SUPREME COURT OF INDIA

Jaipur Development Authority

Vs.

Vijay Kumar Data & Anr.

C.A.No.7374 of 2003

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

12.07.2011

JUDGMENT

G.S.Singhvi,J.,

1. These appeals filed by the Jaipur Development Authority against judgment dated 29.7.2002 of the Division Bench of the Rajasthan High Court, Jaipur Bench are illustrative of how unscrupulous elements within the State apparatus connived with the private individuals and succeeded in partly frustrating one of the most ambitious schemes framed by Urban Improvement Trust, Jaipur (for short, "the Trust") (predecessor of the appellant), which came to be popularly known as Lal Kothi Scheme, for construction of new building of the Legislative Assembly, educational institutions, stadium complex, district shopping centre, MLA quarters etc.

2. By notification dated 13.5.1960 issued under Section 4 of the Rajasthan Land Acquisition Act, 1953 (for short, "the 1953 Act"), which was published in the official gazette dated 29.6.1960, the State Government proposed the acquisition of 552 bighas 8 biswas land of village Bhojpura and Chak Sudershanpura for planned development of Jaipur city. The land was to be utilised for the purpose mentioned in the preceding paragraph. Declaration under Section 6 was issued on 3.5.1961 and was published in the official gazette dated 11.5.1961. Thereafter, notice dated 18.7.1961 was issued to the land owners (Khatedars) under Section 9(1) and (3). Initially, 65 Khatedars filed claims for compensation but this figure swelled to more than 137 because those who purchased land from the Khatedars after publication of the notification issued under Section 4 and their nominees/sub-nominees also filed claims for compensation. The second category of persons included Shri Ganesh Narayan Gupta, Advocate and Dr. Bhagwan Das Khera, both of whom managed to purchase portions of the acquired land from one of the Khatedars, namely, Shri Vijay Lal son of Ram Sukhji. The Land Acquisition Officer, Jaipur passed an unusual award dated 9.1.1964 whereby he not only determined the amount of compensation payable to the landowners and the beneficiaries of illegal transfers, but also directed allotment of plots measuring 1000 to 2000 square yards to the owners, their transferees and nominees/sub-nominees out of the acquired land.

3. After passing of the award, Shri Ganesh Narayan Gupta filed execution application and succeeded in getting an order for delivery of possession of 1500 square yards land in the Lal Kothi Scheme. The revision filed against the order of Executing Court was dismissed by the High Court and in that sense, the order passed by the Executing Court became final. However, as will be seen hereinafter, in view of the judgment of this Court in Jaipur Development Authority v. Radhey Shyam (1994) 4 SCC 370, all such orders and judgments will be deemed to have become nullity.

4. In the meanwhile, 12 of the awardees filed applications for enhancement of the compensation. District Judge, Jaipur City, Jaipur accepted their claim. Simultaneously, he rejected the objection raised by the State Government that the Land Acquisition Officer did not have the jurisdiction to allot land in lieu of or in addition to the monetary compensation. The appeals filed against the judgment of the learned District Judge were disposed of by the High Court on the basis of compromise arrived at between the awardees and the Trust.

5. With a view to favour those who manipulated to create documents showing purchase of land after publication of the notification issued under Section 4 and who had access to the power corridors, the State and the Trust deliberately omitted to challenge the direction contained in the award of the Land Acquisition Officer for allotment of land to the land owners (awardees), transferees (sub-awardees) and their nominees/sub-nominees. However when large number of execution applications were filed by the beneficiaries, the functionaries of the State and the Trust appear to have become alive to the grave consequences which would have ensued by implementing the direction given by the Land Acquisition Officer. Therefore, they questioned the authority of the Land Acquisition Officer to give direction for allotment of land. The Executing Court partly upheld the objection but the revisions filed by the beneficiaries were allowed by the Division Bench of the High Court, which held that the legality of the award cannot be challenged in the execution proceedings.

6. During the pendency of litigation before different courts, another attempt was made by the functionaries of the State to confer legitimacy on the illegal transactions involving purchase of the acquired land. The then Minister of Urban Development of Housing, who was also Chairman of the Trust, constituted a Committee for suggesting the methodology for allotment of land in terms of the directions given by the Land Acquisition Officer. The members of the Committee obliged their master i.e. the Minister and recommended that land be allotted to the beneficiaries of illegal transactions at the rate of Rs.8/- per square yard. Thereafter, a circular disguised as policy decision was issued in 1978 for allotment of land to sub-awardees and their nominees/sub-nominees at the rate of Rs.8/- per square yard.

7. In furtherance of the so called policy decision, draw of lots was held on 23.12.1980 for allotment of plots to the awardees and the beneficiaries of illegal transfers of the acquired land and those who were successful were allotted plots. This exercise did not satisfy all and those who could not get plots filed writ petitions questioning the draw of lots. The Division Bench of the High Court held that the directions given by the Land Acquisition Officer and the Minister for allotment of plots were ex-facie illegal and had the effect of defeating the

public purpose for which the land was acquired. Notwithstanding this, the High Court granted relief to the writ petitioners on the ground of violation of the equality clause enshrined in Article 14 of the Constitution and directed that they should also be allotted plots as per their entitlement.

8. In the meanwhile, the Lokayukta of Rajasthan made inquiry under Section 10 of the Rajasthan Lokayukta and Up-Lokayuktas Act, 1973 in the matter of illegal allotments of plots in the Lal Kothi Scheme and submitted report dated 12.11.1992, the operative portion of which reads thus:

> "In view of what has been stated above, it is prima facie established that Smt Kamala, the then Hon'ble Minister, Urban Development and Housing Department, Government of Rajasthan-cum-Chairman, JDA Jaipur, Shri M.D. Kaurani, IAS, the then Commissioner, Jaipur Development Authority and Shri Subhebhan Mitra, the then Zonal Officer, Lal Kothi Scheme, JDA, Jaipur, have blatantly misused their official position to favour a few influential and highly placed individuals and have also thereby caused wrongful gain to them and wrongful loss to the Jaipur Development Authority and the public at large. But Smt Kamala, the then Hon'ble Minister, Urban Development and Housing Department-cum-Chairman, JDA is not now a public servant as defined in Section 2(1) of the Rajasthan Lokayukta and Up-Lokayuktas Act, 1973 (for short `the Act') because she has ceased to be a Minister. So investigation is not being commenced against her but the investigation deserves to be commenced against S/Shri M.D. Kaurani, IAS and Subhebhan Mitra under Section 1 of the Act, and I order accordingly."

