

SUPREME COURT OF INDIA

Jaipur Development Authority

Vs.

Mahesh Sharma

C.A.No.8590 of 2003

(Dr. Mukundakam Sharma and Anil R. Dave JJ.)

21.09.2010

JUDGEMENT

DR. MUKUNDAKAM SHARMA, J.

1. We propose to dispose of these appeals together since the issues in these matters are interconnected.

2. A narration of the facts leading to the filing of the present appeal would indicate as to how money and land of the Government has been squandered away by some of the Government officials of Jaipur by joining hand with certain private parties. The facts of the present case would also reflect how unscrupulous and adventurous people in connivance with bureaucrats and persons in power have not only sought to give undue advantage of giving compensation for land but also sought to grab valuable lands causing willful loss to the Government exchequer and gain unto themselves. Facts of the present case appropriately reflects the earlier observations of this court in Secy., Jaipur Development Authority v. Daulat Mal Jain, reported at (1997) 1 SCC 35 wherein it was stated that public policy cannot be a camouflage for abuse of power and trust entrusted with a public authority

or public servant for the performance of public duty and an illegal allotment of land founded upon ultra vires and illegal policy of allotment made to some other persons wrongly would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order nor would it be legalized.

3. These points find close imitation in the facts of this case, which we may briefly narrate here. This appeal arises out of an order passed by the Rajasthan High Court in a contempt petition filed against the appellant, Jaipur Development Authority, for failure to comply with an order of the High Court of Rajasthan passed in 1984 to award the respondent not only compensation for the land acquired but also directing for allotment of a plot of developed land admeasuring 2500 sq. yards. On 18.02.1952, the Rajasthan Land Reforms and Resumption of Jagir Act (hereinafter "Jagir Act" for short) came into force whereby all Jagir lands from the commencement of the Act was made liable to payment of land revenue to the Government. With the coming into force of the aforesaid Act, land measuring 29 Bighas and 17 Biswas under the occupation of Idol of which Mahant Ram Narain was the Manager, being the sole priest of the temple, also vested with the Government. The said land measuring 29 Bighas and 17 Biswas was resumed by the Government effective from 01.08.1960. A Notification, however, was issued under Section 4(1) of the Rajasthan Land Acquisition Act (hereinafter "the Act" for short), which was published in the Rajasthan Gazette on 09.06.1960, to acquire 552 Bighas and 8 Biswas of land in village Bhojpura and Chak Sudershanpura Tehsil Jaipur. The land which was sought to be acquired under this Notification also included the aforesaid 29 Bighas and 17 Biswas of land, which is included in Khasra Nos. 257, 258, and 259, which was popularly known as Lal Kothi scheme, which is adjacent to Jaipur city for a planned development of the city. On 03.05.1961, a Notification under Section 6 of the Rajasthan Land Acquisition Act came to be published in the Rajasthan Gazette for the same area of land. The sole priest of the temple submitted a statement of his claim on 16.09.1965 for payment of compensation by treating his Maufi rental income of Rs. 1,000/- before the Jagir Commissioner. An order was passed on 17.10.1968 by the Jagir Commissioner sanctioning the payment of a sum of Rs. 2250/- as interim compensation and rehabilitation grant payable to the Jagirdar Mahant Ram Narain under Section 36 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. The aforesaid compensation was received by Jagirdar Mahant Ram Narain on 29.10.1968 as interim compensation under the Jagir Act.

4. Despite the aforesaid fact of vesting of the land on the State Government by virtue of the provisions of Jagir Act and despite the payment of interim compensation under Jagir Act, an Award was passed by the Land Acquisition Officer on 29.04.1971, determining a sum of Rs. 2,62,680/- as compensation in lieu of the acquisition of the land. Surprisingly and rather peculiarly, the Land Acquisition Officer apart from determining the compensation for the land, also recommended allotment of developed plot of land measuring 2,500 sq. yds. to be given to the respondent. The Government of Rajasthan taking the stand that the aforesaid issuance of notifications under Sections 4 and 6 of the Act as also passing of the Award on 29.04.1971 was a nullity, issued an order dated 26.09.1973 deacquiring the land under Section 48 of the Rajasthan Land Acquisition Act stating therein that the possession of the land in question stood resumed on the day under the Jagir Act. On 27.11.1973, the Land Acquisition Officer moved an application for withdrawal of reference on the ground that the land already stood deacquired, consequent upon which the learned Civil Judge, Jaipur City, dismissed the reference on 14.05.1974 as withdrawn. The respondent seems to have

been aggrieved by the aforesaid order and accordingly preferred an application on 06.09.1974 before the Land Acquisition Officer for payment of compensation amount, which was rejected by the Land Acquisition Officer holding inter alia that since the land stood resumed under the Jagir Act there is no question of payment of compensation.

