

# RAJASTHAN HIGH COURT

Rochees Hotels Pvt. Ltd

Vs.

Jaipur Development Authority

C.S.A. No. 787 of 1998  
(Arun Madan and K.S. Rathore, JJ.)

15.09.2001

## JUDGEMENT

### **Madan, J.**

1. Since both these appeals arise out of the common impugned order dated 14-8-1998 passed by the learned single Judge disposing of writ petition bearing No. (*Rochees Hotels Pvt. Ltd. v. Jaipur Development Authority*),<sup>1</sup> they are being decided by this common order.

2. The appellant Rochees Hotels Pvt. Ltd. is a Public Limited Company incorporated and registered under the provisions of the Companies Act, 1956 while appellant Ishwar Dass is the Director of the said appellant Company. The appellants entered into an agreement, dated 10-5-1987 for purchase of 2450 Sq. Yds. of land situated at Tonk Road, Jaipur which was executed between Shri Parmanand Ojha in his personal capacity as well as in the capacity of Power of Attorney Holder on behalf of Smt. Padmawati Ojha. On the basis of above agreement dated 10-5-1987, the registered sale deeds were executed in favour of Ishwar Dass, Laxman Dass and Nanak Dass sons of late Shri Rochi Ram for sale of the aforesaid land which were duly registered by the Sub-Registrar, Jaipur on 18-12-1989.

3. Before dealing with the contentions advanced by the learned counsel for the parties, we would like to refer to the brief background which is relevant for deciding the controversy between the parties thus :-

A patta was executed by the Government of the former State of Jaipur on 10-10-1909 in respect of 70 bighas of land, including the land in dispute, whereby

lease for a period up to Samwat 1994 (1937-38 AD) was granted to one Shri Praduman Ojha. Before the expiry of period of the lease, with the said patta, the Government of the former State of Jaipur, issued Tenancy Rules for 'Chak Bandi' Villages on 23-12-1931 which were brought into force w.e.f. September, 1931 and under Rule 2 of the said Rules a right was conferred on every tenant to occupy his holding for his lifetime, and Rule 4 provided that on the death of a tenant, his legal heirs shall be entitled to retain possession of the holding for a period of five years from the first date of September next following the date of the tenant's death, on payment of the rent payable by the deceased tenant and on the expiry of four years, the Tehsildar was required to report for the orders of the Nazim whether in his opinion the legal heirs should or should not be permitted to retain the holding for his life. By virtue of these Rules Shri Praduman Ojha was entitled to continue as tenant through his lifetime. During his lifetime itself, the Govt. of former State of Jaipur issued a notification dated 17-9-1945, whereby the tenant who had completed 10 years of his possession in Samwat 2000 (1943 AD), was deemed to be a tenant of old standing and was not liable to be ejected. Thereafter, by virtue of the provisions of Section 8 of the Jaipur Tenancy Act, 1945, Shri Praduman Ojha became the khatedar tenant of the said land as on the date of commencement of the said Act, he was in continuous occupation of the land in dispute as a tenant. By virtue of Section 8(1) of Jaipur State Grants Land Tenure Act, 1947 and the Rajasthan Tenancy Act, 1945 as well, Shri Praduman Ojha acquired the Khatedari rights in his favour as regards the same land and after his death, on 14-5-1965, his legal heirs succeeded to his right in the land and remained in possession of the said land. Meanwhile, in Samwat 1987 (1931 AD) 'Misal Haquiyat' (settlement) of Village Bhojpura was prepared by the Govt. of the former State of Jaipur and the name of Pandit Madhu Sudhanji, father of late Shri Praduman Ojha was entered therein as a cultivator of the land in dispute. On 15-11-1951 the Revenue Department issued certain directions to the effect that Smt. Padmawati Ojha wife of late Shri Praduman Ojha may continue to enjoy the income derived out of garden and 15 bighas of land, as she had earlier been deriving till then. The total area referred to above forms part of Khasra Nos. 477 to 484 and a part of Khasra No. 485 of village Bhojpura measuring 76 bighas. Khasra Nos. 478, 479 and 480 was known as Ojha Ji Ka Bag while the area of Khasra Nos. 477 and 481 was the adjoining land known as 'Ojha-Ji-Ka' Bagh measuring 15 bighas of land. With the permission of late Shri Praduman Ojha certain shops

were allowed to be built up in Khasra Nos. 477 and 481 the rent of which was regularly paid to Shri Ojha till 1967.

4. It is further averred in Appeal No. 787/98 that in 1969, the Urban Improvement Trust, Jaipur (for short "the UIT"), the predecessor in interest of JDA sought to interfere with the peaceful possession of land bearing Khasra Nos. 477 to 485 belonging to the land of Shri Praduman Ojha (part of Village Bhojpura) now, known as Gandhi Nagar. Aggrieved thereof, Smt. Padmawati Ojha filed a suit for permanent injunction which was decreed against the UIT on 30-11-1971 by the trial Court holding that the appellants (plaintiffs) aforesaid are the Khatedars and in possession of the entire land since 1909. The trial Court further observed, as under:-

