
 No. P5(4) Ind/75 dated 22.6.82. Besides the Industries
 Department also released from acquisition the total land
 measuring 126 Bighas 13 Biswas vide notification P5 (4)/
 C Ind/1/75 dated 31.7.1982 in village Jalana Chod of Khasra
 No. 177, 181, 182, 184, 185, 186 and 180 min., and 187,
 the land which is acquired by the Rajasthan Housing Board.
 All these lands was de-acquired under Section 48 of the
 Act whose possession was not taken by concerned
 D Department. Assistant Manager (adarboot) RIICO Jaipur
 vide his letter No. IPI/3/6-76 dated 31.10.1983 to Deputy
 Secretary Industries Department Rajasthan Government
 recommended release for acquisition of Khasra No. 126
 Min. measuring 2 Bighas as there being no passage and
 there godown being situated there. Therefore, it is not
 E possible to consider this till final orders are received. Only
 after the receipt of the final decision of the concerned
 department further action can be possible."

26. It is thus evident from the award itself, that land
 F admeasuring 126 Bighas 13 Biswas was de-notified on
 31.7.1982, in the village Jalana Chod, for the reason that the
 said land had also been notified under the Act for some other
 public purpose, i.e., the same had been acquired for the
 Rajasthan Housing Board, and therefore, such land was de-
 G notified under Section 48 of the Act 1894. In other cases, small
 pieces of land measuring 6 bighas 2 biswas, and 2 bighas and
 4 biswas were also released, for the reason that construction
 existed on some of this land and the other piece of land was
 found to be entirely land-locked, with no passage to access it.

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27. A large number of issues were agitated before the High Court, however, the High Court did not deal with any of those. The Court allowed the petition merely observing: A

"The petitioner Subhash Sindhi Cooperative Housing Society is contesting only for a limited piece of land measuring 17 Bighas 9 Biswas which had been acquired and given to DGDC by the RIICO. The case of the society is that in view of the observations made by the Supreme Court in its order, it has pleaded its case in this petition on the basis that the other land which had been acquired had been released or it stood de facto released and the government was itself a party to it in releasing the acquired land and large number of lands of this nature de facto stood released from acquisition inasmuch as houses have been constructed thereon; the Government itself has acquiesced with such construction and has also taken steps for regularisation of such construction and the decision which was taken by the JDA in the meeting headed by the Chief Minister was implemented qua all others except the land of petitioner Society, merely because the petitioner society's land had been given to DGDC/RIICO. This small piece of land which is claimed by the society in the facts and circumstances of the case, can very well be restored to the Society and to that extent, land allotted to DGDC can be curtailed without having any adverse impact on the prospects of business of DGDC. Facts have come on record through documents that to start with, DGDC had demanded only 35 acres of land. This demand was raised from time to time and ultimately, it reached upto 105 acres. It is also on record that the RIICO had given only 80 acres of land to DGDC as against the allotment of 105 acres. In such a situation, if a small piece of land measuring 17 Bighas 9 Biswas out of the land allotted to DGDC is restored back to the petitioner Society it cannot have any adverse impact on the business prospects of DGDC nor the RIICO may have any just objection and the State B
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A Government which has already acquiesced with the
 release of such acquired lands in large number of cases,
 cannot have any legitimate case to contest the grant of
 relief to the petitioner society and the petitioner Society is
 found to be entitled for the same on the principles of parity
 B as well as equity."

28. The High Court had asked the authorities of the
 appellant-RIICO to provide an explanation regarding the release
 of land in village Durgapura, and in its reply to the said order,
 C an additional affidavit was filed. The High Court, after taking
 note of the same held as under:

"As per the acquisition proceedings which
 commenced in July, 1979, the land which was
 sought to be acquired in Village Durgapura, was
 D 119 Bighas 4 Biswas.

- The land (of which possession was not taken)
 measured 12 Bighas & Biswas (comprised in
 E Khasra Nos. 126, 128, 129, 137, 153 and 156).