5. The Government officials adopted the stand that the land was Government land after its vesting with the Government under the provisions of the Jagir Act. The said position was also fortified by entry made in the Memo of Entries (Jamabandi) of village Bhojpura Tehsil, Jaipur District, Jaipur, wherein the entire land measuring 29 Bighas and 17 Biswas was shown with Khasra numbers as government land and the said land stood as Government land for the period between Samvat 2015 to 2034 which is years 1958 to 1977. The aforesaid jamabandi entries, therefore, clearly indicate the land in the revenue record was recorded as Government land during the period from 1958 to 1977. But despite the said fact, a Notification under Section 4(1) of the Act was issued for acquiring the land by the State Government followed by a Notification under Section 6 of the Act.

Further, not only did an award come to be passed on 29.04.1971 by the Land Acquisition Officer determining a sum of Rs. 2,62,680/- as compensation in lieu of the acquired land, but the Land Acquisition Officer also recommended the allotment of additional land measuring 2500 sq. yds. of developed land to be given to the respondent.

6. The respondent being aggrieved by the issuance of the aforesaid Notification by the Government under Section 48 of the Rajasthan Land Acquisition Act preferred a writ petition before the Rajasthan High Court praying for the quashing and setting aside of the Notification dated 26.09.1973 with a further prayer to direct the appellant herein to make immediate payment of an amount of Rs. 2,62,680/- awarded under the award dated 29.04.1971 and also to allot the land measuring 2500 sq. yds in compliance of the award. The said writ petition was heard by the learned single Judge of the High Court, who allowed the writ petition filed by Mahant Ram Narain and pursued by his son, the present respondent No. 1 as Ram Narain himself expired before the judgment was pronounced. The High Court while allowing the writ petition quashed the Notification issued by the State Government under Section 48 of the Rajasthan Land Acquisition Act with a further direction to the State Government to deposit the compensation amount in the court of the Civil Judge, Jaipur within three months and also to allot a plot of land of 2500 sq. yds.

7. Aggrieved by the aforesaid Judgment and Order passed by the learned Single Judge, the appellant herein preferred a DB Civil Special Appeal before the Division Bench of the High Court of Rajasthan contending inter alia that the land acquisition proceedings were void ab initio as the land had already vested in the State and therefore, no benefit could be granted to the respondent under illegal and void proceedings, particularly when the entire land acquisition proceedings was a nullity. It was also contended before the Division Bench of the High Court that the predecessor- in-interest of the respondent had accepted the interim compensation under the Jagir Act, which indicates that he explicitly admitted resumption of the land, and therefore, there was no occasion to take

possession under the Land Acquisition Act. The Division Bench of the High Court admitted the appeal filed by the appellant herein but ultimately dismissed the said appeal on 06.02.1996 on the ground that the State had failed to take necessary steps.

On 17.04.2002, an application for recalling the order dated 06.02.1996 was filed and the High Court dismissed the matter holding inter alia that the application was pending for last six years. As against the aforesaid order a special leave to appeal petition was filed in this Court, which was also dismissed on 11.10.2002.

8. It appears thereafter the respondent preferred a fresh petition before the High Court under Article 226 of the Constitution on 22.07.2002 for contempt of court in view of the alleged non-compliance of the order passed by the High Court. On 27.11.2002, the Division Bench of the High Court took up the aforesaid writ petition and rejected the same.

9. The contention of the appellant before the High Court was that the order dated 27.11.2002 was non est and a nullity.

Before the High Court it was also stated by the appellant that not only was the initiation of the acquisition proceedings by issuance of notifications under Sections 4(1) and 6 of the Land Acquisition Act a nullity, but even the passing of the award was also a nullity. In support of the contentions, reliance was placed on the decisions of this Court in Jaipur Development Authority v. Radhey Shyam, reported at (1994) 4 SCC 370 and Secretary, Jaipur Development Authority v. Daulat Mal Jain, reported at (1997) 1 SCC 35, as also the case of Narpat Singh & others vs. Jaipur Development Authority & Another reported at (2002) 4 SCC 666.