The plaintiff has well proved in this case that their possession of the 76 bighas of land in village Bhojpura originate lawfully by the Gift Deed of Kunj Lal and two pattas of 20 bighas and 50 bighas granted by Izraedar Abdul Hamid ending up to Samwat 1973 and thereafter since 1973 by the 30 years lease granted by the Former Jaipur State Council in 1909 which lease was to expire in Samwat 2003. Before the lease expired, Jaipur Tenancy Act came into force and gave as new status of Khatedar to the plaintiff and they were covered by the notification of the Revenue Branch of 17/1945 and therefore, their status became at least "not liable to be ejected". Further, that the Additional Collector has in his judgment Exh. 29 has accepted the appeal of Smt. Padmawati Devi and set aside the order of the Tehsildar, Jaipur for dismantling the Dola over the land of Smt. Padmawati Devi. The plaintiffs (the appellants hereinabove) have produced the judgment of the Revenue Appellate Authority which is Exh. 41, which contains the reference to the Tehsildar's judgment dated 31-3-55. The Tehsildar in this judgment has held that the land belongs to Smt. Padmawati Devi and no appeal or revision against the judgment was filed, hence it had attained finality. The possession of the plaintiffs continued on 45 bighas in the suit land as per the report of the SDO, Jaipur in the year 1954. The reason for having in possession only 45 bighas in the year 1954 (in addition to the 6 bighas of land gifted by Shri Kunj Lal) is not hard to find because, the plaintiffs have themselves admitted in Exh. 8 that 23 Bighas 15 biswas of their land has been taken possession of by the State Government for the construction of Gandhi Nagar quarters and compensation money was awarded to Shri Praduman Ojha. After deducting the acquired land of 23 bighas 15 biswas from 70 bighas of land granted by the State of Jaipur vide council Order 1909 A.D. what remains

is 46 bighas and 5 biswas out of which the possession of the plaintiffs continued over 45 bighas contained in Khasra Nos. 481 to 485. The defendant in this case do not admit that any part of the plaintiffs land was acquired as alleged, but they have failed to rebut Exh. 24 and Exh. 25 which are the certified copies of the State Government order. There is nothing on record from the side of the defendant to rebut the documents Exts. 24 and 25. In its written submission, the State Govt. admitted that some portion of the land of the plaintiffs or Shri Praduman Ojha was acquired and taken possession for the construction of Gandhi Nagar quarters and it has also been admitted that the compensation amount of Rs. 80,000/- was paid in the year 1965. It is not possible to infer as to how the UTI, Jaipur could so behind the admission made by the State Govt ? Moreover, the written statement filed on behalf of the State Govt. also corroborates the version of the plaintiff and Exh. 8 produced by the plaintiffs which goes to show that out of 76 bighas of land of Shri Praduman Ojha 23 bighas and 15 biswas were taken possession of the State Government for the construction of Gandhi Nagar quarters. The plaintiffs witness Shri Phool Chand who has prepared Exh. 8 also says that in the portion shown by oblique white lines in Exh. 8 Gandhi Nagar government quarters exit and he has measured the area as 23 bighas 15 biswas out of the suit land, which has gone in acquisition. Pursuant to the admission of the State Govt. contained in the written statement it can safely be said that the plaintiffs contention is correct and to come to the conclusion that the plaintiffs have well proved that the land shown in Red and Green Colour in Exh. 8 belongs to them and they have been in possession of the same land which bears Khasra Nos. 477 to 488 and part of 485. Further, that it is well proved that the Dola over Khasra Nos. 481 to 485 was constructed by Smt. Padmawati Devi in the year 1953 and Dola existed over these Khasras and also belongs to plaintiffs and the act of the defendant in dismantling the Dola was an illegal and unauthorised act.

5. Accordingly, the learned trial Court decreed the suit to the effect that the plaintiffs suit for permanently restraining the defendant from making any 'Dola' or making any sort of construction over the land or dividing the suit land into the plots or making any Garden or Park over the suit land in Red and Green colour in Exh. 8 or interfering with the plaintiffs possession on the suit land with costs of the suit against the defendant. As the undertaking by the defendant after filing of the suit was given to restore the original shape of the land on his own expenditure, he has been allowed to make the

constructions over the suit land.

6. It is further the case of appellants Rochees Hotel Pvt. Ltd. and Ishwar Dass that Tehsildar, Jaipur vide his order dated 16-1-1968 issued a notice to Smt. Padmawati to show cause as to how she had been holding premises in 'Sawai Chak' and selling pieces of that land. Pursuant to the said notice, another notice was issued under Section 91 of the Rajasthan Land Revenue Act, 1957 on 30-1-1968. The said notices were issued in respect of land measuring 15 bighas falling in Khasra Nos. 477 and 488 of Village Bhojpura, a part of Jaipur City now. As regards the same proceedings, other orders were also passed by the Collector, Jaipur, Revenue Appellate Authority and the Board of Revenue. The order passed by the Board of Revenue was challenged before the Division Bench of this Court bearing SBCWP No. 2226/1973 by Smt. Padmawati Ojha which came to be allowed by the Division Bench vide order dated 27-8-1979. Before the Division Bench, it was the contention of the UIT that the entire 76 bighas of land which was claimed to be owned by Praduman Ojha was in fact vested in UIT. Aggrieved by the said judgment, the State Govt. preferred SLP before the Apex Court.

