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KHUB RAM

v.

DALBIR SINGH & ORS.

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(Civil Appeal No. 2734 of 2012)

APRIL 29, 2015

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**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]**

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Service law: Appointment – Post of Chief Inspector in Haryana Roadways – KR appointed – DS challenged appointment of KR – Writ petition allowed on the ground that KR did not meet experience certificate – Appointment of KR quashed – Direction to appoint DS from retrospective effect – MP challenged the said decision on the ground that he was one amongst the selected candidates and has better claim for appointment than DS and therefore, MP should be appointed in place of DS – Held: The appellant-KR is not entitled to hold the office which he obtained by submitting questionable certificates of experience and more so when he lacked the essential qualification of requisite working experience – As regard DS, he was only an applicant and was not among the selected 14 candidates – In that view of the matter, High Court was misled to issue a direction for his appointment and that too from an earlier date when KR was appointed, and with consequential benefits – Such directions could not have been issued without considering the claims of other persons in the Select List – For that reason, the directions issued in favour of DS set aside – However, the other prayer made on behalf of MP that authorities be directed to offer him appointment or consider his claim cannot be allowed on account of the fact that writ petition of MP filed in

1991 was decided against him and had attained finality – A
 His claim thus suffered from *res judicata* as well as
acquiescence and *estoppel* – In that view of the matter and
 also for the reason that a long period of more than 25 years
 has passed since the preparation of the Select List, no relief
 can be granted – However in view of inaction of the State B
 Government after becoming aware that KR lacked essential
 qualification and obtained job by fraud, State is directed to
 pay compensation of Rs.3 lacs to MP and further deposit
 Rs.1 lac with Mediation Centre – Compensation. C

Disposing of the appeals, the Court

HELD: 1. KR is not entitled to hold the office which
 he obtained by submitting questionable certificates of
 experience and more so when he lacked the essential D
 qualification of working experience in a Government/
 Semi-government/Public Sector Undertaking. MP has
 shown from the pleadings that while he was at serial no.9
 of the Select List containing 14 names prepared for
 appointment to 5 advertised posts, first respondent-DS E
 did not find any place in such Select List. This fact
 escaped the attention of Single Judge as well as Division
 Bench possibly because there was no rival claimant to
 point out such shortcoming in the case of writ petitioner- F
 DS. There is no dispute that first respondent-DS was
 only an applicant and was not among the selected 14
 candidates. In that view of the matter, the High Court
 was misled to issue a direction for his appointment and
 that too from an earlier date when KR was appointed, G
 and with consequential benefits. Such directions could
 not have been issued without considering the claims of
 other persons in the Select List. For that reason, the
 directions issued in favour of first respondent are set H

A aside. To that extent, appeal of MP has to be allowed. However, the other prayer made on behalf of MP that authorities be directed to offer him appointment or consider his claim cannot be allowed on account of the fact that writ petition of MP filed in 1991 was decided against him. Rightly or wrongly, the High Court held that he could not claim any right of appointment on account of a place in the Select List. That judgment attained finality. MP chose not to appeal against that order nor he challenged the appointment of any of the persons selected and appointed. His claim thus suffered from *res judicata* as well as acquiescence and estoppel. In that view of the matter and also for the reason that a long period of more than 25 years has passed since the preparation of the Select List, it would be inappropriate to grant any relief which may require the authorities to examine the claim of persons in the Select List for appointment to the original post which may not even be available after lapse of so many years. MP is presently about 50 years of age and has not crossed the age of superannuation and is still working on another post with Haryana Roadways. Hence he is not granted any further relief and his appeal is allowed only in part as a result whereof the direction to appoint DS is set aside. [paras 10, 11, 15] [360-B-F; 362-G-H; 363-A-D]

State of Mysore v. K.N. Chandrasekhara AIR 1965 SC 532; *R.S. Mittal v. Union of India* 1995 (2) SCR 1127 : 1995 Supp. (2) SCC 230 – referred to.

2. A disturbing feature of this case is that even after notice of the writ petition when the State of Haryana became aware that KR lacked essential qualification and his certificates were unreliable, it took no action to undo

the ill effects of fraud by taking any action against KR. As a result KR continued in service for a number of years and also earned promotions. This was at the cost of claim of other genuine selected candidates whose cases could have been considered if action had been taken at appropriate time. In such a situation, although no relief is granted to MP by ordering for his appointment, the State of Haryana is directed to compensate MP by paying him Rs.3 Lacs. A further amount of Rs.1 lac should also be deposited by the State of Haryana with the Supreme Court Mediation Centre. [para 16] [363-D-G]

Jiten Kumar Sahoo v. Mahanadi Coalfields Ltd. 2011 (1) SCR 572 : (2011) 11 SCC 520; *Buddhi Nath Chaudhary v. Abahi Kumar* 2001 (2) SCR 18 : (2001) 3 SCC 328; *Meghmala v. G. Narasimha Reddy* 2010 (10) SCR 47 : (2010) 8 SCC 383; *Central Bank of India v. Madhulika Guruprasad Dahir* 2008 (11) SCR 319 : (2008) 13 SCC 170 – referred to.

Case Law Reference

2011 (1) SCR 572	Referred to.	Para 5
2001 (2) SCR 18	Referred to.	Para 5
2010 (10) SCR 47	Relied on.	Para 10
AIR 1965 SC 532	Referred to.	Para 13
1995 (2) SCR 1127	Referred to.	Para 13
2008 (11) SCR 319	Referred to.	Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2734 of 2012

A From the Judgment and Order dated 09.11.2010 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 1510 of 2010

WITH

B C.A. No. 4097 of 2015.

C P. N. Misra, Paramjit Singh Patwalia, Vikas Singh, Aruna Bhardwaj, AAG, Tarjeet Singh, Satyendra Kumar, Ashok K. Mahajan, Deepeika Kalia, Kapish Seth, Ajay Sharma, Dr. Monica Gusain, Sanjeev Tayal (for Kamal Mohan Gupta), Naresh Bakshi, for the appearing parties.

The Judgment of the Court was delivered by

D **SHIVA KIRTI SINGH, J.** 1. The Civil Appeal and the Special Leave Petition have been heard together because claim of the parties is in respect of same post of Chief Inspector in the Haryana Roadways to which the appellant - Khub Ram was initially appointed in the year 1990 pursuant to his selection
E in response to advertisement dated 07.05.1989. First respondent – Dalbir Singh challenged the selection and appointment of appellant Khub Ram by filing C.W.P. No.12711
F of 1992 in the High Court. That writ petition was allowed on 01.10.2010 by a learned Single Judge. Not only the appointment of Khub Ram and one more person was quashed but a direction was also issued to appoint writ petitioner – Dalbir Singh from a retrospective date with all consequential benefits. Appellant's appeal before the Division Bench was
G dismissed by the impugned order. The petitioner of S.L.P. – Mahavir Prasad has sought permission to file the Special Leave Petition against judgment of learned Single Judge as well as of Division Bench on the ground that he is one amongst the selected candidates and has a better claim for appointment
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than respondent – Dalbir Singh and hence order should be passed for appointing him in place of Khub Ram. This judgment shall govern both the matters which involve common issues of facts and law. A

2. Permission to file Special Leave Petition (C) B
No.15871 of 2012 is granted. Delay condoned. Leave granted.

3. For the sake of convenience the facts have been noticed mainly from the records of Civil Appeal No.2734 of 2012 except where indicated otherwise. For deciding the two issues arising in these cases it is not necessary to go deeper into the facts except to notice that as per terms of advertisement dated 07.05.1989, besides a Degree of Graduation and Hindi upto Matriculation level and age qualification of 17-35 years, it was essential for the candidate to have two years' experience in Government/Semi-government or Public Undertakings and Roadways Fleet. The appellant's selection was questioned in the writ petition mainly on the ground that he did not possess the requisite experience and the two certificates submitted by him were from private transporters. There were strong arguments advanced against the selection of appellant and some others on the allegation that political influence had been exercised in their favour and it was specifically pleaded that the appellant was selected in the second round of selection as he belonged to village of the then Chief Minister. The learned Single Judge noticed that appellant's experience certificates showed that he had worked with a private Bus Service from June 1986 to June 1988 as a Field Staff (Checker) for two years and also with another private roadways as Assistant Manager between 01.09.1984 to 10.03.1987. The courts below noticed that both the certificates contradicted each other because between June 1986 to 10.03.1987 the appellant as C
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A per his certificates had worked in two different capacities with
two different private bus service. The court also found that the
two years' experience as per terms of the advertisement could
not be satisfied by showing experience of working with private
transporters as they were not covered by the expression
B 'Government/Semi-government or Public Undertakings and
Roadways Fleet'.

