SUPREME COURT OF INDIA

The Rajasthan State Industrial Development and Investment Corporation

Vs.

Subhash Sindhi Cooperative Housing Society Jaipur

C.A.No.7254 of 2003

(Dr.B.S. Chauhan and V.Gopala Gowda JJ.)

12.02.2013

JUDGMENT

Dr. B. S. CHAUHAN, J.

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

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

> A. That, a huge area of land admeasuring 607 Bighas and 5 Biswas situate in the revenue estate of villages Durgapura, Jhalan Chod, Sanganer and Dhol-ka-Bad in District Jaipur, including the suit land measuring about 17 Bighas and 9 Biswas in village Durgapura stood notified under Section 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as the `Act') on 18.7.1979, for a public purpose i.e. industrial development, to be executed by the RIICO.
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> B. The respondent society claims to have entered into an agreement to sell with the Khatedars of the suit land on 21.7.1981.

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

D. Acquisition proceedings emanating from the Section 4 Notification dated 18.7.1979, were challenged by the respondent society, as well as by the khatedars jointly in 1989, by filing of Writ Petitions before the High Court of Rajasthan at Jodhpur. A lease deed was executed by appellant-RIICO in favour of the company- respondent No.37 in relation to 105 acres of land on 22.5.1989, including the land in question, which is comprised of Khasra Nos. 226 to 230 is village Durgapura. The aforementioned writ petitions filed by the respondent society and the original khatedars, challenging the land acquisition proceedings stood dismissed on the ground of delay and latches, vide judgment and order dated 21.8.1990 passed by the High Court.

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

F. In view thereof, the society filed a Writ Petition No. 454 of 1993 praying for release of the land admeasuring 17 Bighas and 9 Biswas in Khasra Nos.

226 to 230, in revenue estate of village Durgapura or in the alternative, for the allotment of equivalent suitable land, and also for the cancellation of the allotment of 105 acres of land in favour of the Company. The writ petition was contested by the appellants on the grounds that the respondent society had no locus standi to challenge the acquisition proceedings which had attained finality upto this Court; the transfer of land by the khatedars to the respondent society was void; the respondent society could not claim parity with other persons/societies, whose land stood released for bonafide reasons on good grounds. The High Court heard the said writ petition alongwith another writ petition that had been filed by the Company, which will be dealt with separately. During the pendency of the writ petition, certain other developments took place, that is, the allotment of land made in favour of the Company, was cancelled by the appellant vide order dated 1.10.1996, and possession of the same was taken over from it on 3.10.1996.

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

Hence, this appeal.

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

Article 14 is not meant to perpetuate an illegality or fraud. Moreover, it is to be established that discrimination was made cautiously. The agreement to

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

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

5. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the Company, respondent no. 37, has submitted that the High Court has directed to release the land in favour of the respondent – society, from the land which was allotted to the Company, and that Company has no objection to the order passed by the High Court, releasing a particular piece of land in favour of the society. Thus, the appeals are liable to be dismissed.

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

It is a settled legal proposition that acquisition proceedings cannot be challenged at a belated stage. In the instant case, the earlier writ petition filed by the society and the khatedars jointly, was dismissed by the High Court only on the ground of delay. This Court upheld the said judgment and

order, while granting the said parties liberty to challenge the acquisition afresh, on the ground of discrimination alone.

7. There can be no quarrel with respect to the settled legal proposition that a purchaser, subsequent to the issuance of a Section 4 Notification in respect of the land, cannot challenge the acquisition proceedings, and can only claim compensation as the sale transaction in such a situation is Void qua the Government. Any such encumbrance created by the owner, or any transfer of the land in question, that is made after the issuance of such a notification, would be deemed to be void and would not be binding on the Government. (Vide: Ors., (1995) 2 SCC 528; Ors., AIR 1996 SC 520; Ors. (1996) 11 SCC 229; Ors., (1997) 1 SCC 35; Ors., (2008) 9 SCC 177; Har Narain (Dead) by Lrs. v. Mam Chand (Dead) by LRs. Ors., (2010) 13 SCC 128; and V. Chandrasekaran Anr. v. The Administrative Officer Ors., JT 2012 (9) SC 260).

8. Thus, in the instant case, the respondent-society, and its members, have to satisfy the court as regards their locus standi with respect to maintenance of the writ petition on any ground whatsoever, as none of the original khatedars has joined the society in subsequent petition.