7. It has further been contended by the learned counsel for the appellants that on 29-7-1988 a notice under Section 32(1) of the Jaipur Development Authority Act, 1982 (for short "the JDA Act") for constructing one room in the aforesaid land without seeking prior permission of the JDA was issued and the question regarding title thereof was never disputed by the JDA. It is further averred in the appeal that appellant Ishwar Dass applied before the JDA seeking permission for construction of the Hotel. On 25-1-1990 a communication was sent by the JDA to the said appellant informing that from the documents submitted by the appellant, the title over the land was not clear and only after getting the title of the said land settled, the documents should be submitted for seeking permission. The appellant No. 2 Ishwar Dass sent a letter to the Commissioner JDA informing therein that he had already sent the documents first relating to title but still no satisfactory reply was being sent. On 14-5-1993 an application was received in the Building Plan Committee-II known as BPC-II Cell of JDA for grant of permission for construction of Hotel Building of plot situated at Tonk Road near Institute of Local-Self Government Building. The BPC-II JDA in its meeting held on 30-7-1993 discussed the matter and it was found that the land in dispute was in possession of the appellants. It was further observed by the Committee that if a reasonable price could be fetched by the JDA the land under reference could be offered to the appellants for allotment with approval of plans for hotel. Ultimately,

the BPC took decision on 30-7-1993 giving a proposal to the appellants that if the commercial reserve price of the land is deposited by the appellants then the matter can be sorted out and the land can be allotted and the building can be approved for hotel purpose. The appellants accepted this offer of the JDA. On 2-9-1993 the JDA by way of an agreement as per the provisions of the JDA Act, 1982, issued letter of allotment of land measuring 1849.97 sq. mtrs. in favour of Roches Hotel Pvt. Ltd. asking them to deposit the cost of the land @ Rs. 2000/- per sq. mtr. within 30 days which was the reserved commercial price of the land in that area at the relevant time and other charges total amounting to Rs. 38,5,524.91/-. In compliance of the allotment letter, the appellants deposited the partial amount on 8-9-1993 and balance amount on 29-9-1993 within the stipulated time with the hope and expectation that they get the sanction for the construction from the Authority but the same were belied. Even after depositing the said contractual amount being deposited with the JDA when the JDA did not pay any heed, appellants wrote letters dated 25-4-1994, 31-5-1994 and 26-7-1994 to the Commissioner, JDA and the Zonal Officer, Zone-I, Jaipur with a request to immediately release the building plans which were submitted for approval for construction of hotel and further to convey the amount of the lease money which was to be deposited. But when all in vein, the appellants wrote a letter dated 7-11-1994 to the Chief Minister of the State of Raj. and mentioning all the facts requested that the concerned authorities be directed to release the building plans immediately so that the construction cost may not be increased. But, no heed was paid to this request of the appellants. Thereafter, appellants again wrote letters dated 21-4-1997 and 22-4-1997 seeking the same directions.

8. Hence, being aggrieved of the inaction of JDA, the appellants-Rochees Hotel Pvt. Ltd. and Ishwar Dass preferred writ petition bearing SBCWP No. 5766/1997 with the following prayer :-

- "a) to direct the respondent to grant permission for construction of a hotel as per the plans submitted by the petitioners to the JDA within a period of 1 month or with such time as may be prescribed by the Hon'ble Court;
- b) the respondent JDA may be directed to pay compensation for delaying the hotel project as may be assessed by the Hon'ble Court;
- c) to direct the JDA to refund a sum of Rs. 38,59,524.91/- with interest @ 21% per annum from the date of payment till realization; and
- d) or to grant any other relief to which the petitioners may be found entitled."

9. The learned single Judge vide order dated 14-8-1998 disposed of the aforesaid writ petition with the following directions :-

"Heard.

Upon considering the submissions made by both the sides at bar, it is directed that the respondent, who has allotted the land to the petitioners vide annexure 10 for the purpose of hotel business, may either accord the permission for the same on the application already submitted by the petitioners to the respondent in accordance with law and rules or, if the respondent so chooses, may cancel the allotment and refund the entire amount paid by the petitioners pursuant to the allotment letter annexure 10 plus interest of 18% p.a. thereon. The entire exercise which the respondent chooses to adopt, may be done within the period of three months.

With these directions, this writ petition is disposed of".

10. Being aggrieved of the aforesaid order of the learned single Judge, the appellants Rochees Hotels Pvt. Ltd. and Ishwar Dass Rochiram Mool Rajani have come up before this Court by way of appeal bearing (*Rochees Hotels Pvt. Ltd. v. JDA*) <sup>2</sup>and on the other hand, the appellant Jaipur Development Authority has also challenged the validity of the impugned order of the learned single Judge by way of appeal bearing *titled : JDA v. Rochees Hotels Pvt. Ltd.*<sup>3</sup>

11. The appellants Rochees Hotels Pvt. Ltd. while assailing the impugned order of the learned single Judge have also challenged the subsequent order dated 10-9-1998 (Ann. R/12) whereby the JDA at the behest of the aforesaid order of the learned single Judge, has taken decision to cancel the allotment of land in favour of appellant Rochees Hotels Pvt. Ltd. vide its order dated 10-9-1998 and consequent to thereof other orders were also passed i.e. dated 12-10-98 (Ann. R/2), 28-10-98 (Ann. R/3) and 1-12-98 (Ann. R/4) regarding cancellation of allotment made in favour of the appellant as above.