4. On behalf of Mahavir Prasad it has been pleaded
that the Select List contained names of 14 persons which
C included Khub Ram and Ram Niwas Rathi whose
appointments were quashed by the learned Single Judge as
well as name of appellant – Mahavir Prasad but not that of first
respondent – Dalbir Singh. On account of his place in the
Select List Mahavir Prasad represented for appointment and
ultimately filed a writ petition for that purpose bearing C.W.P.
D No.17600 of 1991 but no relief was given to him by the final
order dated 04.08.1992 which for some reason was
challenged by the State of Haryana before the Division Bench
E but not by Mahavir Prasad. But when he learnt that respondent
– Dalbir Singh has succeeded in getting a judgment against
Khub Ram and a direction for his own appointment, Mahavir
Prasad chose to challenge those judgments in favour of Dalbir
Singh by preferring the Special Leave Petition directly in this
F Court and the same was tagged for hearing along with the
Civil Appeal.

5. On behalf of appellant - Khub Ram, Mr. P.N. Misra,
Sr. Advocate raised a strong objection that writ petition should
G not have been allowed in 2010 in view of delay in impleading
the appellant as late as in 2004 when he had already earned a
promotion on 01.03.1996 and a second promotion as Traffic
Manager on 05.05.2000. It was also highlighted that because
of interim order of this Court he has continued in service and
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has been promoted as General Manager in December 2014. A
He pointed out that objection was taken to the impleadment
application dated 16.02.2004 on grounds of delay as well as
promotion already earned by the appellant. In support of the
aforesaid plea reliance was placed on judgment of this Court
in the case of Jiten Kumar Sahoo v. Mahanadi Coalfields Ltd. B
(2011) 11 SCC 520 and in the case of Buddhi Nath Chaudhary
v. Abahi Kumar (2001) 3 SCC 328.

6. Learned senior counsel Mr. Misra also submitted that
experience in private roadways fleet would meet the C
requirement of advertisement if the word 'and' appearing
before the 'Roadways Fleet' is understood and treated as 'or'.
According to him, now when the appellant - Khub Ram has
worked for long years, he cannot be denied continuance in D
service for lack of minimum experience at the stage of
recruitment. He further pointed that the appellant noticed the
error in experience certificate dated 05.06.1989 relating to
experience of two years in Shyam Bus Service from June 1986
to June 1988 and therefore he obtained a corrected certificate E
on the next day, i.e., 06.06.1989 showing such experience to
be from June 1987 to June 1988. According to the appellant,
the corrected experience certificate dated 06.06.1989 is on
record as Annexure P-2.

7. In reply, Mr. Vikas Singh, Sr. Advocate for first F
respondent has pointed out that issue of delay in impleading
the appellant as a respondent in the writ petition was not argued
before the learned Single Judge or before the Division Bench.
He pointed out that in respect of two years of working G
experience in paragraph 2 of the writ petition it was claimed
that the experience required was of working in a Government
or semi-government department and such claim was admitted
by the State, second respondent in para 2 of its reply. It was

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- A also shown that the learned Single Judge as well as the Division
Bench have returned concurrent findings that the appellant –
Khub Ram did not meet the experience qualification and not
only his certificates were from private bus operators but also
the same were untrustworthy because of apparent conflict and
B overlapping of a particular period in both the certificates.

8. Anticipating the arguments on behalf of appellant –
Mahavir Prasad in the light of pleadings in the appeal filed by
him, Mr. Vikas Singh, learned senior counsel for first respondent
C highlighted that no other claimant for the post joined the
litigation when first respondent preferred the connected writ
petition in the year 1992 and even till 2010 when the writ petition
was allowed, no other candidate came forward with a rival
claim and in such circumstances writ court committed no error
D in directing for appointment of first respondent as a
consequence of setting aside the appointment of appellant –
Khub Ram and another person.

9. Before advertng to the claims of first respondent and
E similar claim of appellant – Mahavir Prasad for appointment
to the post held by the appellant – Khub Ram, it would be
appropriate to first examine the merit of appeal preferred by
appellant – Khub Ram. We have carefully looked into the
F averments made in the writ petition, the reply filed by State
and other respondents as well as the judgment of the learned
Single Judge as well as the Division Bench. We find no good
reason to take a different view in respect of the finding that the
appellant lacked the essential qualification of experience
G because his experience certificates were only from private bus
operators. It is also found that even the alleged corrected
certificate said to be dated 06.06.1989 contained in Annexure
P-2 is an unreliable document inasmuch as the date
06.06.1989 is clearly a subsequent correction without any
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authorization by way of counter signature and so is the case with the words and letters 'June 1987' which have been altered subsequently by converting '1986' to '1987'. Even after such unauthorized corrections the total experience as per last line of the certificate remains two years. Had the concerned Bus Service issued a fresh corrected certificate then the experience from June 1987 to June 1988 could not have been certified to be experience for two years. The list of dates also has been subsequently corrected to show the date of experience certificate, Annexure P-2 as 06.06.1989 in place of 05.06.1989. This appears to have been done at the instance of the appellant to justify his stand and apparently a bogus claim that he had obtained a correct certificate on the very next date when he found mistakes in the certificates dated 05.06.1989. Had this been the case, there was no occasion for submission of the certificate dated 05.06.1989 with his application which issue has been discussed in detail by the learned Single Judge.

10. Had the appellant not committed such acts for obtaining selection and appointment, we could have considered the issue of delay as well as judgments supporting such a claim. However, Mr. Patwalia has rightly submitted that delay in impleading the appellant could not weigh with this Court when a case of fraudulent entry into service has been found by the learned Single Judge as well as Division Bench and an attempt has been made by the appellant even to mislead this Court by producing Annexure P-2 and claiming it to be copy of the corrected certificate freshly issued on 06.06.1989. Such conduct of the appellant in our considered view disentitles the appellant – Khub Ram to get any relief under Article 136 of the Constitution of India. Mr. Patwalia has rightly placed reliance to support the aforesaid submissions, on a judgment of this Court in the case of Meghmala v. G. Narasimha Reddy (2010)

- A 8 SCC 383. The law relating to effect of fraud upon a competent authority to get an appointment/office as well as effect of fraud upon court has been discussed in detail in paragraphs 28 to 36 of the said judgment with which we are in respectful agreement. As a result, we hold that the appellant –
- B Khub Ram is not entitled to hold the office which he obtained by submitting questionable certificates of experience and more so when he lacked the essential qualification of working experience in a Government/Semi-government/Public Sector Undertaking. Hence his appeal is dismissed.
- C

11. The next question is whether in the facts and circumstances of the case the direction of the High Court to appoint first respondent from a retrospective date along with consequential benefits deserves to be upheld or not,
- D particularly when a strong challenge has been made to such direction through a Special Leave Petition of Mahavir Prasad. On this issue Mr. Patwalia, learned senior advocate appearing for Mahavir Prasad has shown from the pleadings that while
- E Mahavir Prasad was at serial no.9 of the Select List containing 14 names prepared for appointment to 5 advertised posts, first respondent Dalbir Singh did not find any place in such Select List. This fact escaped the attention of learned Single Judge as well as Division Bench possibly because there was
- F no rival claimant to point out such shortcoming in the case of writ petitioner – Dalbir Singh.