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

> Void means non-existent from its very inception.

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

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

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

> The word "void" is used in the sense of incapable of ratification. A thing which is found non-est and not required to be set aside though, it is

sometimes convenient to do so. There would be no need for an order to quash it. It would be automatically null and void without more ado. The continuation orders would be nullities too, because no one can continue a nullity. (Vide: Behram Khurshid Pesikaka v. State of Bombay, AIR 1955 SC 123; Pankaj Mehra Anr. v. State of Maharashtra Ors., AIR 2000 SC 1953; Ors., AIR 2001 SC 2552; and Ors., (2002) 9 SCC 28).

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

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

> "We are conscious of the fact that when a person subjected to blatant discrimination, approaches a court seeking equal treatment, he expects relief similar to what others have been granted. All that he is interested is getting relief for himself, as others. He is not interested in getting the relief illegally granted to others, quashed. Nor is he interested in knowing whether others were granted relief legally or about the distinction between positive equality

> and negative equality. In fact he will be reluctant to approach courts for quashing the relief granted to others on the ground that it is illegal, as he does not want to incur the wrath of those who have benefited from the wrong action. As a result, in most cases those who benefit by the illegal grants/actions by authorities, get away with the benefit, while others who are not fortunate to have "connections" or "money power" suffer. But these are not the grounds for courts to enforce negative equality and perpetuate the illegality"

(Emphasis added)

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

15. This Court explained the phrase "discrimination" in Anr., AIR 2011 SC 1989 observing :

> "66. Unequals cannot claim equality. In Madhu Kishwar and Ors. v. State of Bihar and Ors., AIR 1996 SC 1864, it has been held by this Court that every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution.
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> 67. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify. (Vide: Kathi Raning Rawat v. State of

Saurashtra, AIR 1952 SC 123; and M/s Video Electronics Pvt. Ltd. and Anr. v. State of Punjab and Anr., AIR 1990 SC 820).

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

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

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

Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are

being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. (Vide:Commissioner of Police, Bombay v. Govardhandas Bhanji, AIR 1952 SC 16; Ors., AIR 1969 SC 1306; Punjab Financial Corporation v. Garg Steel, (2010) 15 SCC 546; Union of India Ors. v. Arulmozhi Iniarasu Ors., AIR 2011 SC 2731; and Khela Banerjee Anr. v. City Montessori School Ors., (2012) 7 SCC 261).

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

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

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

Thus, it is evident that a writ is not issued merely as is legal to do so. The court must exercise its discretion after examining pros and cons of the case.

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

20. During the hearing of the case if it is pointed out to the court that the party has raised the grievance before the statutory/appropriate authority and the authority has not decided the same, it is always warranted that the court may direct the said authority to decide the representation within a stipulated time by a reasoned order. However, it is not desirable that the court take upon itself the task of the statutory authority and pass an order. (Vide: Ors., AIR 1952 SC 192; Anr., AIR 1994 SC 2148; Anr., AIR 2010 SC 2620; and Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. Ors., JT 2011 (12) SC 41).

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

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

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

> "….Land acquisition notifications are statutorily issued by the Administrative Department of the State Government and therefore the lands which are proposed to be de-acquired will have to be notified by the Government itself." (Emphasis added)
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> Thus, it is evident from the Circular that even if, the Government wanted to exempt the land, it would require a notification by the Government. Law provides a notification under Section 48 of the Land Acquisition Act, 1894, (hereinafter called as `Act 1894') or abandonment of the land acquisition proceedings by the State but it is permissible only prior to taking possession of the land. Once the land is vested in the State free from all encumbrances it cannot be divested. Therefore, we do not find any force in the submission advanced on behalf of the respondent-society that they were entitled for release of the land.
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> The object and purpose of issuing such circulars could be to regularise the construction of residential houses where the land was sought to be acquired for residential purposes. Various states have issued circulars to meet such a situation. However, such a construction should be in consonance with the development scheme, or may be compatible with certain modification. Even in absence of such schemes, this Court has dealt with the issue and held that where the land is acquired for establishing residential, commercial, or industrial area and the application for release of the land reveal that the land has been used for the same purpose, the Government may release the land, if its existence does not by any means hinder development as per the notification for acquisition. (Vide : Union of India Anr. v. Bal Ram Singh Anr., 1992 Suppl (2) SCC 136; Sube Singh Ors. v. State of Haryana Ors., (2001) 7 SCC 545; Jagdish Chand Anr. v. State of Haryana Anr., (2005) 10 SCC 162; and Ors., (2009) 2 SCC 397).
>
> In the instant case land has been acquired for industrial development. The respondent-society wants the said land for developing the residential houses. Therefore, such a demand is not worth acceptance.