12. The appellants Rochees Hotels Pvt. Ltd. and Ishwar Dass have challenged the impugned order mainly on the following grounds :-

"(a) Because the learned single Judge having found in favour of the petitioner

that they are entitled to have the plans submitted by them duly approved by the JDA, and having issued a direction to that effect to the JDA, it could not have issued a further direction, that if the JDA does not approve the plan, the JDA may cancel the allotment. The direction for cancellation of the allotment is vitiated, for the reason, that the learned single Judge has not assigned any reason for issuing the direction for cancellation of allotment. It is stated, that the direction for cancellation of allotment could not have been issued, without examining, as to whether it was a case of allotment; and if so, whether any justification existed for cancellation of allotment by the JDA. The learned single Judge failed to examine all the aforesaid three issues, and without recording any finding as to whether it was a case of allotment, and whether the JDA was empowered under law to cancel the allotment, and whether any rationale or justification existed for such cancellation, a direction was issued for cancellation of allotment. It is stated that the direction for cancellation of land was thus absolutely invalid.

(b) That the learned single Judge failed to appreciate that the allotment decision dated 30-7-1993 merged in the offer dated 2-9-1993 then and fructified into a valid contract on 8-9-1993. The learned single Judge failed to appreciate that a contract cannot be cancelled unilaterally by any party to a contract. A contract can only be invalidated by a competent Court. In view of the aforesaid, the direction for cancellation of the contract as also the consequential decision taken for cancellation taken by JDA on 10-9-1998 is absolutely invalid and not tenable in the eye of law.

(c) That the order dated 14-8-1998 failed to appreciate that the basic issue was as to whether the petitioners were entitled to approval of their building plans on the strength of sale deed executed in their favour by Smt. Padmavati Devi and others itself. Once it were to be found, that the petitioners were in terms of the said sale deeds entitled to a direction for approval of the building plans submitted by them no other issue was required to be decided except for issuing a direction for refund of the payment collected in terms of the contract dated 8-9-1993.

(d) That the order dated 14-8-1998 fails to appreciate that the contract dated 8-9-1993 unequivocally provided for approval of the building plans submitted by the petitioners within a period of six months from the date of the contract. The JDA was thus under a contractual obligation also to approve the building plans submitted by the petitioners.

(e) That the order dated 14-8-1998 fails to appreciate that under Section 17 of the JDA Act a statutory obligation vests with the JDA to approve the building plans that are submitted before it subject to such plans being in conformity with the applicable building parameters. The JDA being a regulating authority, has no jurisdiction whatsoever, to examine the issue of title. Once a development proposed under a plan is found to be in consonance with the overall developmental perspective, as contained under the Building Regulations, the Planning Authority is statutorily obliged to approve the proposed development. The action of the JDA in not approving the development proposed by the petitioner is thus an absolute nullity.

(f) That the order dated 14th August, 1998 fails to appreciate that once a contract is stated to be concluded, neither the State Government nor the State Bureau of Investigation, can bring about such cancellation of such contract. The pendency of the investigation was totally irrelevant, inasmuch as, the authority which was investigating the matter, could not have taken any steps consequent to the conclusion of such investigation for cancellation of the contract. The only authority that was possessed with the authority to invalidate the contract was the competent judicial Court, and thus the JDA could not have refused to discharge its statutory powers on the ground, that the circumstances under which the contract was formed, was a matter of investigation before the State Government and its functionaries.

(g) That the order dated 14th August, 1998 fails to appreciate that the facts of the case clearly established the absolute possession of the petitioners over the land in issue. It also brought out in unequivocal terms the absolute title of the petitioners over the land in issue. In any case the orders of the Supreme Court clearly brings out the facts that till such time as a competent Court declares JDA and/or the State to be the owner of the property, the title in the property *prima facie* lies with the petitioners. In view of the aforesaid JDA was statutorily obliged to approve the building plans submitted by the petitioner, and order for refund of the amount that was paid by the petitioners under the coercion exerted by the JDA in not approving the building plans submitted by the petitioners.

(h) That the order dated 14th August, 1998 fails to appreciate that even if the land was considered to be a part of Khasra No. 307 of village Ruprampura, since the recorded khatedars of the said land i.e. Smt. Kiran Duggad and others, were not disputing the title of the petitioners over the property in question, the

JDA certainly did not possess any authority to question the validity of the petitioners title over the property in question.

(i) That the order dated 14th August, 1998 fails to appreciate that the dimensions of the property set out under the sale deed clearly established beyond all doubt the fact that the petitioners were the absolute owners of the property.

(j) That the decision dated 10th September, 1998 that has been taken by JDA in consequence of the order dated 14th August, 1998 is also vitiated, additionally for the reason, that the rationale adopted for the cancellation, namely that the allotment dated 30th July, 1993 was invalid, inasmuch as, that the matter was not examined by the LPC, and that the allotment was contrary to the UIT (Disposal of Urban Land) Rules, 1974, is totally incorrect, inasmuch, as shown above, firstly, once the contract was concluded on 8th September, 1993, there was no subsisting allotment available for cancellation. Secondly, as stated above, the decision dated 30th July, 1993 was in fact taken by the LPC. Thirdly, the matter was to be governed by Section 54 of the JDA Act, and the decision that was taken, was in strict accordance with the provisions of Section 54 of the JDA Act.

(k) That the order dated 14th August, 1998 fails to appreciate that the interference of the State Government, and more specifically, the Chief Minister, in the matter, was totally unauthorized. As stated above, neither the functionaries of the State Government nor the Chief Minister, had any authority whatsoever, to interfere in the matter of exercise of power by the JDA.

(l) That the action of the JDA of not approving the building plans by virtue of the matter being subject to investigation by the State Government was totally untenable in the eye of law.