12. Mr. Patwalia has shown from the supplementary affidavit filed in the Special Leave Petition to support the application for condonation of delay, that as far back as on 25.08.1993 the High Court had passed an order in the writ petition directing the writ petitioner to implead the selected candidates (emphasis added) who are likely to be affected by the result of the present writ petition. The writ petitioner was
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given liberty to file an application for early hearing after
impleading the affected party. The writ petitioner filed the
impleadment application only for adding Khub Ram and one
another person and did not implead all the selected
candidates. As a result appellant – Mahavir Prasad was
denied the opportunity of contesting the claim of the writ
petitioner by placing the relevant correct facts particularly the
fact that Dalbir Singh was not a selected candidate.

13. A number of judgments including *State of Mysore v.*
K.N. Chandrasekhara AIR 1965 SC 532 and *R.S. Mittal v. Union*
of India 1995 Supp. (2) SCC 230 were relied upon by Mr.
Patwalia in support of his submission that if challenge to an
appointment succeeds, the court will direct for appointment
against consequent vacancy only as per the merit list prepared
for the purpose of such appointment. The list has to be given
due weightage unless the court has proceeded to quash the
Select List itself. Since the proposition is well founded in law
and there is no caveat on this issue, there is no need to discuss
the case law on the subject in any detail.

14. Learned counsel for the State of Rajasthan has
submitted that Khub Ram was ineligible for want of a requisite
experience and hence by working on the post as claimed by
him for subsequent two years he cannot get the required
eligibility. He placed reliance upon a judgment of this Court in
the case of *Central Bank of India v. Madhulika Guruprasad*
Dahir (2008) 13 SCC 170. That judgment was rendered in a
case where the caste certificate which was the basis for
claiming and getting appointment was found to be false. The
court, in the facts of the case held the action of the applicant
concerned to be fraudulent and on that basis, after discussing
the relevant case law in detail in paragraphs 15, 16 and 17,
declined to endorse the lenient view taken by the High Court

A and instead, upheld the order of termination of service of the
concerned employee with a sound reasoning - "the selection
of the employee was conceived in deceit and, therefore, could
not be saved by equitable considerations". According to
learned counsel for the State Dalbir Singh did not find place in
B the list of selected candidates and hence it would not be proper
to uphold the direction for his appointment and if Mahavir's
claim finds favour then the authority concerned may be directed
to consider the claim of all selected candidates including that
C of Mahavir Prasad but only against original post, if available.
The appointment should not be ordered from any retrospective
date or with any consequential benefits.

15. There is no dispute that first respondent – Dalbir
Singh was only an applicant and was not among the selected
D 14 candidates. In that view of the matter, the High Court was
misled to issue a direction for his appointment and that too
from an earlier date when Khub Ram was appointed, and with
consequential benefits. Such directions could not have been
E issued without considering the claims of other persons in the
Select List. For that reason, the directions issued in favour of
first respondent are set aside. To that extent, appeal of Mahavir
Prasad has to be allowed. However, the other prayer made
on behalf of Mahavir Prasad that authorities be directed to
F offer him appointment or consider his claim, in our considered
view cannot be allowed on account of the fact that writ petition
of Mahavir Prasad filed in 1991 was decided against him by
order dated 04.08.1992 passed in C.W.P.No.17600 of 1991.
Rightly or wrongly the High Court held that he could not claim
G any right of appointment on account of a place in the Select
List. That judgment attained finality. Mahavir Prasad chose
not to appeal against that order nor he challenged the
appointment of any of the persons selected and appointed.
H His claim thus suffers from *res judicata* as well as

acquiescence and estoppel. In that view of the matter and also for the reason that a long period of more than 25 years has passed since the preparation of the Select List, in our view it would be inappropriate to grant any relief which may require the authorities to examine the claim of persons in the Select List for appointment to the original post which may not even be available after lapse of so many years. We have been told that Mahavir is presently about 50 years of age and has not crossed the age of superannuation and is still working on another post with Haryana Roadways. That in our opinion, will not change the relevant factors indicated above. Hence we are not persuaded to grant any further relief to Mahavir Prasad and his appeal is allowed only in part as a result whereof the direction to appoint first respondent – Dalbir Singh is set aside.

16. A disturbing feature of this case is that even after notice of the writ petition when the State of Haryana became aware that Khub Ram lacked essential qualification and his certificates were unreliable, it took no action to undo the ill effects of fraud by taking any action against Khub Ram. As a result Khub Ram continued in service for a number of years and also earned promotions. This was at the cost of claim of other genuine selected candidates whose cases could have been considered if action had been taken at appropriate time. In such a situation, although we have granted no relief to Mahavir Prasad by ordering for his appointment, we direct the State of Haryana to compensate Mahavir Prasad by paying him an amount of Rs.3,00,000/- (Rupees Three Lacs) within two months. A further amount of Rs.1,00,000/- (Rupees one lac) should also be deposited by the State of Haryana with the Supreme Court Mediation Centre within the same time. The State of Haryana would be at liberty to fix responsibility as to who was at fault for not taking action in the matter after the deceitful acts came to its knowledge through filing of the writ

A petition in 1992, and if possible, to recover the aforesaid amount of Rs.4,00,000/- (Rupees Four Lacs) from the concerned persons, in accordance with law, if they are still in office.

B 17. As discussed above, Civil Appeal No.2734 of 2012 is dismissed and the other Civil Appeal arising out of S.L.P.(C)No.15871 of 2012 is allowed only to the extent indicated above. There shall be no further order as to costs.

C Devika Gujral

Appeal disposed of.

RAJASTHAN HOUSING BOARD

A

v.

NEW PINK CITY NIRMAN SAHKARI SAMITI LTD. & ANR.

Civil Appeal Nos.1527-1536 of 2013

B

MAY 1, 2015

[H.L. DATTU, CJI, A.K. SIKRI AND ARUN MISHRA, JJ.]

C

Rajasthan Land Acquisition Act, 1953 – s.4 – Acquisition of Land – Of the Khatedars who belonged to Scheduled Caste – Objection to acquisition by Housing Society claiming to have entered into agreement for sale with the Khatedars in respect of the land in question – Objection rejected – Award in favour of the Khatedars – Thereafter the Society filed suit against the Khatedars for specific performance of the agreement of sale and obtained decree in its favour – Reference u/s. 18 by a Khatedar as well as the Housing Society – Civil Court answered the reference determining the compensation @ Rs. 260 per sq. yd. – Single Judge of High Court reduced the compensation to Rs. 100/- per sq. yd. – Order of Single Judge affirmed by Division Bench of High Court – In addition, Division Bench relying on Notification dated 27-10-2005 directed grant of 25% of the developed land to the Housing Society – On appeal, held: The sale in favour of the Society (a juristic person) by the Khatedars, being not permissible u/s. 42 of Rajasthan Tenancy Act was void ab initio – Decree obtained on the basis of the agreement was violative of the mandate of s. 42 of the Tenancy Act and thus was a nullity – Therefore, the Housing Society was not entitled to compensation – The khatedars alone were the rightful claimants – Failure on the part of the

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- A *Khatedars to take recourse to provisions of s. 175 of the Tenancy Act is inconsequential in the facts of the present case – The circular dated 27-10-2005 did not confer any right either on the Society or the Khatedars to claim the developed land as the same is not applicable in the present case – The*
- B *determination of compensation @ Rs 100/- per sq. yd. is justified – Rajasthan Tenancy Act, 1955 – ss. 42 and 175 – Notification dated 27-10-2005 – Constitution of India, 1950 – Art. 341 and 342.*
- C *Limitation – Award under Land Acquisition Act passed in the year 1982 – Reference u/s. 18 of the Act made in the year 1989 – By the society claiming itself to be the purchaser of the land – Whether such reference barred by limitation –*
- D *Held: In view of the conjoint reading of s.12(2) and 18(2) of the Act, the reference was not time barred – Rajasthan Land Acquisition Act, 1953 – ss. 12(2) and 18(2).*

Words and Phrases – ‘Constructive notice’ – Meaning of – Discussed.