10. The Division Bench, however, by the impugned order dated 27.11.2002, held that the Division Bench cannot enter into a controversy so as to find out whether the order dated 17.05.1984 is a nullity once the order dated 17.05.1984 has attained its finality upto the Supreme Court, and therefore, a direction was issued to the appellant herein to carry out the order. Being aggrieved by the aforesaid order dated 27.11.2002 passed by the Division Bench of the High Court, the appellant preferred the present Special Leave Petition in which initially a notice was issued and an interim order was passed staying the operation of the impugned order. However, an order came to be passed on 03.11.2003 by this Court granting leave and also making interim order absolute till the disposal of the appeal. It was, however, ordered by this Court in the same order dated 03.11.2003 that the amount awarded would be deposited before the Registrar of the High Court within a period of four weeks and that the same would be permitted to be withdrawn by the respondents on furnishing security to the satisfaction of the Registrar of the High court. Now the appeal being ready in all respects was listed for hearing and in the light of the aforesaid background facts we heard the learned counsel appearing for the appellant in this appeal but none appeared for the respondent despite the matter being heard on several dates.

11. Mr. S.K. Bhattacharya, counsel appearing for the appellant submitted before us that the land measuring 29 Bighas and 17 Biswas having been vested with the Government, and with the legislation and enforcement of the Jagir Act the said land having been resumed, and there being a case of resumption of the entire land by the Government effective from 01.08.1960, there could not have been any notification under Section 4(1) and 6 of the Land Acquisition Act seeking to acquire land belong to the Government itself, and therefore, entire initiation of the proceedings under the Land Acquisition Act and passing of the award under the Land Acquisition Act was a nullity. It was also submitted by him that the land in question belonged to the Idol and not to Ram Narain, who was only a Mahant being the sole priest of the temple and therefore passing of the Award of compensation in favour of Ram Narain, the predecessor-in-interest of the respondent was not only illegal, but also a nullity, and therefore, even on that ground the award is non est in the eyes of law. His further submission was that in any case the order passed by the Land Acquisition Officer directing allotment of land measuring 2500 sq. yds. in favour of Ram Narain was void ab initio and that the aforesaid directions of the Land Acquisition Officer were contrary to and unknown to the law of the land. He also drew our attention to an agreement dated 21.04.2001, copy of which is placed on record, whereby the respondent no. 1 herein had entered into an agreement for the development of land measuring 3 Bighas and 15 Biswas covered by Khasra No. 130 with Messrs Ganpati Royal Estate, who is described as partner/purchaser. In the said agreement, it was stated by the respondent no. 1 that the aforesaid property is entered in the revenue record and papers in the name of father of first party Shri Ram Narayan Sharma and consequent upon his death, the owner of the aforesaid land, proprietor is first party and land owner. It was further stated in the said agreement that the aforesaid land is under acquisition proceeding initiated by the Government of Rajasthan but no award or compensation has yet been paid to the land owner - respondent for which litigation is pending, and therefore, the agreement is being executed for development of the aforesaid land under the said agreement.

12. Our attention was also drawn by the learned counsel appearing for the appellant to a Circular dated 13.12.1991, which was issued by the Deputy Secretary, Admn., Government of Rajasthan, Jaipur to the Deputy Director, Bikaner, Settlement Commissioner, Jaipur. The subject of the said Circular described the Entry of the name of Pujari along with Mandir Dev Statue for khatedari of land. In the said Circular, it was stated that the question has been raised time and again that when such Mandirs which have their personal lands, whether the name of the Pujari should be entered in the revenue records (Jamabandi) along with the Idol (Dev Statue). In paragraph 3 of the said Circular, it was also clarified that the right position is that the name of the Pujari or Shiwayat should not be mentioned in the Jamabandi.

13. In view of the aforesaid position and for the protection of the Dev statue and in order to check the unwarranted litigation relating to the land of the Dev statue, it was decided that in the Jamabandi to be prepared by the Revenue Department or by the Settlement Department in future, the name of Pujari will not be mentioned along with the name of the Dev statue. Another direction which was issued was that in Jamabandis which have been prepared and presently in force, the name of Pujari wherever it occurs along with name of Dev statue be struck off and be mentioned in the aforesaid register. It was also informed under the aforesaid Circular that the aforesaid directions shall come

into force with immediate effect.

14. During the course of his arguments, the learned counsel appearing for the appellant relied upon the copy of Jamabandi for the period between 1958 to 1977, wherein the entire 29 Bighas and 17 Biswas of land was shown to have been registered as Government land in the Jamabandi.