However, as has happened with hundreds of similar reports submitted by the Lokayukta and other statutory authorities entrusted with the task of making investigation into the acts of favouritism, nepotism and corruption committed by the bureaucrats and public representatives, no tangible action appears to have been taken on the recommendations contained in report dated 12.11.1992.

9. The question whether the Land Acquisition Officer could issue direction for allotment of land to the awardees, sub-awardees and their nominees/sub-nominees was considered by this Court in Radhey Shyam's case. After noticing the provisions of Section 31(3) and (4) of the 1953 Act on which reliance was placed by the senior counsel appearing for the respondents, this Court held that the Land Acquisition Officer did not have the jurisdiction, power or authority to direct allotment of land to the claimants. This is clearly borne out from the following extracts of paragraph 7 of the judgment:

> "A reading of sub-section (4) of Section 31, in our considered view, indicates that the Land Acquisition Officer has no power or jurisdiction to give any land under acquisition or any other land in lieu of compensation. Sub-section (4) though gives power to him in the matter of payment of compensation, it does not empower him to give any land in lieu of compensation. Sub-section (3) expressly gives power "only to allot any other land in exchange". In other words the land under acquisition is not

liable to be allotted in lieu of compensation except under Section 31(3), that too only to a person having limited interest. .....The problem could be looked at from a different angle. Under Section 4(1), the appropriate Government notifies a particular land needed for public purpose. On publication of the declaration under Section 6, the extent of the land with specified demarcation gets crystallised as the land needed for a public purpose. If the enquiry under Section 5-A was dispensed with, exercising the power under Section 17(1), the Collector on issuance of notice under Sections 17, 9 and 10 is entitled to take possession of the acquired land for use of public purpose. Even otherwise on making the award and offering to pay compensation he is empowered under Section 16 to take possession of the land. Such land vests in the Government free from all encumbrances. The only power for the Government under Section 48 is to denotify the lands before possession is taken. Thus, in the scheme of the Act, the Land Acquisition Officer has no power to create an encumbrance or right in the erstwhile owner to claim possession of a part of the acquired land in lieu of compensation. Such power of the Land Acquisition Officer if is exercised would be self-defeating and subversive to public purpose."

(emphasis supplied)

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

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

(emphasis supplied)

10. The legality and correctness of order dated 24.9.1993 passed by the Division Bench of the Rajasthan High Court in D.B.C.S.A.W. No.680 of 1992 was considered in Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others (1997) 1 SCC 35. This Court noted that the Lokayukta of Rajasthan had severely criticized the actions of the then Minister of Urban Development and Housing Department, Commissioner, Jaipur

Development Authority and Zonal Officer of Lal Kothi Scheme, referred to the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 and held:

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

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

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

said to have the stamp of public policy; rather it is a policy to feed corruption and to deflect the public purpose and to confer benefits on a specified category, as described above."

(emphasis supplied)

The plea of discrimination which found favour with the High Court was also negatived by this Court by making the following observations:

"The question then is whether the action of not delivering possession of the land to the respondents on a par with other persons who had possession is an ultra vires act and violates Article 14 of the Constitution? We had directed the appellants to file an affidavit explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that behalf by Shri Pawan Arora, Deputy Commissioner, that allotments in respect of 47 persons were cancelled and possession was not given. He listed various cases pending in this Court and the High Court and executing court in respect of other cases. It is clear from the record that as and when any person had gone to the court to get the orders of the LAO enforced, the appellant-Authority resisted such actions taking consistent stand and usually adverse orders have been subjected to decision in various proceedings. Therefore, no blame of inaction or favouritism to others can be laid at the door of the present set-up of the appellant-Authority. When the Minister was the Chairman and had made illegal allotments following which possession was delivered, no action to unsettle any such illegal allotment could have been taken then. That apart, they were awaiting the outcome of pending cases. It would thus be clear that the present set-up of the bureaucrats has set new standards to suspend the claims and is trying to legalise the ultra vires actions of Minister and predecessor bureaucrats through the process of law so much so that illegal and ultra vires acts are not allowed to be legitimised nor are to be perpetuated by aid of Article 14. That apart, Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no."

While repelling the argument made on behalf of the respondents that the judgment in Radhey Shyam's case was per incuriam, this Court observed:

"The basic postulate of the contention is the omission to refer to Rules 31 and 36 of the Rajasthan Land Acquisition Rules, 1956. Rule 31 was made to guide the exercise

of power of the Collector (LAO) under Section 31(3) of the Act. As seen, the Government has empowered the Collector to allot "any other land' in lieu of money compensation only when the land acquired belongs to a person having "limited interest in the land", like widow's estate or minor's estate, Mutawali etc. In that behalf, Rule 31 amplifies the exercise of the power by the authorised LAO. It says that the Collector cannot force a party to take land in lieu of cash. Where, however, the interest of the party is so limited, as in the case of a trustee of a wakf property or a Hindu widow, as to make it extremely difficult, if not impossible, to arrive at an adequate cash estimate of its value or where, from the circumstances of a case, it is impossible to place the parties concerned by cash compensation in the same or nearly the same position as before acquisition, sub-section (3) enables the Collector to arrange to award land (subject to the same limitation of interest) in lieu of cash. In Radhey Shyam case the scope of sub-section (3) of Section 31 has been considered and explained in extenso. Rule 31 is only to elongate the discretion which the LAO is expected to exercise in awarding land in lieu of cash consideration and the circumstances in which it would be done. Equally, Rule 36 deals with disposal of the excess land acquired by the Collector for a company and imposition of the conditions for sanction of transfer of excess land. Therefore, the absence of reference to them does not make any dent into the principle of law laid in Radhey Shyam case."