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Disposing of the appeal, the Court

- HELD: 1.1 Section 12(2) of the Rajasthan Land Acquisition Act, 1953, requires immediate notice to be**
- F **given of the award to such of the persons interested as are not present personally or by their representative/s when the award is made. Section 18(2) of the Act of 1953 requires to file the objections within six weeks from the date of the award if the person or the representative was**
- G **present when the award was made. In other cases, within six weeks of the receipt of notice from the Collector under section 12(2) or within six months from the date of the award whichever period shall first expire. In the**
- H **instant case, notice under section 12(2) was issued to**

the Society by the Special Officer on 31.12.1988, treating the Society as 'person interested' and informing that an award had been passed on 30.11.1982. [Para 13 and 14] [382-C-F] A

1.2 In the instant case, it is apparent that the Housing Society had preferred objections and was aware of the land acquisition process and determination of compensation and has filed objections which stood rejected on 4.9.1982. Thus, the constructive knowledge of the award is fairly attributable to it when it was so passed. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstention from inquiry or search which he ought to have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. [Para 17][385-H; 386-A-C] B C D E

1.3 It is also apparent that the Society had actively participated in the other pending cases with respect to determination of compensation in which award had been passed on 2.1.1989. Thus the reference sought on the strength of the notice under section 12(2) issued and received on 31.12.1988 would not provide limitation to the Society for seeking reference with respect to the four cases in which the award was passed on 30.11.1982 as notice to it was wholly unnecessary in view of rejection of its objection on the ground that it was not having right, title or interest in the land. Thus it could not be said to be F G H

A 'person interested' in view of the order dated 4.9.1982. Thus, in view of the conjoint reading of sections 12(2) and 18(2) of the Rajasthan Land Acquisition Act, it was not open to the LAO to refer the case to the civil court on the basis of the time barred application. [Para 18] [386-D-H]

Madan & Anr. v. State of Maharashtra (2014) 2 SCC 720: 2013 (12) SCR 761; *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer & Anr.* AIR 1961 SC 1500: 1962 SCR 676; *Muthia Chettiar v. Commissioner of Income Tax, Madras* [AIR 1951 Mad. 204] - referred to.

2.1 The original Khatedars are 'Bairwa' by caste which is a Scheduled Caste and they are entitled to the protection of the provisions contained in section 42 of the Rajasthan Tenancy Act. The provisions of section 42 declare the transaction entered into by a Scheduled Caste with any person other than a person of a Scheduled Caste or by a Scheduled Tribe with any other tribe to be void. The so-called agreements dated 15.2.1974, 17.2.1974, 21.2.1974 and 21.2.1976 which were purportedly entered into by the Society with the Khatedars were thus clearly void as per the mandate of section 42. The notification in the instant case u/s. 4 was issued on 12.1.1982. The plea of part-performance under section 53A of Transfer of Property Act was also not available to the Society as transaction is void. [Para 19, 20 and 21] [388-B-C, H; 389-A-B]

2.2 It is not correct that since the Society is a juristic person, sale cannot be said to be in contravention of section 42 of the Rajasthan Tenancy Act. 'Sale' is permitted by a person of Scheduled Caste to another

person of Scheduled Caste. The Society cannot be said to be a person of 'Scheduled Caste'. The Society cannot be said to be a person included in the notification issued under Article 341 of the Constitution of India. Article 341 of the Constitution envisages notification to be issued for inclusion of Scheduled Caste in relation to a State or Union Territory. The sale to the Society which is a juristic person is *ab initio* void and not recognisable in the eye of law. [Para 22] [389-C-D; 390-E]

State of Rajasthan & Ors. v. Aanjaney Organic Herbal Pvt. Ltd. (2012) 10 SCC 283: 2012 (7) SCR 1148; *Manchegowda & Ors. v. State of Karnataka & Ors.* (1984) 3 SCC 301: 1984 (3) SCR 502 – relied on

2.3 In the instant case, the transaction is *ab initio* void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public

A policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India. [Para 25] [394-C-H]

State of Madhya Pradesh v. Babu Lal & Ors. 1977 (2) SCC 435; *Lincal Gamango & Ors. v. Dayanidhi Jena & Ors.* AIR 2004 SC 3457; 2004 (2) Suppl. SCR 825; *Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors.* AIR 2004 SC 3782 – relied on.

3. The right to claim compensation cannot be enforced by the Society on the basis of such transaction as that would defeat the very object of the Act and the constitutional provisions including such castes and tribes under the protective umbrella of the Schedules to Articles 341 and 342, they cannot be deprived of right to obtain the compensation of the land legally held by them and they cannot be made to fall prey to unscrupulous devices of land grabbers. The right to claim compensation is based on right, title or interest in the land, cannot be transferred by virtue of the mandate of section 42 to a juristic person like the Society. It is the duty of the State to ensure that the benefit reaches to such persons directly and not usurped by intermeddlers as what is intended by the protection of the right to hold property of SC/ST, cannot be taken away by disbursing the compensation to Society. Persons of SC/ST, as the case may be, are the only rightful claimants to disbursement of compensation and such right cannot be tinkered with by void transaction as the purpose of compensation is

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**the re-settlement of Scheduled Castes or tribes. [Para A
30] [399-A-E]**

*Himalayan Tiles and Marble (P) Ltd. v. Francis Victor
Coutinho (dead) by LRs. 1980 (3) SCC 223: 1980 (3)
SCR 235 – held inapplicable.*

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*U.P. Jal Nigam, Lucknow through its Chairman & Anr.
v. Kalra Properties (P) Ltd., Lucknow & Ors. 1996 (3)
SCC 124: 1996 (1) SCR 683; V. Chandrasekaran &
Anr. v. Administrative Officer & Ors. 2012 (12) SCC 133:
2012 (10) SCR 603; Dossibai Nanabhoy Jeejeebhoy
v. P.M.Bharucha 1958 (60) Bom.LR 1208 – referred
to*

C

4. It cannot be said that having failed to take
recourse to the provisions of section 175 of the
Rajasthan Tenancy Act, the Khatedars have lost their
remedy for ignoring the title acquired by the Society
which has been perfected by the compromise decrees
passed by the civil court. In the instant case, there is no
question of initiating the process under section 175 of
the Rajasthan Tenancy Act as much before passing of
the decrees by the civil court in the year 1986, possession
had been taken by the State in May, 1982 much before
limitation lapsed. Thus, institution of proceedings for
ejectment was not warranted. Apart from that, voidity of
the transaction can be looked into in the present
proceedings also when right to claim compensation is
asserted by the Society and from factual conspectus of
the instant case it is apparent that Khatedars belong to
Scheduled Castes and they cannot be deprived of their
right to claim compensation, intendment of section 42
can be effectuated in these proceedings. [Para 34, 35
and 36] [402-B; 404-A-B, E]