15. The facts of the present case, which we have delineated at length, clearly disclose that the entire land of 29 Bighas and 17 Biswas stood in the name of the Government and has been shown as Government land in the Jamabandi for the period between 1958 to 1977. That entry came to be entered into in view of the promulgation of the Jagir Act w.e.f. 18.02.1952 and was fortified by the resumption of the entire land effective from 01.08.1960. The order of the Jagir Commissioner dated 17.10.1968 is also placed on record. A bare perusal of the said order proves and establishes that a sum of Rs. 2250/- was sanctioned as interim compensation and rehabilitation grant payable to the Jagirdar Ram Narain under Section 36 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952. There could have been a mistake in describing Ram Narain as Jagirdar as the land belonged to the Idol/Dev statue and Ram Narain being only a priest of the said temple. Such description of Ram Narain as Jagirdar was also not in tune with the circular dated 13.12.1991. This fact gets established even by the application filed before the Jagir Commissioner by showing Ram Narain as the Pujari and Manager and showing the Idol as the Jagirdar.

In paragraph 1 of the said application filed by the predecessor-in-interest of respondent no. 1 herein, it was clearly stated that there is a temple with an Idol of Lord Hanuman Ji in which Ram Narain is the only Pujari and Manager. He had stated in the said application that with the vesting and resumption of the land, he is entitled to get compensation under Section 22 of the Land Reforms and Resumption of Jagir Act, which should be paid to him.

Pursuant to the same, order for interim compensation was made by the Jagir Commissioner, Rajasthan. The predecessor-in-interest of respondent no. 1 received the interim compensation thereunder without any protest and demur. Consequently, he was, at the most, entitled to receive balance compensation under the Jagir Act.

16. Despite vesting of the land with the Government under the provisions of the Jagir Act and also resumption of the said land measuring 29 Bighas and 17 Biswas by the Government, a notification proposing acquisition of the said land was issued by the Government under Section 4(1) of the Act followed by the notification under Section 6 of the Act. The Land Acquisition Officer even proceeded to pass an award in respect of the land, which already belonged to the Government, by determining compensation, and proceeded further in directing retention of interim compensation paid under Jagir Act and also by directing the allotment of a plot of developed land measuring 2500 sq. yds. Although there was no law supporting such action, the said action on the part of the Land Acquisition Officer directing the payment of compensation and also allotting a plot of land in favour

of the respondent indicates as to how Government officials, who are protectors of the Government property, abuse their power and trust under the camouflage of performance of their public duty. The respondent no. 1 entering into a private agreement describing himself as the owner of the land is in itself a disclosure as to how property belonging to an Idol is being frittered away by a trustee who is a Manager for promoting his self interest and self gain. If on the one hand, a Government officer of the status of Land Acquisition Officer, who is entrusted with a public authority while performing a public duty has sought to make an illegal acquisition of land and also making illegal allotment of land, on the other hand it is a trustee and the Manager who has abused his position and has, following the trust reposed on him, sought to fritter away a property belonging to the Idol.

17. Unfortunately, the learned Single Judge while hearing the first writ petition completely ignored the aforesaid position and instead issued a direction for not only for retaining payment of the interim compensation under the Jagir Act but also ordered for payment of compensation under the Land Acquisition Act along with interest, but also upheld the order of allotment of additional land. The Division Bench of the High Court dismissed the appeal filed therefrom on the ground that the appellant has failed to take appropriate steps. The special leave petition by this Court was dismissed for non-prosecution as the appellant failed to take steps in the appeal. In the subsequent writ petition, the Division Bench of the High Court by the impugned order directed for payment of compensation, totally ignoring the contention of the appellant that such an order is a nullity in the eyes of law which submission was enforced by at least three decisions of this Court.

18. In *Jaipur Development Authority v. Radhey Shyam*, reported at (1994) 4 SCC 370, at page 372, it was held by this Court that the power expressly given to the Land Acquisition Officer is only in respect of enquiry into the true area of the land acquired and determination of the compensation which in his opinion should be allowed to the acquired land and apportionment of the compensation among the claimants who appeared before him or persons known or believed to be interested in the land whether appeared or not and that it excludes by implication any other power other than that given to the Collector by Section 11. It was also held in the said decision that the award is only an offer made after consideration of the above matters and is only made subsequent to reference and determination made under sub-section (1) of Section 23 of the amounts awardable thereunder or any other amount awarded under any or all other clauses thereunder including sub-section (2). Subsequently, an award shall be made by court and such award by operation of sub-section (2) of Section 26 would be deemed to be a decree. In Para 7, this Court laid down that a reading of sub-section (4) of Section 31 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. The contention of the learned counsel for the claimants was that while awarding compensation, the Collector (Land Acquisition Officer) has a higher power than the limited power given under sub-section (3) of Section 31. It was held that such a position is not tenable, and would run counter to the scheme envisaged in the Act and such interpretation, if accepted would result in defeating the public purpose. This Court clearly held in the said decision 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 and that 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.