(n) Because the order dated 14th August, 1998 passed by the learned single Judge is contrary to law. The petitioners are the *bona fide* purchasers of the land from the owners of the land vide registered sale deed dated 18th Dec., 1989. It was an admitted position that late Sh. Praduman Ojha and his family was in continuous possession of the land till 10th May, 1987 and till then neither the State nor the JDA had at any point of time raised any objection about the title of the land. It is true that in the matter of granting permission for construction the JDA is competent to examine the possessory title of the land in order to examine that there is no other person who is claiming possession or the right with respect to the property for which permission for construction has been

applied for. For this purpose, possessory title is a good title and if the applicant applying for permission is ready and willing to comply with all the requirements for the grant of permission, it is obligatory for the JDA to accord permission. In the circumstances, the act of the JDA in not granting permission simply on the ground that it has some suspicion about the title, is completely without jurisdiction and illegal. In view of the matter, the JDA has failed to exercise its jurisdiction properly.

(o) Because the petitioners are entitled to the grant of permission on the basis of the plans submitted by them as they have complied with all the requisite formalities and are ready and willing to comply with all other formalities if the same are required to be complied with.

(p) Because the JDA has no authority to investigate about the title of the State. If the land belong to the State, it was for the State to file a civil suit seeking a declaration of title and possession and a decree for setting aside the sale deeds of which reference has been made in the preceding paras.

(q) Because the action of the JDA in not granting permission for construction is arbitrary and unreasonable and is violative of Article 14 of the Constitution of India. The petitioners are entitled to the grant of permission for construction as per the provisions of the JDA Act, 1982, as the petitioners have complied with all the formalities required for construction.

(r) Because as regards title, it was the case of the petitioner-appellants that the land belonged to Sh. Praduman Ojha and the legal heirs were competent to transfer the same. It may be mentioned that in the civil suit filed by Smt. Padmavati Devi, widow of late Sh. Praduman Ojha against the UIT in the Court of Addl. Munsiff No. 2, Jaipur city, Jaipur, the learned Court had held that the property belongs to Smt. Padmavati Devi. The said judgment dated 30th Nov., 1971 operates as *res judicata*. Still, the JDA has failed to appreciate the same and has further failed to grant permission for construction.

(s) Because in certain proceedings initiated by the Tehsildar, Teh. Jaipur, against Smt. Padmavati Devi and other LRs of Praduman Ojha, the case went up to Supreme Court. The Hon'ble Supreme Court in *Civil Appeal No. 2896/1981, State of Rajasthan v. Smt. Padmavati Devi, reported in* <sup>4</sup> has observed as under :-"In the present case respondent No. 1 has put forward a *bona fide* claim about her right to remain in occupation over the land. The said claim raises questions involving the applicability and interpretation of various laws and documents as well as investigation into disputed questions of fact

involving recording of evidence. These matters could not be satisfactorily adjudicated in summary proceedings under Section 91 of the Act and can more properly be considered in regular proceedings in the appropriate forum" and has further observed that "in view of the fact that these proceedings have been pending for the last 25 years, we were not disinclined to consider the claim of the respondent No. 1 that she is entitled to remain in occupation of the land."

The Hon'ble Supreme Court made the following observations :-

"If the person in occupation has *bona fide* claim to litigate, he could not be ejected save by the due process of law". In such a case the proper course is to have the matter adjudicated by the ordinary Courts of law."

Ultimately, after analysing the entire position of law and the facts, the Hon'ble Supreme Court has given the following direction :-

"it will be open to the appellant to pursue the appropriate remedy available in law before the competent forum for establishing its rights over the land in question."

The submission of the appellants in the writ petition was that if the State or the JDA has any doubt about the title of the seller, they had the remedy to challenge the sale deeds in the Court of competent jurisdiction but without taking such a recourse, it was not within the competence and/or jurisdiction of the JDA to refrain from granting permission for construction only on the ground that the title of the land vests in the State whereas the State even has no right to raise any question of title before the JDA. It may be submitted that even after the decision of the judgment of the Hon'ble Supreme Court, the State has not taken any recourse to law as observed by the Hon'ble Supreme Court.

(t) Because JDA has no right, title or interest in the property. The land never vested in JDA. The JDA has no authority to raise a question of title of third person.

(u) Because the petitioners have absolute right to deal with their property in any manner they like, they can transfer and alienate it and have a right to put it to any use. The right to raise construction and put it to any use is, however, subject to certain lawful conditions and/or restrictions in public interest. Accordingly, when the petitioners have complied with all formalities, it is the bounden duty

of the JDA to accord permission for construction. Under the Rules, JDA has no authority to investigate any title to land.

(v) Because the action of the JDA is running counter to the observations of the Hon'ble Supreme Court in the case referred to above.

(w) Because the JDA has no authority to adjudicate and/or investigate into title of third parties.

(x) Because the provisions of law governing grant of permission for construction, nowhere prescribes, any authority in JDA to investigate into the question of title.

(y) Because in view of the specific provisions of the Specific Relief Act, the JDA is required to see a decree for cancellation of the sale deeds and without challenging the same in a Civil Court, it has no right to challenge the sale deeds".