23. Be that as it may, there can be no estoppel against the law or public policy. The State and statutory authorities are not bound by their previous erroneous understanding or interpretation of law. Statutory authorities or legislature cannot be

asked to act in contravention of law. "The statutory body cannot be estopped from denying that it has entered into a contract which was ultra vires for it to make. No corporate body can be bound by estoppel to do something beyond its powers, or to refrain from doing what it is its duty to do." Even an offer or concession made by the public authority can always be withdrawn in public interest. (Vide: State of Madras Anr. v. K.M. Rajagopalan, AIR 1955 SC 817; Badri Prasad Ors. v. Nagarmal Ors., AIR 1959 SC 559; and Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee, AIR 1962 SC 554).

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

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

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

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

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

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

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

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

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

"The Deputy Secretary Industries (Group I) Department Rajasthan Jaipur released from acquisition the land in Durgapura, Khasra No. 137, measuring 6 Bigha 2 Biswas in village Jaland chod, Khasra No. 124 measuring 2 Bighas 4 Biswas, Khasra No. 2389 measuring 1 Bigha – 2 Biswas, Khasra No. 250, measuring 0.05 Biswas, 261 measuring 0.08 Biswas in village Dolka Abad Khasra No. 44 measuring 1 Bigha 11 Biswas, Khasra No. 45 measuring 2 Bigha 11 Biswas, Khasra No. 45 measuring 2 Bigha, 13 Biswas, vide his order Nos. P-(4)/IND/75 dated 19.10.1981 No. P(4)Ind/1/79 dated 1.1.1982 and No. P5(4) Ind/75 dated 22.6.82. Besides the Industries Department also released from acquisition the total land measuring 126 Bighas 13 Biswas vide notification P5 (4)/Ind/1/75 dated 31.7.1982 in village Jalana Chod of Khasra No. 177, 181, 182, 184, 185, 186 and 180 min,. and 187, the land which is acquired by the Rajasthan Housing Board. All these lands was de-acquired under Section 48 of the Act whose possession was not taken by concerned Department. Assistant Manager (adarboot) RIICO Jaipur vide his letter No. IPI/3/6-76 dated 31.10.1983 to

> Deputy Secretary Industries Department Rajasthan Government recommended release for acquisition of Khasra No. 126 Min. measuring 2 Bighas as there being no passage and there godown being situated there. Therefore, it is not possible to consider this till final orders are received. Only after the receipt of the final decision of the concerned department further action can be possible."

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

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

> "The petitioner Subhash Sindhi Cooperative Housing Society is contesting only for a limited piece of land measuring 17 Bighas 9 Biswas which had been acquired and given to DGDC by the RIICO. The case of the society is that in view of the observations made by the Supreme Court in its order, it has pleaded its case in this petition on the basis that the other land which had been acquired had been released or it stood de facto released and the government was itself a party to it in releasing the acquired land and large number of lands of this nature de facto stood released from acquisition inasmuch as houses have been constructed thereon; the Government itself has acquiesced with such construction and has also taken steps for regularisation of such construction and the decision which was taken by the JDA in the meeting headed by the Chief Minister was implemented qua all others except the land of petitioner Society, merely because the petitioner society's land had been given to DGDC/RIICO. This small piece of land which is claimed by the society in the facts and circumstances of the case, can very well be restored to the Society and to that extent, land allotted to DGDC can be curtailed without having any adverse impact on the prospects of business of DGDC. Facts have come on record through documents that to start with, DGDC had demanded only 35 acres of land. This demand was

raised from time to time and ultimately, it reached upto 105 acres. It is also on record that the RIICO had given only 80 acres of land to DGDC as against the allotment of 105 acres. In such a situation, if a small piece of land measuring 17 Bighas 9 Biswas out of the land allotted to DGDC is restored back to the petitioner Society it cannot have any adverse impact on the business prospects of DGDC nor the RIICO may have any just objection and the State Government which has already acquiesced with the release of such acquired lands in large number of cases, cannot have any legitimate case to contest the grant of relief to the petitioner society and the petitioner Society is found to be entitled for the same on the principles of parity as well as equity."