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A *Ram Karan (dead) through LR & Ors. v. State of Rajasthan & Ors.* 2014 (8) SCC 282 – distinguished

Nathu Ram (dead) by LRs. & Ors. v. State of Rajasthan & Ors. 2004 (13) SCC 585 – held inapplicable

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5. It is correct that the right to hold property cannot be taken away except in accordance with the provisions of the statute, but in the instant case, the right to hold property *albeit* had not been acquired by the Society, transaction was *ab initio void* and a nullity. On the other hand, the land has been acquired by the State Government and even the right to claim compensation was denied to the Society in the award passed on 30.11.1982 by rejecting their objections. The recourse to section 175 was not required. The question of entitlement of the Society is involved in the cases in view of award dated 30.11.1982 rejecting right of the Society to claim compensation. Thus, it cannot be said that there is violation of the principles laid down by this Court in aforesaid cases with respect to right to hold property which cannot be taken away except as provided in the provisions of the statute. [Para 41] [406-H; 407-A-C]

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F *Lachhman Dass v. Jagat Ram & Ors.* 2007 (10) SCC 448; 2007 (2) SCR 980; *Tukaram Kana Joshi & Ors. through Power-of-Attorney holder v. Maharashtra Industrial Development Corpn. & Ors.* 2013 (1) SCC 353; 2012 (13) SCR 29; *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan & Ors.* 2013 (11) SCC 1; 2013 (7) SCR 192 – referred to

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H 6.1 The Circular dated 27-10-2005 is applicable in the matter of land acquisition when the Khatedars surrendered their lands. Further, the provisions shall

apply in case of future acquisitions and the provisions shall not apply where the Land Acquisition Officers have already passed the award/s. In the instant case, even the prevalent instructions which have been modified did not confer any right on the Society or the Khatedars to claim the developed land. It was not a case of surrender of land; thus there was no question of the provisions of the circular being applied as the circular was in the form of guidelines for future acquisitions where Khatedars surrendered their lands and award has not been passed. Therefore, the aforesaid circular could not have been pressed into service by the Society and that too at the appellate stage before the Division Bench. The Division Bench has gravely erred in law while issuing the aforesaid directions which were wholly unwarranted and uncalled for. [Para 44, 45 and 46] [408-E-H; 409-A-B]

Jaipur Development Authority & Ors. v. Vijay Kumar Data & Anr. 2011 (12) SCC 94: 2011 (7) SCR 242; *Jaipur Development Authority & Ors. v. Radhey Shyam* 1994 (4) SCC 370: 1994 (2) SCR 1; *Jaipur Development Authority v. Daulat Mal Jain* 1997 (1) SCC 35: 1996 (6) Suppl. SCR 584 – relied on

6.2 Apart from inapplicability, it is also apparent that the very purpose of issuing such circulars is not to benefit the purchaser who has acquired the right after issuance of notification under section 4 of Rajasthan Land Acquisition Act, and in violation of mandate of section 42. Consequently, the High Court had no jurisdiction to direct allotment of land. Even Khatedars were not entitled to such direction/benefit as the circulars are not applicable in such cases. [Para 52][418-H; 419-A]

A *Hari Ram & Anr. v. State of Haryana & Ors.* 2010 (3) SCC 621: 2010 (2) SCR 756 – distinguished

Usha Stud and Agricultural Farms Pvt. Ltd. & Ors. v. State of Haryana & Ors. 2013 (4) SCC 210: 2013 (5) SCR 645 – held inapplicable

7. Oral evidence can also be taken into consideration while determining compensation, but in the facts of the present case, the best evidence is documentary evidence which has to prevail. In the face of the documentary evidence evincing the price of the land per sq.yd. the oral evidence which was based upon *ipse dixit* and without any sound basis, could not have been accepted by the Reference Court. Thus, the grave error which was committed had been rightly set at naught by the single Bench of the High Court, which determination of compensation has also not been interfered by a Division Bench. [Para 57] [421-B-F]

E *State of Gujarat & Ors. v. Rama Rana & Ors.* 1997 (2) SCC 693: 1996 (10) Suppl. SCR 102; *Satyanarayana & Ors. v. Bhu Arjan Adhikari & Ors.* 2011 (15) SCC 133: 2013 (7) SCR 631; *Ramanlal Deochand Shah v. State of Maharashtra & Anr.* 2013 (14) SCC 50; *State of Gujarat & Ors. v. Rama Rana & Ors.* 1997 (2) SCC 693: 1996 (10) Suppl. SCR 102; *Satyanarayana v. Bhu Arjan Adhikari & Ors.* 2011 (15) SCC 133 – referred to

G 8. In order to protect the interest of the Scheduled Caste persons, it is directed that the Society or other intermeddler, or power of attorney holder shall not be paid compensation on their behalf and the Collector/ Land Acquisition Officer to ensure that the compensation

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is disbursed directly to the Khatedars or their legal A
representatives, as the case may be, and that they are
not deprived of the same by any unscrupulous devices
of land grabbers etc. [Para 61] [423-C-D]

Case Law Reference			B
2013 (12) SCR 761	referred to	Para 15	
1962 SCR 676	referred to	Para 15	
AIR 1951 Mad. 204	referred to	Para 16	
2012 (7) SCR 1148	relied on	Para 22	C
1984 (3) SCR 502	relied on	Para 23	
1977 (2) SCC 435	relied on	Para 26	
2004(2) Suppl.SCR 825	relied on	Para 27	
AIR 2004 SC 3782	relied on	Para 27	D
1996 (1) SCR 683	referred to	Para 29	
2012 (10) SCR 603	referred to	Para 31	
1958 (60) Bom.LR 1208	referred to	Para 32	
1980 (3) SCR 235	held inapplicable	Para33	E
2004 (13) SCC 585	held inapplicable	Para 36	
2014 (8) SCC 282	distinguished	Para 37	
2007 (2) SCR 980	referred to	Para 38	
2012 (13) SCR 29	referred to	Para 39	F
2013 (7) SCR 192	referred to	Para 40	
2014 (2) SCR 736	relied on	Para 40	
2011 (7) SCR 242	relied on	Para 48	
1994 (2) SCR 1	relied on	Para 48	G
1996 (6)Suppl. SCR 584	relied on	Para 49	
2010 (2) SCR 756	distinguished	Para 53	
2013 (5) SCR 645	held inapplicable	Para 54	H

A	1996 (10) Suppl.SCR 102	referred to	Para 55
	2013 (7) SCR 631	referred to	Para 55
	2013 (14) SCC 50	referred to	Para 55
	1996 (10) Suppl.SCR 102	referred to	Para 58
B	2011 (15) SCC 133	referred to	Para 59

**CIVIL APPELLATE JURISDICTION : CIVIL APPEAL
Nos. 1527-1536 of 2013**

C From the Judgment and Order dated 29.10.2009 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in D. B. Special Appeal (Civil) Nos. 13 of 2001, 55 of 1999, 101, 102, 103, 104, 105, 106, 107 of 2000

WITH

D C.A. Nos. 1537-1546, 1547-1556, 1557-1566, 1567-1576, 1577-1586, 1587-1596, 1597-1606, 1607-1608, 1609-1610, 1611-1612, 1613-1614, 1615-1616, 1617-1618, 1619-1620, 1621-1622, 1623-1624, 1625-1626, 1627-1628, 1629-1630,
E 1631-1632, 1633-1634 of 2013 & 4183-4192 of 2015

Vijay Hansaria, Vikas Singh, R. P. Bhatt, Basava Prabhu S. Patil, Surya Kant, P. C. Jain, Avnish Pandey, Yunus Malik, Depaika Kalia, Aman Malik, Prashant Choudhary, Praveen
F Swarup, Shashank Singh, Lakshmi Raman Singh, Sanjeev Anand, Yakesh Anand, Nimit Mathur, Milind Kumar, Yunus Malik, Kapish Seth, Praveen Swarup for the appearing parties.