13. On the other hand, Shri Bharat Vyas, learned counsel appearing for the JDA assailed the validity of the impugned order of the learned single Judge mainly on the following ground :-

"That the learned single Judge has failed to appreciate that there was no occasion for the issuance of writ of mandamus inasmuch as there was no failure on the part of the Jaipur Development Authority to discharge its statutory obligations in the present matter. It is submitted that the State of Rajasthan ordered an enquiry and also initiated investigation through State Bureau of Investigation with regard to corruption charges in the matter of allotment. It is submitted that the allotment was apparently bad being contrary to the mandatory provisions of Disposal Rules, 1974. Since the matter was under investigation, therefore, the Jaipur Development Authority had every right to keep the matter regarding approval of the plans pending during such investigations by an enforcement agency. Charges of corruption in such cases are serious in nature and no public authority is expected to create further complications during the pendency of such investigations by approving the plans. Therefore, the learned single Judge wrongly exercised the powers under Article 226 for the issuance of mandamus so issued.

(I) That the learned single Judge has completely failed to appreciate that there was no occasion for directing the refund of the same with interest. It is submitted that the learned single Judge could not have pre-empted the decision

of the Jaipur Development Authority with regard to payment of the interest. The Jaipur Development Authority had every right to dwell into and decide such a question while deciding the matter, the Jaipur Development Authority might or might not have decided to provide interest, in any case, the respondents at all point of time had right to challenge such decision. Otherwise also in a case where the allotment was made contrary to the rules and criminal investigation with regard to corruption charges are pending, a public body like Jaipur Development Authority cannot be directed to pay interest to those persons who are party to such proceedings, which are prima facie, contrary to law. It is, thus clear that the learned single Judge has committed grave illegality in directing for the payment of the interest.

(J) That the impugned judgment is liable to be quashed and set aside on a solitary ground that the learned single Judge has passed the order without proper application of mind as to the facts and the statutory provisions applicable in the instant case. The order is also non-speaking."

14. During the course of hearing, it was contended by the learned counsel for the appellants that ever since 18-12-1989 the appellants have been in continuous possession of the suit and being the owners have also paid the land and building tax as assessed by the concerned authorities. In support of this contention, the learned counsel has placed on the record the relevant orders of the Assessing Authority regarding the payment of land and building tax.

15. In the context of above background, the appellant No. 2 applied to JDA in 1989 for construction of Hotel on the suit land measuring 2450 sq. yards which originally was found to be the part of the land of Praduman Ojha and which has been purchased through registered sale deed dated 18-12-1989. The appellants complied with all the requirements with regard to the submission of the relevant documents pertaining to the title etc. as required by the JDA and made repeated representations for approval of the building plans for construction of the Hotel. It was further contended by the learned counsel for the appellants-Rochees Hotels Pvt. Ltd. that as per the contractual terms duly arrived at and duly settled between the JDA and the appellants, they deposited Rs. 3859524.91 with the JDA and information to this regard had been communicated to the JDA vide letter dated 29-9-1993, but when the JDA did not approve the building plans for four years after his repeated representations in this regard, appellants preferred writ petition as aforesaid which came to be disposed of with the

direction to the JDA to either accord the permission for construction of Hotel or refund the deposited amount with interest to the appellants. Hence, these appeals.

16. Learned counsel for the appellants submitted that pursuant to the directions of the learned single Judge dated 14-8-1998 the JDA had examined the matter and on 10-9-1998 (Ann. R/1) when the decision was taken that the allotment made in favour of the appellants be cancelled and the amount deposited with the JDA be refunded back along with interest @ 18% p.a. to which, learned counsel for the appellants submits that JDA had absolutely no legal right or justification to do so, more particularly, that it is not acceptable at this belated stage. Counsel further states that once the contract/agreement having been arrived at between them and the JDA accepting all the terms and conditions of the JDA stood concluded (sic). Valuable rights had lawfully accrued in their favour and of which they could not be divested in this unlawful manner. This decision of the JDA is contrary to the agreement which is not acceptable to the appellants and the unilateral and arbitrary decision of JDA seeking cancellation of the contract is absolutely illegal, arbitrary and not sustainable in the eye of law.

17. In rebuttal, it was the contention of the learned counsel appearing for the JDA-appellant that the decision taken by the JDA vide order dated 10-9-1998 (Ann. R/1) is an absolute decision as the criminal investigation with regard to corruption charges is pending and at this stage the JDA cannot be directed to pay interest to those persons who are party to such proceedings. As such, learned counsel for JDA prayed for quashing and setting aside the impugned order of the learned single Judge dated 14-8-1998.

18. We have heard the learned counsel for the parties and examined their rival claims and contentions as well as the case law on the subject. We have also examined the ratio of the decision of the learned single Judge dated 14-8-1998.

19. Prima facie, we are of the view that the direction of the learned single Judge that "the respondent, who has allotted the land to the petitioners vide Annexure 10 for the purpose of Hotel business, may either accord the permission for the same on the application already submitted by the petitioners to the respondent in accordance with law and rules or, if the respondent so chooses, may cancel the allotment and refund the entire amount paid by the petitioners pursuant to the allotment letter Annexure 10 plus

interest of 18% p.a. thereon", is wholly innocuous, irrational and not sustainable in the eye of law for the reason that the learned single Judge has failed to consider that such direction should not have been issued without examining as to whether the JDA was empowered under the circumstances to cancel such allotment and further whether there was any rationale or justification for such cancellation of the allotment by the JDA at this belated stage? Such a direction in our view is not only invalid but also not tenable in the eye of law. We are further of the opinion that once it was found that the appellants were in continuous possession of the land in question on the basis of the registered sale deeds executed in their favour, (a) also in view of sale consideration fully paid by them to the predecessor- in-interest and being within their rights to apply for building plans to JDA so as to enable them to raise (b) construction over the land as the title over the land lawfully vested in them, the JDA was under a statutory obligation to accord approval to the building plans as per the norms and bye-laws within the specified period.