19. The subsequent decision of this Court in Secy., Jaipur Development Authority v. Daulat Mal Jain, reported at (1997) 1 SCC 35 is almost to the same effect. In the said decision, this Court has laid down almost to the same extent while interpreted the provisions of the Rajasthan Land Acquisition Act, 1953. This Court held in paragraphs 11, 12 and 13 as under:

"11. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The Executive Government should frame its policies to maintain the social order, stability, progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity.

Therefore, they should morally be responsible for their actions.

12.The Government acts through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy.

The action would, therefore, bear necessary integral connection between the 'purpose' and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility thereat comes into consideration.....

13. All purposes or actions for which moral responsibility can be attached are actions performed by individual persons composing the department. All government actions, therefore, means actions performed by individual persons to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions, social and economic democracy set down in the Preamble, Part III and Part IV of the Constitution. The intention behind the government actions and purposes is to further the public welfare and the national interest. Public good is synonymous with protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification."

What the Court has said in paragraphs 14 and 15, have been extracted right at the beginning of this Judgment.

20. In *State of Orissa v. Brundaban Sharma*, reported at 1995 Supp (3) SCC 249, this Court has held that the Land Acquisition Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition. It reiterated the settled position of law that the Government being the owner of the land need not acquire its own land merely because person mistakenly resorted to acquire the land and later on mistakenly published notifications under Sections 4 and 6 of the Act.

21. The aforesaid position was reiterated in a subsequent decision of this Court in *Meher Rusi Dalal v. Union of India*, reported at (2004) 7 SCC 362. In paragraphs 15 and 16 of the said judgment, this Court has held that the High Court has clearly erred in setting aside the order of the Special Land Acquisition Officer declining a reference since it is settled law that in land acquisition proceedings the Government cannot and does not acquire its own interest. While laying down the aforesaid law, this Court has referred to its earlier decision in the case of *Collector of Bombay v. Nusserwanji Rattanji Mistri & Ors.* reported at (1955) 1 SCR 1311.

22. We may at this stage appropriately refer to the decision of this Court in the case of *Kiran Singh & Ors. v. Chaman Paswan & Ors.* reported in (1955) 1 SCR 117. In the said case this Court has held that judgment passed by a Court without jurisdiction is a nullity and such a judgment could be challenged even in execution or collateral proceedings.

Court on page 121 at para 6 held thus:

"..... It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings."

23. In the case of *State of Jammu & Kashmir v. Sanahullah Mir* reported in (1980) 3 SCR 281 this court dealing with a case regarding resumption of land on pages 286-287 at para 9 held thus: -
"..... On going through these documents it appears to us that under the influence of some high-ups a case was made out for payment of compensation to the respondent in respect of the land acquired 60 years ago by acquiring it again which naturally led to the determination of the market value of the land in or about the year 1955. The State Exchequer cannot be made to suffer for such wanton and illegal actions of its officers. The land had been resumed long ago. It belonged to the State. The whole proceeding of land acquisition was a nullity. The Award resulting therefrom was

also-ultra vires and a nullity. It mattered little whether the proceeding was taken as a result of the fraud or mistake or otherwise. We are accepting the findings of the courts below that the respondent had not practised and fraud nor was the land acquisition proceeding started as a result of any mistake of fact. It was either as a result of gross negligence or a deliberate act on the part of the officials at the instance of some high-ups to help the respondent. It is well-settled that there is no question of any acquisition of the State's own land as was purported to be done in this case."

24. In view of the aforesaid decisions of this Court, it is crystal clear that the issuance of notifications under Sections 4 and 6 of the Act as also the Award passed for acquisition of the land was a nullity and the subsequent action of the Government de-requisitioning land by issuance of notification under Section 48 was just and proper as that was an action for rectification of the mistake. The subsequent land acquisition officer was justified in refusing to refer to the Reference Court in view of the fact that the land was already a Government land and was so described in the revenue record itself. The Land Acquisition Officer, who passed the award, committed an illegality by not only determining the compensation under the Land Acquisition Act but also directing for retention of the interim compensation paid under Jagir Act and also in directing for allotment of a developed plot of land admeasuring 2500 sq. yds. Initiation of the acquisition proceedings as also award passed by the said Land Acquisition Officer is nullity in the eyes of law and void ab initio and therefore could be held so and set aside in a proceeding of this nature. We, therefore, hold that the directions for payment of compensation under the Rajasthan Land Acquisition Act to the predecessor-in-interest of the respondent no. 1 and subsequently to respondent no. 1 are illegal and without jurisdiction as the award passed by the land acquisition officer was only an offer which itself was a nullity. Payment made to the predecessor-in-interest of the respondent no. 1 and also to the respondent no. 1 as its successor is also held unwarranted as the said orders were passed considering them as the owners of the land and not as a trustee or manager. Therefore, the said orders directing for payment of compensation and withdrawal of the compensation by respondent no. 1 is held to be illegal and without jurisdiction. We set aside the said orders by allowing the appeal filed by the appellant. The amount deposited pursuant to the orders of this Court, if, has been withdrawn by respondent no. 1 shall be realized from him through the process of the High Court. The Registrar General of the High Court would take necessary steps to realise the amount paid to the respondent by invoking the security furnished and if necessary by resorting to remedy in accordance with law. In terms of the aforesaid order the appeal is allowed but we leave the parties to bear their own costs.