11. In Narpat Singh v. Jaipur Development Authority (2002) 4 SCC 666, this Court again considered whether the Land Acquisition Officer could direct allotment of plots measuring 1000 to 2000 sq. yds. to the landowners and their transferees etc. The appellants in that case were the owners of some parcels of land acquired by the State Government. They were also beneficiaries of the direction given by the Land Acquisition Officer. After disposal of the appeals filed by the Trust against the award passed by District Judge, Jaipur City, Narpat Singh and others filed execution application seeking implementation of the award made by the High Court. The appellant, who had succeeded the Trust, did not contest the application. Therefore, the Executing Court passed ex parte order and issued warrant of possession. The revisions filed against the order of the Executing Court were dismissed by the High Court, but in the special leave petitions, this Court gave liberty to the State Government and the appellant to raise objections before the Executing Court with a direction to the latter to decide the same after hearing the parties. Thereafter, the Executing Court reconsidered the matter and passed order dated 1.6.1990 whereby it rejected the objections filed against the prayer made by Narpat Singh and others for delivery of possession of the plots. This time, the High Court allowed the revision filed against the order of the Executing Court and declared that the earlier judgment, which was based on compromise, suffered from inherent lack of jurisdiction and, as such, the same could not be executed. In taking this view, the High Court relied upon the judgments of this Court in Radhey Shyam's case and Daulat Mal Jain's case. Before this Court, it was argued that the law laid down in the two cases was not applicable to the appellants' case because the decree was passed in their favour in terms of the compromise, but this argument was not accepted by the Court and the appeals were dismissed by making the following observations:

"Without entering into the question whether it is permissible for the Land Acquisition Officer or the Reference Court or the High Court hearing an appeal against an award made by the Reference Court to record a compromise whereunder the beneficiary of land acquisition agrees to offer land in lieu of monetary compensation and whether such a compromise would be legal and not opposed to public policy, we are of the opinion that the facts and circumstances of this case are enough to decline exercise of jurisdiction by this Court under Article 136 of the Constitution to the appellants. The exercise of jurisdiction conferred by Article 136 of the Constitution on this Court is discretionary. It does not confer a right to appeal on a party to litigation; it only confers a discretionary power of widest amplitude on this Court to be exercised for satisfying the demands of justice. On one hand, it is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations or situations occasioning gross failure of justice; on the other hand, it is an overriding power whereunder the Court may generously step in to impart justice and remedy injustice. The facts and circumstances of this case as have already been set out do not inspire the conscience of this Court to act in the aid of the appellants. It would, in our opinion, meet the ends of justice, and the appellants too ought to feel satisfied, if monetary compensation based on the principles for assessment thereof in land acquisition cases is awarded and in addition they are given each a plot of reasonable size to rehabilitate themselves so as to meet the demands of reasonability and consistency."

12. We may now advert to the facts of these cases. Shri Ganesh Narayan Gupta, who had purchased the acquired land in 1963 i.e. much after publication of the notification issued under Section 4 and declaration issued under Section 6, filed suit for injunction, which came to be registered as Civil Suit No.629/1983 and was renumbered as Civil Suit No.270/1985 with the prayer that the defendant (appellant herein) may be restrained from interfering with his possession over plot Nos.C-112 to C-115, Lal Kothi Scheme. During the pendency of the suit, Ganesh Narayan Gupta transferred the plots to the respondents and two others by registered sale deeds, who were impleaded as plaintiff Nos. 2 to 5 vide order dated 19.1.2001. Shri Ganesh Narayan Gupta claimed title over the plots on the basis of the sale deed executed in his favour by Khatedar - Shri Vijay Lal and subsequent allotment of plots in his favour by the Trust. The respondents laid their claim on the basis of registered sale deeds dated 18.4.1993 executed in their favour by Shri Ganesh Narayan Gupta.

13. In the written statement filed on behalf of the appellant, it was pleaded that in view of the judgments of this Court in Radhey Shyam's case and Daulat Mal Jain's case, the orders passed in favour of Shri Ganesh Narayan Gupta as also the allotment of plots by the Trust were nullity and, as such, he did not acquire any right over the suit land and he could not have transferred the plots to the respondents.

14. On the pleadings of the parties, the trial Court framed the following issues:

"1. Whether the plaintiff is owner in possession over the plot since 24.12.82.

2. Whether the defendant out of prejudice and anger is neither accepting the application and site plan from the plaintiff nor is approving them.

3. Whether the defendant wants to demolish the construction existing on the disputed plot in an illegal manner without giving notice?

4. Whether against handing over possession in execution proceedings, appeal has been preferred and what is its effect on the suit.

5. Whether possession of the plaintiff is not legal possession and he is encroacher.
6. Relief.

Additional Issue No.7

7. Whether the plaintiff No.1 has cased to have any interest with the property in dispute. In place of plaintiff No.1, the plaintiffs Nos. 2 to 5 have got right over the disputed property in consequence of sale of property."