20. Hence, the learned single Judge was not justified in giving the alternative direction to the JDA to refund the deposited amount along with interest to the appellants. The JDA was thus under a contractual obligation not only to approve the building plans but also to give necessary approval and by its refusal had violated the statutory obligation to great prejudice and disadvantage of the appellants.

21. In this regard, we would like to observe that in the impugned order dated 14-8-1998 the learned single Judge has failed to take into consideration that once the contract stood duly concluded between the parties, it was neither open to the State Govt.. nor the JDA to take such a decision on the plea that there was pendency of the criminal investigation. The only authority that could question the validity of the contract is the judicial forum and thus it was not open to the JDA to have refused to discharge its statutory obligation on the ground that the circumstances under which the contract was arrived at, was a matter of investigation before the State Govt. or its functionaries. This argument advanced by the learned counsel for the JDA during the course of hearing is wholly irrational and not sustainable and consequently the impugned order of the learned single Judge cannot be sustained.

22. Thus, the decision taken by the JDA on 10-9-1998 in consequence of the impugned order of the learned single Judge dated 14-8-1998 is wholly vitiated. Law is well settled that there has to be fairness in State-actions and its functionaries.

23. During the course of hearing, Shri R.D. Rastogi, learned counsel appearing for the appellants has placed reliance upon the following decisions :-

*Century Spinning and Manufacturing Co. Ltd. v. Ulhas Nagar Municipal<sup>5</sup> Council; Collector of Bombay v. Municipal Corporation of Bombay;*<sup>6</sup> *Dwarkadas Marfatia v. Board of Trustees;*<sup>7</sup> *Rathi Alloys and Steel, Alwar v. Collector of Central Excise, Jaipur;*<sup>8</sup> *LIC of India v. Consumer Education and Research Institute;*<sup>9</sup> *MP Oil Extraction v. State of M.P.;*<sup>10</sup> *U.P. Awas Evam Vikas Parishad v. Gyan Devi;*<sup>11</sup> *National Building Construction Corporation v. S. Raghunandan;*<sup>12</sup> *Punjab Communication Ltd. v. UOI;*<sup>13</sup> *Vinit Kumar v. Mangal Sain Wadhva;*<sup>14</sup> *Jai Mangal Oraon v. Smt. Mira Nayak;*<sup>15</sup> *BR Rama-bhadriah v. Secretary;*<sup>16</sup> *Food and Agriculture Department, A.P.;*<sup>17</sup> *Laxmi Rattan Cotton Mills Co. Ltd. v. JK Jute Mills Co. Ltd., Kanpur;*<sup>18</sup> *Varkey Souriar v. Karaleeya Banking Co. Ltd.;*<sup>19</sup> *CK Siva Sankara Panicker v. Kerala Financial Corporation;*<sup>20</sup> *Hitech Gears Ltd. v. Yogi Pharma Ltd.;*<sup>21</sup> *R. Rangaswami Reddiar v. R. Krishna-swami Reddiar;*<sup>22</sup> *SP Gupta v. Union of India;*<sup>23</sup> *Punjab Land Development Corporation v. Presiding Officer, Labour Court, Chandigarh*<sup>24</sup> and *A.R. Antuley v. R.S. Nayak.*<sup>25</sup>

24. In *Century Spinning and Manufacturing Co. Ltd. (supra)*, the Apex Court in sub-para (iv) of its judgment held that a Public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

25. In *Collector of Bombay (supra)*, the Apex Court in para (21) held that they have acquired a title to the land which the Government cannot upset or challenge. This acquisition of title is as a result of the law of limitation. It has nothing to do with any conduct on the part of the Corporation which can be said to have rendered the representation about non-liability to assessment of no legal effect or consequence. The invalidity of the grant does not lead to the obliteration of the representation.

26. In *M/s. Dwarkadas Marfatia and Sons (supra)*, the Apex Court held that all actions including contractual dealings of, are subject to judicial review, Court can see if such body has followed the statutory purpose and acted in public interest and not in *mala fide* or arbitrary or for a collateral purpose. Its action must be reasonable and taken upon lawful and relevant grounds of public interest. The Apex Court in para 27 further held that if a governmental policy or action even in contractual matters fails to satisfy

the test of reasonableness, it would be unconstitutional.

27. In *Rathi Alloys and Steel Ltd., Alwar* (supra), the Apex Court on the principle of natural justice and fairness in State-action held that Government, Board and even Department already granting benefit of exemption to manufacture of a particular item though the same on strict and literal interpretation not covered by the exemption notification, rule of fairness precludes the department from reopening such matter which was taken to be settled by its own action and injustice and hardship to assesses consequent upon reopening of assessment in such cases to be kept in mind. Further, notices issued to assesses beyond six months' period, whether barred by limitation, not considered and matters already taken to have been settled by Government's own action in favor of a class of persons cannot be reopened by Government even though such action is not strictly in terms of statutory provision.

28. In *LIC of India* (supra), the Apex Court held that in the sphere of contractual relations the State, its instrumentality, public authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined in a manner that is fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision. The Apex Court in para 24 further held that even in contractual relations the Court cannot ignore that the public authority must have constitutional conscience so that any interpretation put up must be to avoid arbitrary action.