The Judgment of the Court was delivered by

G **ARUN MISHRA, J.** 1. Leave granted in SLP [C] Nos.21344-21353/2015.

H 2. The appeals arise out of a common judgment and order dated 29.10.2009 passed by a Division Bench of the

High Court of Rajasthan in Special Appeal No.13/2001 and other connected matters. The Rajasthan Housing Board, original Khatedars and the New Pink City Housing Construction Co-operative Society Ltd. (transferee) (hereinafter referred to as the Society') have assailed the impugned judgment and order on different grounds. The Rajasthan Housing Board has prayed for setting aside direction to consider 25% of developed land and compensation, whereas the original khatedars have prayed for payment of compensation to them. Similarly, the Rajasthan Housing Board has also questioned the entitlement of the Society to claim compensation. The Society has also claimed for more value of land.

3. The State Government issued a notification under section 4 of the Rajasthan Land Acquisition Act, 1953 (for short 'the Act of 1953') on 12.1.1982. The land had been acquired for the purpose of housing scheme of Rajasthan Housing Board. On 22.5.1982 the possession had been handed over to Rajasthan Housing Board under section 9 of the Act of 1953. The Society preferred objections before the Land Acquisition Officer (LAO). The objections preferred by the Society were rejected vide order dated 4.9.1982. Thereafter, Award was passed with respect to four cases by the LAO on 30.11.1982 in favour of Khatedars. With respect to the remaining cases the award was passed on 2.1.1989 by the LAO. Notice under section 12(2) of the Act of 1953 was issued to the Society with respect to the award of 30.11.1982 on 31.12.1988.

4. The Society applied for reference under section 18 of the Act of 1953. On 17.4.1989, the reference was made to the Civil Court. One of the Khatedars namely Prabhu also sought reference registered as Case No.43/1989. The Civil Court answered the reference on 23.1.1994 determining the compensation at Rs.260 per sq.yd. The objection raised by

A the Housing Board with respect to the entitlement of Society under section 42 of the Rajasthan Tenancy Act, was brushed aside. On appeal to the High Court, the single Bench vide impugned judgment and order dated 22.3.1999 reduced the compensation to Rs.100 per sq.yd. The Division Bench has
B not only affirmed the aforesaid award but has additionally directed to consider allotment of 25% of developed land in view of circular dated 27.10.2005 in terms of the order passed by a Division Bench in Special Appeal No.697/1995.

C 5. The Khatedars have claimed that they are 'Bairwa' by caste which is a Scheduled Caste notified under the Constitution Scheduled Castes Order, 1950.

6. The Society has claimed that it had entered into an
D agreement to sell with Khatedars of the land on 15.2.1974, 17.2.1974, 21.2.1974 and 22.1.1976. The Society has also claimed that it had applied to the Rajasthan Housing Finance Society Ltd. for financial assistance for construction of houses and an NOC dated 7.6.1982 was issued to it by the Urban
E Improvement Trust, Jaipur. The Society objected to the acquisition but objections were rejected on 3.9.1982 in four cases out of which Reference Case No.1989, 2089, 3089 and 4089 arose. The award was passed on 30.11.1982. Later on,
F the Society appears to have filed a civil suit for specific performance of agreement to sell in the year 1986 against the Khatedars and compromise decrees are said to have been passed on 2.10.1986, 3.10.1986 and 24.1.1988 thereby decreeing the suit in favour of the Society.

G 7. It was submitted on behalf of the State Government, Rajasthan Housing Board and also by the Khatedars that the transactions between the Society and Khatedars, if any, were
H ab initio void in view of the provisions contained in section 42 of the Rajasthan Tenancy Act. Thus, decree obtained on the

basis of void transaction is a nullity and no right had accrued A
to the Society to claim compensation.

8. It was urged before us on behalf of the Society that
the compensation determined is inadequate. Oral evidence
has been ignored by the High Court while reducing the quantum B
of compensation determined by Reference Court. The Society
has a right to claim compensation on the basis of the agreement
which has been culminated into a decree passed by the civil
court. No action has been taken by Khatedars to take back C
the possession under section 175 of the Rajasthan Tenancy
Act within the period of limitation of 30 years which is
prescribed therein. The High Court has rightly ordered allotment
of 25% of the developed land to the Society. The Society is a D
person interested to receive the compensation on the strength
of the judgment and decree of civil court. It has developed the
land and has spent certain amount on development and the
right to hold the property cannot be taken away except in
accordance with the provisions of a statute. In order to claim
superior right to hold the property the procedure prescribed in E
a statute must be complied with as provided in Article 300A of
the Constitution of India. The State is bound to treat various
incumbents similarly as others have been allotted the land. It
is bound to act upon its decision and allot the 25% of the
developed land to the Society. The plea based upon the bar F
created by section 42 of the Rajasthan Tenancy Act has not
been substantiated by adducing the evidence.

9. It was contended on behalf of the Khatedars that
though the civil court's decrees are fraudulent and bogus even G
otherwise the decrees are a nullity and opposed to public policy
on the strength of provisions contained in section 42 of the
Rajasthan Tenancy Act; Transaction being void, the Society
has no locus standi, right, title or interest to claim the enhanced
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A compensation; more so, in view of the rejection of its objection vide order dated 4.9.1982. The award in 1982 was passed by Land Acquisition Officer in favour of Khatedars. They are entitled to enhanced compensation and not the Society. The land was recorded in the names of Khatedars in the revenue records. The agreements of 1974 and 1976 have not been produced and once the transaction is void, it can be questioned in the instant proceedings. They are entitled to compensation and also to obtain developed land, as and when allotted.

C 10. It was contended on behalf of the State Government as well as the Rajasthan Housing Board that the Society is not entitled to any compensation as such transactions are declared void by section 42 of the Rajasthan Tenancy Act. The reference sought in the year 1989 with respect to the lands covered by the award dated 30.11.1982 was clearly barred by limitation. The objection had been raised before the Reference Court based upon section 42 of the Rajasthan Tenancy Act and it has not been disputed at any stage that Khatedars belong to "Bairwa" caste which is a Scheduled Caste. Thus, the bar enacted under section 42 on transfer of such land is clearly attracted. The judgments passed by the High Court and the Reference Court deserve to be set aside. On merits, no case for enhancement of compensation was made out. The Society has no right, title or interest in the land. The Division Bench of the High Court had gravely erred in law in directing allotment of 25% of the developed land. The prayer made by the Society for allotment of the developed land was rejected by the Rajasthan Housing Board on 14.5.2009 and 16.9.2009. The said orders were not questioned. Even otherwise the Circulars dated 13.11.2001 and that of 27.10.2005 are not applicable and not enforceable as held by this Court. The direction to allot the developed land deserves to be set aside.

H 11. First, we advert to the question whether reference,

with respect to the four cases in which award was passed on 30.11.1982, was within period of limitation. Admittedly, possession from the Society had been taken on 22.5.1982. The Society submitted the objections before the LAO on 20.7.1982. While rejecting the objections on 4.9.1982, the Special Officer, Urban Development Authority, LAO, had unilaterally observed that the acquisition cannot be said to be in violation of the provisions contained in Article 300A of the Constitution of India, the Society has no ownership of the land, it has no interest in the land. Thus, it has no right to raise the objection. The said order had attained finality and the award was passed on 30.11.1982. In the award so passed, it has also been mentioned that an Advocate had appeared on behalf of the Khatedars and wanted to file objections regarding compensation. The said Advocate appeared on behalf of some of the Khatedars and stated that they had sold the land to the Society. However, no claim petition was filed on their behalf. There is also a reference in the award dated 30.11.1982 as to the objection filed by the Society had been rejected on 4.9.1982. It is apparent from the award that it was passed after rejecting the objections raised by the Society in favour of Khatedars.