15. The trial Court considered the evidence produced by the parties, referred to the judgments of this Court in Radhey Shyam's case and Daulat Mal Jain's case and held that plaintiff No.1 - Shri Ganesh Narayan Gupta is not entitled to relief of injunction because he could not prove his ownership over the suit land. The process of reasoning by which the trial Court reached this conclusion is evinced from the discussion made under issue No.1, the relevant portions of which are extracted below:

"The burden of proof regarding this issue lay on the plaintiffs part. The plaintiff side was required to prove that since 24.12.82 he has been owner in possession over the plot in dispute. The case of the plaintiff as per plaint is that on 6.1.64 the Land Acquisition Officer passed a joint award under which the land of the plaintiff No.1 was also acquired and the plaintiff No.1 was recommended a residential plot of 1500 square yards and compensation amount in lieu thereof as mentioned in the award. When the defendant as per the award did not give plot of land and compensation to the plaintiff No.1, then he filed execution application and over so many dates when compliance of the award was not made, then warrant of possession was issued from the court and the court through sale Ameen handed over physical possession on site by beating the drum on 24.12.82. The plaintiff since then as per para 5 of the plaint has been in possession over the disputed plot situated in Lal Kothi Bhojpura and Chak Sudarshanpura Scheme. The defendant in the written statement has denied these facts alleging to be wrong and has stated that under the judgment of Hon'ble Supreme Court, the Award in respect of the disputed land has been set aside. Filing of execution application by the plaintiff is admitted and rest of the averment is denied. The plaintiffs have not led any oral and documentary evidence in support of their case inspite of affording opportunity nor filed process fee for summoning the record of Execution Case nor obtained dasti from the court. The plaintiffs for continuously five years have not taken any steps for summoning the record of Execution Case inspite of

court direction nor adduced any evidence while on the other hand the defendant produced in evidence officer incharge Shri Maghraj Ratnu D.W.1, who has stated in his statement that the Land Acquisition Officer passed award dated 9.1.64 for the land in connection with planned development under the Lalkothi Scheme under which besides cash compensation simultaneous recommendation to allot plots of different size was made. Many awardees were allotted plots. In this connection various litigations were initiated in the Court. Similar award was passed in the year 1974. In the case of Civil Appeal J.D.A. versus Radheyshyam and others and Secretary J.D.A. versus Daulatmal Jain and others the Hon'ble Supreme Court has affirmed payment of compensation to be right and recommendation regarding allotment of plots is held to be illegal and void. The Land Acquisition Officer while passing the award for compensation was not competent to recommend for allotment of plot of land in lieu thereof. In this way the plaintiffs have got neither any proprietary right nor any possession over the disputed plot of land. The plaintiffs have concealed the facts. The plaintiff Ganesh Narayan has not been allotted plot of land by the J.D.A. The plaintiff has not cross examined the said witness D.W.1 produced by the defendant in evidence. I have sought guidance from judgments in both the cited cases namely Civil Appeal No.12370/96 Secretary J.D.A. versus Daulatmal Jain and Civil Apepal No.4209 and 4210/09. In both the judgments the Hon'ble Supreme Court has held award in respect of allotment of plot of land by way of compensation under the Lalkothi Scheme to be illegal and initially null & void. The plaintiffs have not rebutted the evidence adduced from the defendant's side nor produced any evidence. In the light of citations produced the ownership of the plaintiff No.1 over the disputed plot since 24.12.82 is not found. For want of evidence the possession of the plaintiff is also not proved. Consequently this issue is decided against the plaintiff."

16. After purchasing the plots from Shri Ganesh Narayan Gupta, the respondents filed applications under Section 83 of the Jaipur Development Authority Act, 1982 (for short, "the 1982 Act") questioning notice dated 19.12.1996 issued by the appellant for auction of the two plots. The Appellate Tribunal constituted under the 1982 Act (hereinafter referred to as, `the Tribunal'), relied upon the judgments in Radhey Shyam's case and Daulat Mal Jain's case and held that the respondents do not have the locus to challenge the proposed auction because transactions involving purchase of land by Shri Ganesh Narayan Gupta from the original Khatedar and subsequent purchase of plots by the respondents were nullity. Paragraphs 7, 9 and 11 of order dated 22.1.1997 passed in Vijay Kumar Data's case (identical order was passed in Daya Kishan Data's case), which contain the detailed reasons recorded by the Tribunal are extracted below:

"7. The Land Acquisition Act provides some powers and jurisdiction in favour of the Land Acquisition Officer, but simultaneously regarding awarding of land out of the land acquired to the khatedar or erstwhile owner some powers are vested about which the Hon'ble High Court in 1994(4) S.C.C. 370 and earlier cited judgment in the case of J.D.A. versus Daulatmal Jain, it is clearly laid down that the Land Acquisition Officer out of the acquired land at the time of passing the Award cannot award land by way of consideration and if he has done so, the act of the Land Acquisition Officer

is ab initio void, illegal and ineffectual and on that basis no proprietary rights can accrue in respect of that land in favour of any body and the Award which in the shape of a decree has reached the final stage that too cannot bestow any right upon the appellant, because this decree is ab initio void, illegal and proceedings done in compliance of it and possession given is also illegal and irregular. The Hon'ble Supreme Court in this judgment under citation has held the allotment of the plot to be illegal. In view of these two cited judgments it is clearly ensured that the Land Acquisition Officer had no right to award land by way of consideration out of the acquired land and on the basis of ab initio void and illegal act Ganesh Narayan Gupta could never acquire proprietary right because neither Ganesh Narayan Gupta could be owner of this acquired land nor the Land Acquisition Officer award any basis for right of ownership to Ganesh Narayan Gupta. Thus on the given land no right of ownership is accrued in favour of Ganesh Narayan Gupta and entire subsequent proceedings done in respect of this land is void in itself. Under the circumstances in view of the cited judgment of Hon'ble Supreme Court when Ganesh Narayan had no proprietary right, then after him question does not arise that the subsequent owners would have any right. Therefore the appellant also cannot have any basis or right in respect of this land.

9. When the notification under section 4 regarding acquisition of this land was published on 19.6.60 and declaration under section 6 was published in 1961, then Ganesh Narayan had no right to purchase this land in 1963 and after publication of this notification out of the land to be acquired if Ganesh Narayan at all purchased any land, even then no right of ownership can accrue to Ganesh Narayan Gupta in respect of this land. Thus the act of Ganesh Narayan to purchase this land is in contravention of rules and is void.