- Land of which possession was taken 106 Bighas
 18 Biswas.

- Land for which acquisition proceedings were
 quashed as per the judgment rendered on 12.7.79
 F in CWP No. 324/89 i.e. S.D. Agarwal v. State of
 Rajasthan) 20 Bighas

- And thus, the balance land remained 86 Bighas 18
 Biswas.

G - Land belonging to the petitioner Subhash Sindhi
 Cooperative Housing Society Ltd. - 17 Bighas 9
 Biswas.

- After deducting this land measuring 17 Bighas 9
 H Biswas from the balance land of 86 Bighas 18

Biswas, the remaining land measures 69 Bighas 9 Biswas and this is the land of which although possession was taken during the acquisition proceedings somewhere in 1982-83 yet on submission of the scheme plans by various Cooperative Housing Societies much after taking of the possession plans were approved in compliance of various orders issued by the Government of Rajasthan after 1986.

Compensation to the recorded khatedars of the land was also paid in terms of the award dated 14.5.1984 and the amount was duly received by the khatedars/persons having interest in the land.

29. The High Court herein above, has observed that land admeasuring 69 Bighas 9 Biswas of which possession had been taken in acquisition proceedings, stood released in favour of various group housing societies in view of the G.Os. issued after 1986, on extraneous considerations. Such observation is not based on any material whatsoever. Learned counsel appearing for the society could not point out any document on record, on the basis of which such an observation could be made. Same remained the position when the High Court held, that it was evident from the documents on record that the tenure holders whose land had been acquired, could not be paid compensation for the reason "that there was shortage of funds with the government". While recording the aforesaid findings, reliance was placed on the affidavit filed by the officers of the appellant. However, there is no such averment in the said affidavit. There are claims and counter claims regarding the payment of compensation, as there are some documents on record to show that compensation had been deposited by the appellant-RIICO, in favour of the predecessor-in-interest of the society in the court.

30. Be that as it may, the High Court has not recorded any finding to the effect that the land referred to hereinabove (in

A village Durgapura), which stood released from acquisition proceedings, was also acquired by group housing societies subsequent to the issuance of the Section 4 Notification, or the society had acquired interest in the same on the basis of an agreement to sell, or on any other ground similar to those raised by the respondent society. The situation of societies whose land stood released, was not compared with the case of the respondent society. Moreover, in case the government had assured such release by issuing several circulars or floating schemes, and the application of the respondent society was in fact pending before the authority concerned, the court ought to have directed the authority to consider the same. But the court, in such facts could not decide the case itself.

31. In the instant case, at the initial stage, the writ petition was filed before the High Court at Jodhpur. Admittedly, the land is situated in the heart of the Jaipur city, and all relevant orders including notifications for acquisition were issued at Jaipur. The writ petition ought to have been filed before the Jaipur Bench as per the statutory requirements therein. Learned counsel appearing for the parties could not furnish any explanation, as under what circumstances the first writ petition had been filed by the society alongwith tenure-holders at Jodhpur. Therefore, we are not only doubtful regarding the sanctity of the order passed by the High Court rather, it creates doubt about the bonafides of the parties and further, as to whether such a move could have been made in good faith.

This Court has on various occasions dealt with the similar situation and explained as where the writ petition is maintainable. (See: *Sri Nasiruddin v. State Transport Appellate Tribunal*, AIR 1976 SC 331; *U.P. Rashtriya Chini Mill Adhikari Parishad, Lucknow, v. State of U.P. & Ors.*, AIR 1995 SC 2148; *Rajasthan High Court Advocates Association v. Union of India & Ors.*, AIR 2001 SC 416; and *Dr. Manju Verma v. State of U.P. & Ors.*, (2005) 1 SCC 73).