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

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

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

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

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

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

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

- After deducting this land measuring 17 Bighas 9 Biswas from the balance land of 86 Bighas 18 Biswas, the remaining land measures 69 Bighas 9 Biswas and this is the land of which although possession was taken during the acquisition proceedings somewhere in 1982-83 yet on submission of the scheme plans by various Cooperative Housing Societies much after taking of

the possession plans were approved in compliance of various orders issued by the Government of Rajasthan after 1986.

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

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

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

31. In the instant case, at the initial stage, the writ petition was filed before the High Court at Jodhpur. Admittedly, the land is situated in the heart of the Jaipur city, and all relevant orders including notifications for acquisition were issued at Jaipur. The writ petition ought to have been filed before the Jaipur Bench as per the statutory requirements therein. Learned counsel appearing for the parties could

not furnish any explanation, as under what circumstances the first writ petition had been filed by the society alongwith tenure- holders at Jodhpur. Therefore, we are not only doubtful regarding the sanctity of the order passed by the High Court rather, it creates doubt about the bonafides of the parties and further, as to whether such a move could have been made in good faith.

> This Court has on various occasions dealt with the similar situation and explained as where the writ petition is maintainable. (See: Sri Nasiruddin v. State Transport Appellate Tribunal, AIR 1976 SC 331; Ors., AIR 1995 SC 2148; Ors., AIR 2001 SC 416; and Ors., (2005) 1 SCC 73).

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

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

> (i) The society members had entered into an agreement to sell even though, a Notification under Section 4 to carry out acquisition had been issued by the Govt., fully knowing the legal consequences that may arise.
>
> (ii) The agreement to sell, made by the society (an unregistered document), did not create any title in favour of the society.
>
> iii) The acquisition proceedings were challenged after a decade of the issuance of Notification under Section 4, and 5 years after the date of award, by the society alongwith original khatedars. The petitions in which the aforesaid acquisition proceedings were challenged were dismissed by the High Court on the ground of delay and latches.
>
> iv) When the land in dispute is situated in Jaipur city, the society, for reasons best known, had filed the writ petition challenging the acquisition

proceedings at Jodhpur and not at Jaipur bench of the High Court. No explanation could be furnished by the learned counsel for the respondent society, as regards the circumstances under which the petition was filed at Jodhpur, and whether the same was maintainable.

v) The first writ petition cannot be held to have been filed in good faith and the bonafides of the parties, becomes doubtful.

vi) Challenge to the acquisition proceedings attained finality so far as the khatedars are concerned, upto this court.

vii) The respondent society never made any application for release of the land on any ground whatsoever, before the Competent Authority i.e. Secretary to the Department of Industries, instead, it applied for regularization before the JDA and before the revenue authorities for conversion of user of the land.

viii) After the order of this court dated 9.9.1992, a telegram was sent by the society to the Chief Secretary stating that great injustice had been done to them, as their land was not released, raising the issue of discrimination qua other societies, but no factual foundation was laid therein, pointing out the discrimination meted out.

ix) The High Court entertained the writ petition, without comparing the actual facts of the respondent society qua other societies.

x) The High Court did not consider a single objection raised by the appellant RIICO before it. The finding of fact recorded to the effect that compensation could not be paid to the khatedars for want of money, is based on no evidence even though a reference was made to an affidavit filed by the State Authorities. Such findings are absolutely perverse.

xi) There is no denial in specific terms as to whether the tenure holders had received compensation for the land in dispute, even though in the earlier proceedings, some khatedars were parties.

xii) The schemes floated by the State Government (knowing well that acquiring land after the issuance of Section 4 Notification would be void), indicates a sorry state of affairs. Such orders have been passed without realizing that administration does not include mal-administration.

xiii) The circulars issued by the State Government, being inconsistent with the policy and the law regarding acquisition, cannot be taken note of. Issuance of such circulars amounts to committing fraud upon statutes, and further, tantamounts to colourable exercise of power. The State in exercise of eminent domain acquires the land. Thus, before completing the acquisition proceedings, it should not release the land in favour of some other person who could not have acquired title over it at any point of time.

xiv) The land had been acquired for industrial development and thus, cannot be permitted to be used for residential purposes. Therefore, the demand of the respondent-society cannot be held to be justified.

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