11. The act of the Land Acquisition Officer of giving plot of land to Ganesh Narayan out of the land acquired is ab initio void, publication of notifications under sections 4 and 6 in 1960 and 61 and after publication of this notification purchasing of land by Ganesh Narayan and subsequently by the appellant from Ganesh Narayan is void, and no right is available under the circumstances to the appellant and on the basis of law laid down in the cited judgments in 1994(4) S.C.C. 370 and in J.D.A. versus Daulatmal Jain, the appellant has failed to establish any of his right or basis. Therefore, this appeal of the appellant against the respondent is not maintainable."

(emphasis supplied)

17. The respondents challenged the orders passed by the Tribunal in S.B. Civil Writ Petition Nos.1047 of 1997 and 1046 of 1997. They pleaded that by virtue of the sale deeds executed by Shri Ganesh Narayan Gupta, they have become owners of the plots and the appellant has no right to auction the same. They relied upon Section 144 of the Code of Civil Procedure and claimed that the appellant is duty bound to restore the land to them because the action taken for depriving them of the possession was wholly illegal.

18. In the written statement filed on behalf of the appellant, it was pleaded that plot Nos.C-113 to C-117, Lal Kothi Scheme were allotted to Bhagwan Das Khera in 1979 but, later on, the said allotment was cancelled. It was further pleaded that in view of the law laid down by this Court in Radhey Shyam's case and Daulat Mal Jain's case, the allotment made in favour of Shri Ganesh Narayan Gupta in compliance of the order passed by the Executing Court has to be treated as nullity and he had no right to transfer the plots to the writ petitioners.

19. The learned Single Judge dismissed the writ petitions by observing that the dispute regarding title of plot Nos.C-113 to C-114 cannot be decided under Article 226 of the Constitution. The learned Single Judge noted that no material was placed before the Court to show that the two plots were allotted either to the original Khatedar or to the writ petitioners whereas the respondents had produced documents to prove that the plots were allotted to one Bhagwan Das Khera and the allotment made in his favour was also cancelled.

20. The Division Bench of the High Court did not find any error in the view taken by the learned Single Judge that dispute relating to title of the property cannot be decided under Article 226 of the Constitution of India, but entertained and accepted an altogether new case put forward by the counsel for the writ petitioners (the respondents herein) that in terms of the policy decision taken by the State Government, which was circulated vide letter dated 6.12.2001 and order dated 9.1.2002 passed by another Division Bench in D.B. Civil Writ Petition No.5776/2001 (suo motu) - Rajasthan High Court v. State of Rajasthan and others, his clients were entitled to regularization of the plots in question.

21. Shri S.K. Bhattacharya, learned counsel for the appellant assailed the impugned judgment mainly on the ground that it runs contrary to the law laid down in Radhey Shyam's case and Daulat Mal Jain's case. Learned counsel submitted that in view of the declaration of law made in Radhey Shyam's case that the Land Acquisition Officer did not have the jurisdiction to allot land to the awardees, sub-awardees and their nominees/sub- nominees, the so-called policy framed by the State Government for regularisation of illegal allotments is liable to be treated as nullity and the Division Bench of the High Court committed serious error by extending the benefit of that policy to the respondents ignoring that Shri Ganesh Narayan Gupta from whom they had purchased the plots did not have title over the land and also that no such case was set up in the writ petition filed by them. Shri Bhattacharya then argued that the concurrent finding recorded by the Tribunal and the trial Court that the transaction involving purchase of land by Shri Ganesh Narayan Gupta after publication of the notification under Section 4 was nullity is binding on the respondents and they did not have the locus to take benefit of the so called policy of regularization contained in letter dated 6.12.2001.

22. Shri M.L. Lahoty, learned counsel for respondent - Vijay Kumar Data argued that the order passed by the Executing Court for delivery of possession of 1500 square yards land to Shri Ganesh Narayan Gupta will be deemed to have become final and is binding on the appellant because revision filed against that order was dismissed by the High Court and it is not open for the appellant to indirectly question the allotment of plot Nos. C- 113 to C-117 to

Shri Ganesh Narayan Gupta. Shri Lahoty submitted that in compliance of the direction given by the Executing Court, the concerned authority had delivered possession of the plots to Shri Ganesh Narayan Gupta and being bonafide purchasers, the respondents are entitled to seek protection of their possession. He then argued that the policy contained in circular dated 6.12.2001 is based on the decision taken by the Cabinet Sub- Committee and the Division Bench of the High Court did not commit any error by directing regularisation of the allotment of plot Nos.C-113 to C-114 in favour of the respondents by relying upon order dated 9.1.2002 passed by the coordinate Bench in D.B. Civil Writ Petition No.5776 of 2001 (Suo Motu). Shri Lahoty pointed out that in furtherance of the policy decision taken by the State Government, the appellant has executed lease deeds in favour of large number of persons who had been benefited by the direction contained in the award passed by the Land Acquisition Officer and argued that the appellant cannot adopt different yardsticks while dealing with similarly situated persons.

23. In furtherance of the liberty given by the Court on 31.3.2011, Shri M.L. Lahoty filed written arguments on 7.4.2011 enclosing therewith documents marked as Annexures `A' to `E'. Of these, Annexure `A' is xerox copy of order dated 20.11.1987 passed by Civil Judge, Jaipur City, Jaipur whereby he dismissed an application filed by Dr. Bhagwan Das Khera under Section 47 read with Order XXI Rules 97 and 99 of the Code of Civil Procedure, 1908. Annexure `B' is the copy of sale deed dated 18.4.1993 executed by Shri Ganesh Narayan Gupta in favour of respondent-Vijay Kumar Data. Annexure `C' is the copy of order dated 30.10.2001 by which a Committee consisting of Minister of Urban Development, Home Minister, Finance Minister, Industries Minister, State Minister for Mines was constituted for solving the problems pertaining to regularisation of illegal construction and encroachment of land in the Lal Kothi and Prithviraj Nagar Schemes. Annexure `D' is xerox copy of order dated 9.1.2002 passed by the Division Bench of the High Court in D.B. Civil Writ Petition No.5776 of 2001 (Suo Motu). Annexure `E' is a bunch of lease deeds dated 1.1.2003, 24.8.2002 and 16.8.2002 executed by the appellant in favour of different persons in respect of different plots of land situated in the Lal Kothi Scheme.