CIVIL APPEAL NO. 9158 OF 2003 WITH

CIVIL APPEAL NO. 9161 OF 2003 AND CIVIL APPEAL NO. 9162 OF 2003

25. The remaining appeals may be disposed together since the facts and circumstances in these cases are similar.

26. In all these appeals, the respondents are sub-awardees who have come to the fore after a Notification under Section 4 of the Rajasthan Land Acquisition Act was published in the State Gazette for acquisition of land in village Bhojpura and Chak Sudershanpura Tehsil Jaipur., for the purpose of construction of a scheme popularly known as Lal Kothi scheme, which is adjacent to Jaipur City for a planned development of the city.

27. These appeals merit the same observations as we have made in Civil Appeal No. 8590 of 2003, wherein the Land Acquisition Officer proceeded to pass an award in respect of the land acquired, which was already vested with the Government after the coming into force of the Rajasthan Land Reforms and Resumption of Jagir Act (hereinafter "Jagir Act" for short) on 18.02.1952, by determining compensation, and went further by directing for allotment of a plot of developed land measuring 2500 sq. yds. We have made it clear in the aforesaid appeal that the Land Acquisition Officer, through such an action, was not only acting beyond his mandate and jurisdiction, but was also betraying the public trust reposed on him by virtue of being a public servant.

28. Pursuant to such an illegal award that we have held in the aforesaid appeal to be non est and void ab initio, the sub-awardees who are also Respondents in the present appeals made representations to the Urban Improvement Trust, Jaipur for allotment of land. Unfortunately, the Trust not only complied with these representations but also drew up allotment plans, asking the Respondents to deposit money in lieu of the same.

29. Kamla Mehta, who is the respondent in Civil Appeal No. 9162, claims to have paid the full price for this reallocated plot on 17.12.1970. Dr. S.K. Sharma, who is the respondent in Civil Appeal No. 9161, was initially allotted a plot no. 32 in the Lal Kothi Scheme by the Urban Improvement Trust and he had deposited the full amount of the plot on 31.3.1970. In the case of Pushpa Saxena, the appellant in Civil Appeal No. 9158, she had purchased land measuring 400 sq. yards from one Usha Kumari vide an agreement to sell dated 7.7.72. The said Usha Kumari who had purchased the plot from the original Khatedar, one Narpat Singh, was allotted a plot no H-256 in the Lal Kothi Scheme vide allotment letter dated 13.9.1970.

30. The Respondents, in their Writ Petitions submitted before the High Court of Rajasthan had complained that the said allotments were not being made expeditiously. The High Court allowed the Writ Petitions holding inter alia that the actions of the appellants herein cannot be sustained and that once an allotment has been made by the Urban Improvement Trust, the same cannot remain unfulfilled.

31. We heard the counsel for parties at length. Mr. S.K. Bhattacharya, Advocate appearing for the appellant submitted before us that the entire initiation of proceedings and passing of the award under the Land Acquisition Act was a nullity. The learned counsel for the appellant based his argument on the contention that the Land Acquisition Officer had no authority or right to allot plots

in addition to monetary compensation. It was also the submission of the appellant that the allotment of the plots in respect of the Respondents was cancelled and possession was taken back. Therefore, according to the appellant, the High Court's decision to allow the claims of the Respondents on the basis of policy was erroneous as the High Court failed to appreciate that the policy of the State Government is inapplicable to the facts of these cases and that such action allowing sub-awardees, nominees, dealers and even encroachers to obtain developed land at nominal rates, as opposed to the high market prices. On this count, the appellant also submitted that recognizing the claim of the Respondents would tantamount to recognizing the right of dealers in land, since nearly all the original Khatedars have sold their anticipated allotment in favour of unscrupulous dealers.