32. In the instant case, the government itself labeled the

sale deeds, executed after issuance of Section 4 Notification as Void, we fail to understand as for what reasons the State authorities could think to regularise such orders. The right to administer, cannot obviously include the right to maladminister. Thus, we find no words to express anguish as what kind of governance it had been. (Vide: In Re: *The Kerala Education Bill*, 1957, AIR 1958 SC 956; *All Bihar Christian Schools Association & Anr. v. State of Bihar & Ors.*, AIR 1988 SC 305; *Sindhi Education Society & Anr. v. The Chief Secretary, Govt. of NCT of Delhi & Ors.*, (2010) 8 SCC 49; and *State of Gujarat & Anr. v. Hon'ble Mr. Justice R.A. Mehra (Retd.) & Ors.*, JT 2013 (1) SC 276).

33. In view of the above discussion, we reach the following inescapable conclusions:

- (i) The society members had entered into an agreement to sell even though, a Notification under Section 4 to carry out acquisition had been issued by the Govt., fully knowing the legal consequences that may arise. D
- (ii) The agreement to sell, made by the society (an unregistered document), did not create any title in favour of the society. E
- (iii) The acquisition proceedings were challenged after a decade of the issuance of Notification under Section 4, and 5 years after the date of award, by the society alongwith original khatedars. The petitions in which the aforesaid acquisition proceedings were challenged were dismissed by the High Court on the ground of delay and latches. F G
- (iv) When the land in dispute is situated in Jaipur city, the society, for reasons best known, had filed the writ petition challenging the acquisition proceedings at Jodhpur and not at Jaipur bench of the High Court. No explanation could be furnished by the H

- A learned counsel for the respondent society, as regards the circumstances under which the petition was filed at Jodhpur, and whether the same was maintainable.
- B (v) The first writ petition cannot be held to have been filed in good faith and the bonafides of the parties, becomes doubtful.
- (vi) Challenge to the acquisition proceedings attained finality so far as the khatedars are concerned, upto this court.
- C (vii) The respondent society never made any application for release of the land on any ground whatsoever, before the Competent Authority i.e. Secretary to the Department of Industries, instead, it applied for regularization before the JDA and before the revenue authorities for conversion of user of the land.
- D (viii) After the order of this court dated 9.9.1992, a telegram was sent by the society to the Chief Secretary stating that great injustice had been done to them, as their land was not released, raising the issue of discrimination qua other societies, but no factual foundation was laid therein, pointing out the discrimination meted out.
- E (ix) The High Court entertained the writ petition, without comparing the actual facts of the respondent society qua other societies.
- F (x) The High Court did not consider a single objection raised by the appellant RIICO before it. The finding of fact recorded to the effect that compensation could not be paid to the khatedars for want of money, is based on no evidence even though a reference was made to an affidavit filed by the State
- G
- H

- Authorities. Such findings are absolutely perverse. A
- (xi) There is no denial in specific terms as to whether the tenure holders had received compensation for the land in dispute, even though in the earlier proceedings, some khatedars were parties. B
- (xii) The schemes floated by the State Government (knowing well that acquiring land after the issuance of Section 4 Notification would be void), indicates a sorry state of affairs. Such orders have been passed without realizing that administration does not include mal-administration. C
- (xiii) The circulars issued by the State Government, being inconsistent with the policy and the law regarding acquisition, cannot be taken note of. Issuance of such circulars amounts to committing fraud upon statutes, and further, tantamounts to colourable exercise of power. The State in exercise of eminent domain acquires the land. Thus, before completing the acquisition proceedings, it should not release the land in favour of some other person who could not have acquired title over it at any point of time. D
E
- (xiv) The land had been acquired for industrial development and thus, cannot be permitted to be used for residential purposes. Therefore, the demand of the respondent-society cannot be held to be justified. F

34. In view of the above, both the appeals are allowed. The impugned judgment and order of the High Court dated 30.7.2002 in Civil Writ Petition No. 454 of 1993 is hereby set aside. No costs. G

K.K.T.

Appeals allowed.

H