29. In *Sant Saran Goswami alias Deoji* (supra), the Apex Court held that reopening of the proceedings was bad as the earlier proceedings having been allowed to become final.

30. In *National Buildings Construction Corporation* (supra), the Apex Court held that claims based on legitimate expectation have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel. Apex Court further held that though the doctrine of legitimate expectation is essentially procedural in character and assures fair play in administrative action, it may, in a given petition, be enforced as a substantive right. The doctrine of legitimate expectation can be invoked if the decision which is

challenged in the Court has some person aggrieved (a) by altering rights of obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do.

31. In Punjab Communications Ltd. (supra), the Apex Court held that official decisions should not be infected with motives such as fraud or dishonesty, malice for personal self-interest. The Apex Court further observed in para 42 that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy and the Court will intervene in that decision only if they are satisfied that the decision is irrational or perverse.

32. In Hitech Gears Ltd. (supra), the Allahabad High Court at page 256 has held that "respectfully agreeing with the aforesaid observations of the Calcutta High Court, I am of the view the petitioner was a *bona fide* creditor who lent money by way of an interoperate deposit and has, therefore, a right to assume as against the company that all requirements of the management have been complied with such as necessary resolutions are there on the directors' book to make them regular and that the Directors have contracted according to procedure enjoined in the Board meeting".

33. From the ratio of the aforesaid decisions of the Apex Court, it is crystal clear that once an agreement having been concluded between the parties, the instrumentalities of the State or the Board or the Corporation under statutory obligation have to perform the agreement once entered into and lawfully executed and concluded. It has no authority to alter or change the same to the detriment of the aggrieved party in an arbitrary or irrational manner such as in the present case giving rise to these appeals.

34. Hence, the ratio of the aforesaid decisions relied upon by Shri Rastogi, learned counsel for the appellants in our view, are fully attracted and applicable.

35. It is the admitted case of the appellants Rochees Hotels Pvt. Ltd. and Ishwar Dass that upon an offer given by the JDA dated 2-9-1993 (Annexure-10 to the writ petition) for allotment of 1849.97 sq. meters (2450 sq. yds.) on its terms and conditions that the appellants should deposit a sum of Rs. 38,59,524.91/- within thirty days, the

appellants accepted the said offer and deposited the aforesaid amount within thirty days i.e. on 29-9-1993 (Annexure-11 to the writ petition) executing an agreement with the JDA. Hence, the JDA being under the statutory obligation vide its subsequent order dated 10-9-1998 (Ann. R/1) has no authority to refuse the said agreement once it had lawfully executed with the appellants. Valuable legal rights had thus got vested in them and of which they could not be divested.

36. In view of the above discussion, we are of the considered opinion that the impugned order of the learned single Judge dated 14-8-1998 and order of the JDA dated 10-9-1998 (Ann. R/1) and subsequent orders passed by the JDA dated 12-10-1998 (Ann. R/2), 28-10-998 (Ann. R/3) and 1-12-1998 (Ann. R/4) deserve to be quashed and set aside.

37. As a result of the above discussion, (*Rochees Hotel Pvt. Ltd. v. JDA*)<sup>26</sup> is allowed with cost quantified as Rs. 25,000/-. The impugned order of the learned single Judge dated 14-8-1998 passed in (*Rochees Hotels Pvt. Ltd. and another v. JDA, Jaipur*)<sup>27</sup> as well as the impugned orders dated 10-9-1998 (Ann. R/1), 12-10-1998 (Ann. R/2), 28-10-1998 (Ann. R/3) and 1-12-1998 (Ann. R/4) passed by the Jaipur Development Authority, Jaipur are quashed and set aside.

38. While, (*Jaipur Development Authority v. Rochees Hotels Pvt. Ltd.*)<sup>28</sup> is dismissed.

39. The Jaipur Development Authority, Jaipur is directed to give necessary sanction for approval of the building plans submitted by the appellant Rochees Hotels Pvt. Ltd. for construction of Hotel over the land in question and pass necessary orders in this regard in accordance with the Rules within a period of thirty days from the date of communication of the certified copy of this order.

Order accordingly.

Cases Referred.

1. SB Civil Writ Petition No. 5766/1997
2. DB Civil Special Appeal No. 787/1998
3. DB Civil Special Appeal No. 251/2000
4. JT 1995 (5) SC 481 decided on 6th April, 1995

5. 1970 (1) SCC 582
6. AIR 1951 SC 469
7. 1989 (3) SCC 293
8. 1990 (2) SCC 324
9. 1995 (5) SCC 482
10. 1997 (2) SCC 592
11. 1995 (2) SCC 326
12. 1998 (7) SCC 66
13. 1999 (4) SCC 727
14. 1984 (3) SCC 352
15. 2000 (5) SCC 141
16. AIR 1981 SC 1653: (1981 Lab IC 1114),
17. AIR 1957 All 311 (DB)
18. AIR 1957 Ker 97
19. 1980 (50) Company Cases 817
20. 1998 (94)
21. Company Cases 250
22. AIR 1973 Madras 251
23. 1981 (Supp) SCC 87
24. 1990 (3) SCC 682
25. 1988 (2) SCC 602
26. DB Civil Special Appeal No. 787/1998
27. S.B. Civil Writ Petition No. 5766/1997
28. DB Civil Special Appeal No. 251/2000