32. The learned counsel for the Respondents, on the other hand, submitted before us that the principles of natural justice were not followed in the proceedings that led to the cancellation of allotment in that the Respondents were not provided an opportunity to be heard. Moreover, it was the submission of the Respondent that the appellant was delivering possession to a number of other allottees who were similarly situated.

33. It is amply clear from our decision in Civil Appeal No. 8590 of 2003 that the issuance of notifications under Sections 4 and 6 of the Land Acquisition Act as also the Award passed for acquisition of the land was a nullity and the subsequent action of the Government de-requisitioning land by issuance of Notification under Section 48 was just and proper as that was merely by way of rectification of the mistake committed therein. In the light of this decision, we find that the Respondents herein have no claim or right to a fresh allotment of land, as directed by the Land Acquisition Officer. That other allottees have been wrongly delivered possession by the appellant does not, in any way, entitle the Respondents to claim the same benefit for a wrong action cannot be allowed to be perpetuated on the ground of discrimination, which is not at all applicable. Furthermore, it is important to note that none of the Respondents herein has been in possession of the said land allotted to them.

34. Moreover, this Court in *Yadu Nandan Garg v. State of Rajasthan*, reported at (1996) 1 SCC 334, on a case dealing with the lapse on the part of the Land Acquisition Officer in wrongly granting a benefit to one party, has held that the benefit thus wrongly granted cannot entitle others to get the same or to press claims of invidious discrimination.

35. In *Jaipur Development Authority v. Radhey Shyam*, reported at (1994) 4 SCC 370, at page 372, it was held by this Court that the power expressly given to the Land Acquisition Officer is only in respect of enquiry into the true area of the land acquired and determination of the compensation which in his opinion should be allowed to the acquired land and apportionment of the compensation among the claimants who appeared before him or persons known or believed to be interested in the land whether appeared or not and that it excludes by implication any other power other than that given to the Collector by Section 11. Seen in the light of the facts and circumstances of the present appeals, and from our decision in Civil Appeal No. 8590 of 2003, there is no doubt that the award

passed by the Land Acquisition Officer determining compensation and allotting fresh plots of land to the Respondents is illegal and void ab initio.

36. Furthermore, it is settled law that sub-awardees and subsequent purchasers possess right vis-à-vis the original vendor only and not against the State Government as the purchases were subsequent to passing of the award. When the acquisition proceedings are itself a nullity, there clearly cannot be a valid claim to allotment as has been contended by the Respondents in this case. In *Secy., Jaipur Development Authority v. Daulat Mal Jain*, reported at (1997) 1 SCC 35, this Court has held at page 43 :

"The diverse contentions give rise to the first question: whether the respondents have a right to allotment of the lands? It is an admitted position that they purchased the lands from Chhote Lal, the erstwhile owner, pursuant to the sale deeds executed by him in 1970 or an agreement of sale etc. Their source of title, therefore, is Chhote Lal, the erstwhile owner. The sales obviously are void since Chhote Lal had no right, title and interest in the land acquired pursuant to notification under Section 4(1) issued on 29-6-1960 and possession taken under Section 16 of the Central Act and equivalent to Section 16 of the State Act. The pre-existing right, title and interest had by Chhote Lal stood ceased and the same were vested in the appellant free from all encumbrances. The nomenclature of sub-awardees or nominees does not get elevated above the source and they had no right, title or interest under void sale except, if at all, only to claim compensation under Section 23(1) of the Act. In *Gian Chand v. Gopala* this Court had held that after the notification under Section 4(1) is published, any encumbrances created by the owner of the land does not bind the Government. The agreement of sale, if any, was frustrated by the publication of the notification under Section 4(1) and the declaration under Section

6. In *Yadu Nandan Garg v. State of Rajasthan* and a catena of other decisions, this Court has held that the purchase after notification under Section 4(1) published in the Gazette was not lawful which did not clothe the sale with any colour of title as against the State. All encumbrances stand extinguished by operation of Section 16 of the Act. Therefore, the purchaser gets no title to the acquired land. The sale (being opposed to the public policy) was void under Section 23 of the Contract Act, 1872. Consequentially, the respondents acquired no right, title or interest either under the sale deeds or agreement entered into by them with Chhote Lal, the erstwhile owner."