12. The provisions of Rajasthan Land Acquisition Act are in *pari materia* with the provisions of the Land Acquisition Act, 1894 and section 12 of the Act of 1953 is extracted hereinbelow :

“12. Award of Collector when to be final.—(1) Such award shall be filed in the Collector's officer and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of

A the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award or the amendment thereof to such of the persons
B interested as are not present personally or by their representatives when the award or the amendment thereof is made."

13. Section 12(2) requires immediate notice to be given
C of the award to such of the persons interested as are not present personally or by their representative/s when the award is made. Section 18(2) of the Act of 1953 requires to file the objections within six weeks from the date of the award if the person or the representative was present when the award was
D made. In other cases, within six weeks of the receipt of notice from the Collector under section 12(2) or within six months from the date of the award whichever period shall first expire.

14. In the instant case, notice under section 12(2) was
E issued to the Society by the Special Officer on 31.12.1988, treating the Society as 'person interested' and informing that an award had been passed on 30.11.1982 in accordance with section 11 of the Land Acquisition Act. On the strength of the aforesaid notices it was urged on behalf of the Society that
F the limitation to seek the reference would commence from the date of receipt of the notices issued and received on 31.12.1988. The reference sought was within the period of limitation.

G 15. Reliance has been placed on the decision of this Court in *Madan & Anr. v. State of Maharashtra* [(2014) 2 SCC 720] and in *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer & Anr.* [AIR 1961 SC 1500] in which
H it has been laid down that the party must have either actual or

constructive communication of the order which is an essential requirement of fair play and natural justice. The date of award used in proviso (b) to section 18(2) of the Act must be the date when the award is either communicated to the party or known by him either actually or constructively. The award in the said case was passed on 25.3.1951. Notice of the award was however given to the appellant as required by section 12(2) on 13.1.1953 by which he received information about making of the said award. It was observed that it was necessary for the Collector to give immediate notice of his award under section 12(2) of the Act. This Court has laid down in *Raja Harish Chandra* (supra) with respect to the knowledge of the award by a party thus :

"6 The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector, it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by

A the award, either actual or constructive, being an
essential requirement of fair-play and natural justice the
expression “the date of the award” used in the proviso
must mean the date when the award is either
B communicated to the party or is known by him either
actually or constructively. In our opinion, therefore, it would
be unreasonable to construe the words “from the date of
the Collector’s award” used in the proviso to s. 18 in a
literal or mechanical way.”

C 16. The decision of the Madras High Court in *Muthia
Chettiar v. Commissioner of Income Tax, Madras* [AIR 1951
Mad. 204] had been considered and approved by this Court
in *Harish Chandra* (supra) thus:

D “10 It may, however, be pertinent to point out that the
Bombay High Court has taken a somewhat different view
in dealing with the effect of the provision as to limitation
prescribed by s. 33A(2) of the Indian Income-tax Act. This
E provision prescribes limitation for an application by an
assessee for the revision of the specified class of orders,
and it says that such an application should be made within
one year from the date of the order. It is significant that
while providing for a similar period of limitation
F s. 33(1) specifically lays down that the limitation of sixty
days therein prescribed is to be calculated from the date
on which the order in question is communicated to the
assessee. In other words, in prescribing limitation
s. 33(1) expressly provides for the commencement of the
G period from the date of the communication of the order,
whereas s. 33A(2) does not refer to any such
communication; and naturally the argument was that
communication was irrelevant under s. 33A(2) and
H limitation would commence as from the making of the

order without reference to its communication. This argument was rejected by the Bombay High Court and it was held that it would be a reasonable interpretation to hold that the making of the order implies notice of the said order, either actual or constructive, to the party affected by it. It would not be easy to reconcile this decision and particularly the reasons given in its support with the decision of the same High Court in the case of *Jehangir Bomanji* AIR 1954 Bom. 419. The relevant clause under s. 33A(2) of the Indian Income-tax Act has also been similarly construed by the Madras High Court in O.A.O.A.M. *Muthia Chettiar v. The Commissioner of Income-tax, Madras* [I.L.R. 1951 Mad. 815.]. "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time", observed Rajamannar, C.J., "limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have the knowledge of the order". In other words the Madras High Court has taken the view that the omission to use the words "from the date of communication" in s. 33A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right."

It is thus clear that either party should have actual knowledge or constructive notice i.e., should have known about the said order.

17. In the instant case it is apparent that the Housing Society had preferred objections and was aware of the land acquisition process and determination of compensation and

A has filed objections which stood rejected on 4.9.1982. Thus, the constructive knowledge of the award is fairly attributable to it when it was so passed. Constructive notice in legal fiction signifies that the individual person should know as a reasonable person would have. Even if they have no actual knowledge of it.

B Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstention from inquiry or search which he ought to have made, or gross negligence he would have known it.

C Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice. The concept of constructive notice has been upheld by this Court in *Harish Chandra* (supra).

D 18. It is also apparent that the Society had actively participated in the other pending cases with respect to determination of compensation in which award had been passed on 2.1.1989. Thus the reference sought on the strength of the notice under section 12(2) issued and received on

E 31.12.1988 would not provide limitation to the Society for seeking reference with respect to the four cases in which the award was passed on 30.11.1982 as notice to it was wholly unnecessary in view of rejection of its objection on the ground that it was not having right, title or interest in the land. Thus it

F could not be said to be 'person interested' in view of the order dated 4.9.1982. The notice was issued for reasons best known to the Special Officer. It is surprising how and for what reasons notice was issued after six years. We need not go into this aspect any further as we are of the opinion that in the facts and

G circumstances, the Society had a constructive notice of the award dated 30.11.1982. Thus, in view of the conjoint reading of sections 12(2) and 18(2) of the Rajasthan Land Acquisition Act, it was not open to the LAO to refer the case to the civil

H court on the basis of the time barred application.

19. Coming to the question whether in view of section 42 of the Rajasthan Tenancy Act, the transaction entered into by the Society with the original Khatedars are void and whether on that basis, it had a right to maintain the reference and to claim compensation? The Society is said to have entered into agreements to sell on 17.2.1974, 21.2.1974 and 21.2.1976. These agreements have not been placed on record by the Society. It was incumbent upon the Society to file these agreements. Be that as it may. The Society has filed certain affidavits of Khatedars along with counter affidavits filed by it. In the case of Ram Pyari and others, the affidavits of various Khatedars have been filed by the Society in which their caste has been mentioned as 'Bairwa'. The caste of the original Khatedars has never been disputed. 'Bairwa' caste is a Scheduled Caste. Before this Court also in the case of Ram Pyari in the SLP preferred, averments have been made to the effect that the original Khatedars belong to Scheduled Caste and the sale in favour of a person not belonging to Scheduled Caste is void as per the mandate of section 42 of the Rajasthan Tenancy Act. In the counter affidavit filed on behalf of the Society, the factum that Khatedars are 'Bairwa' and belongs to Scheduled Caste, has not been denied. Before the Reference Court also, the stand of the State Government was that as the Khatedars belong to Scheduled Caste, the transaction was prohibited by section 42 of the Rajasthan Tenancy Act. On behalf of the Society, it was submitted in counter affidavit that as it is a Society, the rigor of provisions of section 42 is not attracted and it had relied upon the circular dated 1.9.1984 issued by the Government of Rajasthan for regularisation of the land sold in violation of section 42 of the Rajasthan Tenancy Act. The Society has failed to deny clear and categorical averments, non-denial makes the aforesaid facts undisputed one. There is not even an evasive denial that Khatedars do not belong to Scheduled Caste. Even in the

A additional affidavit filed on behalf of the Society in the wake of
the rejoinder filed by the petitioner in reply to the counter affidavit
of respondent No.2, the caste of the original Khatedars has
not been disputed. Thus, we are of the considered opinion
B that the original Khatedars are 'Bairwa' by caste which is a
Scheduled Caste and they are entitled to the protection of the
provisions contained in section 42 of the Rajasthan Tenancy
Act.