24. Shri A.D.N. Rao, learned counsel for Smt. Sunita Agarwal, whose application for impleadment was allowed on 31.3.2011, argued that the direction given by the Division Bench of the High Court should be set aside because plot No.C-114, Lal Kothi Scheme was purchased by his client in the auction held by the appellant on 26.12.1996. Shri Rao pointed out that possession letter was issued in favour of his client on 17.6.2000 and registered sale deed was executed on 21.6.2000. Similar prayer has been made on behalf of Shri D.S. Bhandari and two others, who also filed impleadment application being I.A. No.3/2008. In that application, it has been averred that the applicants were successful in the auction held by the appellant on 19.6.2000 in respect of plot No.C-113, Lal Kothi Scheme and after deposit of the entire money, the appellant executed sale deed dated 7.4.2005 and delivered possession on 13.5.2005. It has been further averred that after getting necessary approval from the appellant on 23.1.2007, the applicants have constructed house on the plot and occupied a portion thereof and leased out another portion to one Mr. Vijay Sharma.

25. We have considered the respective arguments and submissions and carefully scanned the records. We have also gone through the written arguments furnished by learned counsel for respondent - Vijay Kumar Data.

26. The first question which needs consideration is whether the Division Bench of the High Court could have granted relief to the respondents by entertaining an altogether new case set up by their counsel with reference to the so called policy framed by the State Government for regularization of the illegal allotments / encroachments of the acquired land in the Lal Kothi and Prithviraj Nagar Schemes.

27. It is not in dispute that the only issue raised in the writ petitions filed by the respondents was whether the Tribunal was right in dismissing the applications filed by them against the auction of plot Nos. C-113 and C-114, Lal Kothi Scheme. The Tribunal had negated the respondents' challenge on the ground that Shri Ganesh Narayan Gupta from whom they had purchased the plots vide sale deeds dated 18.4.1993 did not have valid title. The Tribunal noted that Shri Ganesh Narayan Gupta had purchased land from its Khatedar Shri Vijay Lal son of Shri Ram Sukhji after publication of the notification issued under Section 4 and held that such transactions did not create any title in his favour. The Tribunal also relied upon the judgments of this Court in Radhey Shyam's case and Daulat Mal Jain's case and held that once the Supreme Court had declared the transactions involving purchase of the acquired land and the direction given by the Land Acquisition Officer for allotment of land to the awardees, sub-awardees and their nominees/sub-nominees to be nullity, the transferees of such purchasers cannot claim any right over the plots which were auctioned by the appellant. In the opinion of the Tribunal, when the purchase of land by Shri Ganesh Narayan Gupta was null and void, he could not have transferred a valid title in favour of the respondents so as to enable them to challenge the advertisement issued by the appellant for auction of the two plots. The learned Single Judge dismissed both the writ petitions primarily on the ground that the disputes questions of fact relating to title of the plots cannot be determined under Article 226 of the Constitution and the writ petitioners are free to avail any other alternative remedy for determination of their rights.

28. What is most significant is that till the disposal of the writ petitions by the learned Single Judge, the seeds of the so called policy decision, which was allegedly circulated vide letter dated 6.12.2001 had not even been sown. A reading of Annexure `C', which forms part of the written arguments filed by Shri M.L. Lahoty, learned counsel for respondent - Vijay Kumar Data, shows that the Committee of Ministers was formed vide order dated 30.10.2001 to suggest solution of the problems in the regularization of illegal constructions/encroachments of land under the Lal Kothi and Prithviraj Nagar Schemes in relation to which several cases were pending in different Courts. The recommendations made by the Committee were given the colour of the Government's decision (though, no material has been placed on record to show that the recommendations made by the Committee were accepted by the State Government) as would appear from letter dated 6.12.2001 written by Deputy Secretary (Administration), Urban Development Department to the Secretary, Jaipur Development Authority, Jaipur. That letter reads as under:

"GOVERNMEN OF RAJASTHAN URBAN DEVELOPMENT DEPARTMENT No.F.3(32)UDD/3/2001 Jaipur Dated: Dec. ,2001 6 DEC 2001 The Secretary, Jaipur Development Authority, Jaipur. Subject: Regarding regularization of illegal construction / encroachment under Lai Kothi Scheme. Sir, In the above context it is stated that under the Ministerial Secretariat Order No.F. 4(1)M.M./99 dated 30th October, 2001 for the solution of problems arising from comp1ications of regularization of illegal construction/encroachments under Lal Kothi and Prithviraj Nagar Schemes, a sub committee was constituted. This Sub Committee comprised of Minister, Urban Development as convenor and Home Minister, Finance Minister, Minister for Industries and State Minister for minerals were nominated its members and Secretary Administration, Urban Development Department was nominated as member secretary of this sub committee. The Committee discussed in detail over various aspects of Lal Kothi Scheme and after taking into consideration the entire facts unanimously took the following decision:

1. As per the awards pronounced so far under the Lal Kothi Scheme, whatever amount is due for payment to the awardees, that may be paid to the concerned cultivators.

2. The awardees who besides compensation amount could not be allotted plot of land or after allotment were cancelled, may now be allotted per awardee a plot measuring 250 square yards in other schemes of J.D.A. Such plot be awarded at rate of 25 percent of the prevalent residential reserved rate under the scheme.