37. So far as the respondents-claimants, namely, Pushpa Saxena, Kamla Mehta and Dr. S.K. Sharma are concerned, there is no dispute to the fact that they purchased a part of the acquired land after the same was vested with the State Government under the Jagir Act and after the Government had resumed possession of the said land. All the aforesaid purchases were in any case subsequent to the notification issued by the State Government under Section 4 of the Land Acquisition Act and even after passing of the award, so as to take advantage of the undue and invalid direction for allotment of additional land by the Land Acquisition Officer.

38. Pushpa Saxena purchased her land from Usha Kumari vide sale deed dated 07.07.1972 and the area of land which was purchased by her was only 400 sq. yards. Usha Kumari had earlier purchased the land from Khatedar, Narpat Singh. The total area of land of Raja Narpat Singh that was acquired was 872.22 sq. yards whereas he was given an area of plot of 1,000 sq. yards as an alternative plot, which itself proves and establishes how some government officers got together to give undue benefit to unscrupulous person and were thereby trying to cause wrongful loss to the government of their assets.

39. There were many such awardees who were being given more land as an alternative to the area of the land which was sought to be acquired by issuing the notification under Section 4. There were 12 awardees who also entered into compromise and they were awarded plots of land in addition to mandatory compensation as under:

S.No Name of the Sl. No. of Area of The area of . Awardee the Land Land (in plot to be sq.yards) given in addition to cash compensati on as per the award

1. Sh. Radhuveer 50 1361 1500 Singh
2. Sh. Ram 27 2108 2000 Lal/Pokhermal
3. Sh. Raja 36 872.22 1000 Narpat Singh
4. Smt. Sharda 54 1097 1000 Dhapar
5. Smt. Jyotsna 28 2089 2000 Kumari
6. Sr. Tulsi 48 2166 2000 Vishnoi
7. Sr. Rameshwari 33 2658 2000 Sethi
8. Amrit Chain 29 2089 2000 Kumari
9. Madhu and 60 2166 2000 Vibhu Kashyap
10. Alok Prasad 52 298 500 Mathur
11. B.P. Bhatnagar 500

40. Incidentally, Raja Narpat Singh who was the original Khatedar and from whom Usha Kumari purchased land of which Pushpa Saxena purchased about 400 sq. yards, approached the Supreme Court but he himself was not allotted any plot of land whereas Pushpa Saxena, who purchased the land from Usha Kumari, is now seeking for allotment of alternative land at least to the extent of 250 sq. yards.

41. In so far as the claim of Dr. S.K. Sharma is concerned, his case is similar to that of Kamla Mehta whose case is disposed by the judgment of the High Court of Rajasthan dated 2nd June, 2000. Dr. S.K. Sharma purchased the land from Rajendra Singh whose area of land that was acquired was 3508 sq. yards as against which there was an order for allotment of alternative land of an area of 2000 sq. yards. Kamla Mehta, out of the anticipated allotment of land measuring 1500 sq. yards in favour of Raghbir Singh, entered into an agreement for allotment of land measuring 375 sq. yards. She has lodged her claim on the basis of documents like receipt and the alleged agreement to sale and she put forth her request for allotment of land in her favour on the basis of such anticipated allotment.

42. The decision to allot alternative plot of land was given by the Land Acquisition Officer in the absence of any supporting law to support such claim on the ground of alleged rehabilitation of the person whose land is sought to be acquired by the Government.

43. Necessarily, none of the aforesaid awardees, namely, Pushpa Saxena, Kamla Mehta and Dr. S.K. Sharma falls into the aforesaid category. When they entered into the agreements to sale there was no allotment of land in favour of the vendors and there was just an anticipated and possible action of allotment of some alternative land either to the vendors or the Khatedars from whom the vendors purchased through agreement to sell. While ordering for allotment of land in favour of such persons the concerned officers misused their position and the trust reposed on them. In any case, as of now, there is neither vacant land available in the Lal Kothi area nor are any of the aforesaid respondents-claimants is entitled to allotment of any alternative land.

44. In the light of the aforesaid decisions of this Court, and our discussion in Civil Appeal 8590 of 2003, we find that the cases of the Respondents are devoid of any merit. We, therefore, hold that the directions for payment of compensation and allotment of land under the Rajasthan Land Acquisition Act to the Respondents are illegal and without jurisdiction as the award passed by the land acquisition officer was only an offer which itself was a nullity. They are not entitled to an allotment of 250 sq. yards of plot, for any direction to allot such plot of land could amount to unjust enrichment of a person who had sought to bind the Government, although, in law no such binding effect came into existence as the land already vested in the Government. If any one of them has paid the charges for allotment of alternative land they can only get back the same from the competent authority, in which case, they shall be paid interest at the rate of 7.5% p.a from the date of the deposit of the amount till the date of the payment.