3. The developed and vacant plots be regularized in the similar manner. These may be regularized at the following rates:
up to 200 sq.yards 25 percent of the reserved

A) residential rate.

B) More than 200 sq. yards 35 percent of the reserved residential rate

4. In the remaining cases of worth regularizing plots of Everest and Salt colonies (which are about 80 plots) which could not be regularized inspite of decision of 1976, the rate of regularization is fixed at 25 percent of the reserved residential rate.

5. In connection with regularization of the plots the amount on the basis of self-assessment be asked to be deposited by 28.2.2002.

6. Those who fail to get regularisation within stipulated time limit, it is decided to afford them opportunity of depositing the amount by 31.3.2002 with 5 per cent, additional amount to obtain regularization. After expiry of the said date, it is decided

that no regularization be done and after notice to such occupants over the plots their construction shall be demolished and such plot's shall then vest in the Authority and for the purpose of rehaoi1itation they shall be allotted as residential plots under other schemes of Jaipur Development Authority.

7. The plots which are not regularized under this order, they be finally refused and their list be published in the news paper, and possession on the site if any, be removed.

8. The awardees/sub awardees whose allotments have not yet been cancelled, but they have construction on site of their plots, it is decided that their earlier allotment be cancelled and treating the plot as acquired, on the basis of possession, be regularized under this order. I t is decided to adjust the amount deposited earlier. On interest shall be chargeable on this amount.

9. In the cases wherein litigation is pending in courts, in connection with them it is decided to follow action as under:

(a) Such of the vacant plots where there is stay order from the court or any adverse order etc. in force and which have been taken over in possession by the Jaipur Development Authority as per rules, i t is decided to sell them through auction. It is decided to draw a list or such plots.

b) In cases of acquired or under acquisition and / plot of land/constructed building which is under effect of any order or stay order from the court, in connection with them it is decided to follow action as under:

Where in connection with acquired or under acquisition land/plot of land/constructed building stay order/order for status quo is issued in favour of cultivator, it is decided to follow regularization proceeding in favour of such cultivator treating the land/ plot of land/ constructed building in his favour. I f the order/ stay order/ order for status quo is in favour of J.D.A. then treating the concerned plot/land to be of J.D.A. i t is decided to follow further taken and such plot/land is decided not to be regularized. On the contrary i f such orders are in favour o f other person and he is i n possession, and he withdraws the case from the court, then regu1arization o f that p l o t / land be done i n hi s favour. In cases of plots where J.D.A. has gone in appeal and no decision i s taken by the court in favour of the Authority then honouring the judgment of the court below, case shall be withdrawn by the J.D.A. the plot/ land/ constructed building is decided to be regularised in favour of concerned person. In such cases the basis of regularization will be physical possession. In connection with regularization on above basis, the Samjhota Samiti will review each and every case and give its decision which shall he binding on J.D.A.

10. In connection with land under acquisition, land of 9 bigha 6 biswa of Pratap Nursary, 5 bigha of Anand Nursary, 2 bigha 12 biswa of Kailashwati, Maharchand &

Sons is decided not to acquire. Simultaneously i t is decided to regularize on payment of 25 percent of reserved residential rate of these land.

No decision was taken in connection with land of Amrudon Ka Bagh. It is thought proper to take any action after decision from Delhi High Court.

Yours faithfully, Sd/- 6.12.01 (H.S. Bhardwaj) Dy. Secretary Administration"

29. In our view, the Division Bench of the High Court committed serious error by entertaining an altogether new case set up on behalf of the respondents, who had not even prayed for amendment of the pleadings and granted relief to them by declaring that they are entitled to get benefit of the policy of regularization contained in letter dated 6.12.2001. It is difficult, if not impossible, to comprehend as to how the Division Bench could rely upon the so called policy decision taken by the Government in flagrant violation of the two judgments of this Court wherein it was categorically held that the transactions involving transfer of land after the issue of notification under Section 4 were nullity and the Land Acquisition Officer did not have the jurisdiction to direct allotment of land to the awardees/sub awardees, their nominees/sub-nominees. The basics of judicial discipline required that the Division Bench of the High Court should have followed the law laid down by this Court in Radhey Shyam's case and Daulat Mal Jain's case and refused relief to the respondents.

30. Another grave error committed by the Division Bench of the High Court is that it ignored the unchallenged findings recorded by the Tribunal and the trial Court that the transferor of the respondents, namely, Shri Ganesh Narayan Gupta did not have valid title over the land and he had no right to secure allotment of 1500 sq. yds. land in the Lal Kothi Scheme and that the order passed by the Executing Court for delivery of possession was liable to be ignored in view of the law laid down in Radhey Shyam's case and Daulat Mal Jain's case.

31. At this juncture, we may notice order dated 9.1.2002 passed by the Division Bench of the Rajasthan High Court in D.B. Civil Writ Petition No.5776/2001 (Suo Motu) titled Rajasthan High Court v. State of Rajasthan and others. The preface of that order shows that a learned Single Judge of the High Court had suo motu taken cognizance of three different news items dated 8.12.2001, 10.12.2001 and 11.12.2001 published in the daily newspaper - Rajasthan Patrika, Jaipur edition. The first news item highlighted the grievance of one Lali Devi against the construction of road through her land. The second news item related to regularization of the Lal Kothi Scheme and the third news item related to the alleged irregularities committed in the construction of high rise buildings. When the matter was listed before the Bench, which had the roster to hear such matters, it was felt that the issue raised in the order passed by the learned Single Judge who, in our considered opinion, was not at all justified in suo motu taking cognizance of the newspaper reports and the order made by him could appropriately be termed as coram non judis, directed that the matter be placed before the Division Bench. On behalf of the State Government and the appellant, affidavits were filed to justify the so called policy contained in letter dated 6.12.2001. 15 villagers of village Herver and some residents of Everest Colony, Lal Kothi also appeared before the Division Bench through their advocates. While dealing with the second news item, the Division Bench did

take cognizance of the fact that people having connection in the power corridors and those who were economically affluent had illegally taken possession of the acquired land and raised construction, but approved the so called policy decision taken by the State Government to regularize the illegal transfers. The reasons recorded by the Division Bench of the High Court for adopting this course are extracted below:

> "The second item with regard to the regularisation of Lal Kothi Scheme is concerned, declaration has been taken as a part of the policy by the Government and there is ample authority o f law to support the contention that such policy decisions cannot be made the subject matter of the judicial review. No doubt in the cases where any policy decision is taken for any reasons which are against the public interest, the judicial review is possible, but in case of this nature, 'it cannot be said in the facts and circumstances of this case which have been established before us with support of documents Including documentary evidence of contemporaneous nature that public interest has not suffered in any manner by the decision of regu1arisation. To bring an end to a 40 years prolonged agony of litigation without any avail to the State, realising the ground realities that demolition of hundreds of constructed houses of the members of public belonging to middle/lower middle class is a tough task coupled with other considerations which are germane, if the popular (elected) Government has taken a policy decision in tune with the pulse of masses, it is difficult for this Court to say that it is contrary to public interest. Public interest litigation is of-course meant to protect the rights and to take care of the problems of those who cannot take care of themselves in want of awareness of their own rights or to espouse a common cause and in such cases, the cognizance can certainly be taken by the Court even by way of suo-motu action in a given case on the basis of the news item or otherwise, but the public interest is neither an unbridled nor an unruly horse, which can enter any arena in an aimless race. In view of the reply public interest is transparent in the State action and we are satisfied and convinced that had there been a correct and complete disclosure of full facts perhaps the cognizance may not have been taken by the Court suo-motu. Be that as it may, now that the full facts have come on record and we have heard all the parties which are present, we have no hesitation in holding that in the instant case, there is no scope of any judicial review and to sit over the wisdom of the state functionaries and therefore, no interference is warranted by this Court with the decision which has been taken by the Government, as a part of public policy. In larger public interest even if the Government has to pay a little price, it is a small price in deed, which has to be paid, if at all we want the object of a welfare State to prevail. It may also be observed in all fairness to the State that after the suo-motu action had been taken by this Court and the notices had been issued, the Government has shown due regard for Court's cognizance by, staying its own order as it is stated before us that the State Government honoured the pendency of the matter in Court by directing the J.D.A. vide order dated 31st December, 2001 not to act upon the decision dated 6th December, 2001 and not to proceed further with the process of regu1arisation and has directed the J.D.A. to produce all the relevant records before the Court. It is, therefore, clear that the decision as had been taken on 6th December, 2001 had been stayed by the Government itself, showing due regard for the action initiated by the

Court. Having heard all the parties, we find that the policy decision hardly warrants any interference by this Court. The Government and all concerned are free to proceed on the basis of the order dated 6th December, 2001 as had been passed by the Government."

32. In our opinion, the High Court had undertaken a wholly unwarranted and unjustified exercise for putting the seal of approval on the so called policy contained in letter dated 6.12.2001 and, that too, by ignoring the law laid down by this Court in Radhey Shyam's case and Daulat Mal Jain's case. What the High Court has done is to legitimised the transactions, which were declared illegal by this Court and this was clearly impermissible. The High Court's understanding of the so called policy framed by the Government was clearly erroneous. The letter written by Deputy Secretary (Administration), Urban Development Department to the Secretary, Jaipur Development Authority, Jaipur cannot, by any stretch of imagination, be treated as a policy decision taken by the State Government. No document was produced before the High Court and none has been produced before us to show that the recommendations made by the Committee of Ministers had been approved by the State Government culminating in issuance of a policy circular. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be [Articles 77(1) and 166(1)]. Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in rules to be made by the President or the Governor, as the case may be [Articles 77(2) and 166(2)]. Article 77(3) lays down that:

> "The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."
>
> Likewise, Article 166(3) lays down that:
>
> "The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

Article 166 was interpreted in State of Bihar v. Kripalu Shankar (1987) 3 SCC 34 and it was observed:

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

--(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

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

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.' Article 166(1) requires that all executive action of the State Government shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this article nor even noting by a Minister. Every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Government. A study of this article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2)."

33. It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor it was authenticated manner prescribed by the Rules. That letter merely speaks of the discussion made by the Committee and the decision taken by it. By no stretch of imagination the same can be treated as a policy decision of the Government within the meaning of Article 166 of the Constitution.

34. We are further of the view that even if the instructions contained in letter dated 6.12.2001 could be treated as policy decision of the Government, the High Court should have quashed the same because the said policy was clearly contrary to the law declared by this Court in Radhey Shyam's case and Daulat Mal Jain's case and was a crude attempt by the concerned political functionaries of the State to legalise what had already been declared illegal by this Court.

35. Although, we are prima facie satisfied that execution of lease deeds by the appellant in favour of some persons in 2002 and 2003 is a clear indication of deep rooted malaise in the functioning of the appellant and is also indicative of sheer favouritism and nepotism, we refrain from pronouncing upon the legality of those transactions because the beneficiaries are not parties to these appeals.

36. In the result, the appeals are allowed. The impugned judgment is set aside. The writ petitions filed by Vijay Kumar Data and Daya Kishan Data are dismissed and they are directed to pay cost of Rs.5 lacs for pursuing unwarranted litigation for last over 15 years. The amount of cost shall be deposited with the Rajasthan State Legal Services Authority within a period of two months. The respondents shall be entitled to recover the price paid to Shri Ganesh Narayan Gupta along with the amount of cost by availing appropriate legal remedy.

37. Since we have found that the so called policy decision contained in letter dated 6.12.2001 is contrary to the law declared by this Court, the State Government and the appellant are restrained from taking any action in future on the basis of the said letter.