20. The provisions of section 42 of the Rajasthan
C Tenancy Act declare the transaction entered into by a Scheduled
Caste with any person other than a person of a Scheduled
Caste or by a Scheduled Tribe with any other tribe to be void.
Section 42 of the Rajasthan Tenancy Act is extracted
D hereunder :

"Section 42 - General restrictions on sale, gift & bequest

¹[The sale, gift or bequest by a Khatedar tenants of his
interest in the whole or part of his holding shall be void, if

E ²[***]

(b) such sale, gift or bequest is by a member of Scheduled
Caste in favour of a person who is not a member of the
F Scheduled Caste, or by a member of a Scheduled Tribe
in favour of a person who is not a member of the
Scheduled Tribe.

³[***]

G "[(bb) such sale, gift or bequest, notwithstanding anything
contained in clause (b), is by a member of Saharia
Scheduled Tribe in favour of a person who is not a
member of the said Saharia tribe."]⁴

H 21. The so-called agreements dated 15.2.1974,

17.2.1974, 21.2.1974 and 21.2.1976 which were purportedly entered into by the Society with the Khatedars were thus clearly void as per the mandate of section 42 of the Rajasthan Tenancy Act. The notification in the instant case under section 4 was issued on 12.1.1982. The plea of part-performance under section 53A of Transfer of Property Act was also not available to the Society as transaction is void.

22. The equally futile is the submission that since the Society is a juristic person, sale cannot be said to be in contravention of section 42 of the Rajasthan Tenancy Act. 'Sale' is permitted by a person of Scheduled Caste to another person of Scheduled Caste. The Society cannot be said to be a person of 'Scheduled Caste'. The Society cannot be said to be a person included in the notification issued under Article 341 of the Constitution of India. Article 341 of the Constitution envisages notification to be issued for inclusion of Scheduled Caste in relation to a State or Union Territory. The expression 'person' in section 42(b) of the Rajasthan Tenancy Act is to a natural person and not a juristic person and the mere fact that some of the persons of the Society belong to Scheduled Caste would not make the transaction with such a Housing Society valid one. This Court in *State of Rajasthan & Ors. v. Aanjaney Organic Herbal Pvt. Ltd.* [(2012) 10 SCC 283] has considered the question of provisions of section 42 of the Rajasthan Tenancy Act and held that bar is attracted to a juristic person :

"12. The expressions "Scheduled Castes" and "Scheduled Tribes", we find in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression "who is not a member of the Scheduled Caste or Scheduled Tribe" would mean a person other than those who have been included in the public notification as per Articles 341 and 342 of the

A Constitution. The expression "person" used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the Company is accepted, it can purchase land from
B Scheduled Caste/Scheduled Tribe and then sell it to a non-Scheduled Caste and Scheduled Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly cannot be done indirectly overreaching the statutory restriction.
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13. We are, therefore, of the view that the reasoning of the High Court that the respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which does not have a caste, is not hit by
D Section 42 of the Act, is untenable and gives a wrong interpretation to the abovementioned provision."

In view of the aforesaid dictum it is crystal clear that the sale to the Society which is a juristic person is *ab initio* void and not recognisable in the eye of law.
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23. This Court in *Manchegowda & Ors. v. State of Karnataka & Ors.* [(1984) 3 SCC 301] has considered the validity of sections 3, 4 and 5 of the Karnataka Scheduled
F Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 which prohibited transfer of granted lands and provided for resumption thereof, it was held that even the prohibited transaction effected prior to commencement of the Act can be nullified and sections 4 and 5 are not violative
G of Article 19(1)(f) as it stood prior to its omission in 1978. Neither the provision is violative of Articles 31 and 31A of the Constitution of India and a transferee shall have no property right and recovery of such property would not attract Article 31
H or 31A. This Court also held that the provisions have reasonable

nexus with the object sought to be achieved. The Scheduled A
Castes and Scheduled Tribes form a distinctive class.
Exclusion of other communities from the provision is not
discriminatory. The right of the Legislature to declare such
transactions to be void has been upheld by this Court in
following manner : B

“12. In pursuance of this policy, the Legislature is
undoubtedly competent to pass an enactment providing
that transfers of such granted lands will be void and not
merely voidable for properly safeguarding and protecting C
the interests of the Scheduled Castes and Scheduled
Tribes for whose benefit only these lands had been
granted. Even in the absence of any such statutory
provisions, the transfer of granted lands in contravention
of the terms of the grant or in breach of any law, rule or
regulation covering such grant will clearly be voidable
and the resumption of such granted lands after avoiding
the voidable transfers in accordance with law will be
permitted. Avoidance of such voidable transfers and
resumption of the granted lands through process of law
is hound to take time. Any negligence and delay on the
part of the authorities entitled to take action to avoid such
transfers through appropriate legal process for
resumption of such grant may be further impediments in
the matter of avoiding such transfers and resumption of
possession of the granted lands. Prolonged legal
proceedings will undoubtedly be prejudicial to the
interests of the members of the Scheduled Caste and
Scheduled Tribe for whose benefit the granted lands are
intended to be resumed. As transfers of granted lands in
contravention of the terms of the grant or any law,
regulation or rule governing such grants can be legally
avoided and possession of such lands can be recovered H

A through process of law, it must be held that the Legislature
for the purpose of avoiding delay and harassment of
protracted litigation and in furthering its object of speedy
restoration of these granted lands to the members of the
weaker communities is perfectly competent to make
B suitable provision for resumption of such granted lands
by stipulating in the enactment that transfers of such lands
in contravention of the terms of the grant or any regulation,
rule or law regulating such grant will be void and in
C providing a suitable procedure consistent with the
principles of natural justice for achieving this purpose
without recourse to prolonged litigation in Court in the
larger interests of benefiting the members of the
Scheduled Castes and Scheduled Tribes.”

D 24. Without payment of compensation, land can be
resumed has also been held by this Court and even in a case
when grant was for a certain period, the land could be resumed.
The vires of the provisions contained in sections 4 and 5
E resuming the land without compensation has been upheld. In
Manchegowda (supra), this Court has laid down thus :

“19. We have earlier noticed that the title which is
acquired by a transferee in the granted lands, transferred
F in contravention of the prohibition against the transfer of
the granted lands, is a voidable title which in law is liable
to be defeated through appropriate action and
possession of such granted lands transferred in breach
of the condition of prohibition could be recovered by the
G grantor. The right or property which a transferee acquires
in the granted lands, is a defeasible right and the
transferee renders himself liable to lose his right or
property at the instance of the grantor. We have further
H observed that by the enactment of this Act and particularly

Section 4 and Section 5 thereof the Legislature is seeking to defeat the defeasible right of the transferee in such lands without the process of a prolonged legal action with a view to speedy resumption of such granted lands for distribution thereof the original grantee or their legal representatives and in their absence to other members of the Scheduled Castes and Scheduled Tribes Communities. In our opinion, this kind of defeasible right of the transferee in the granted lands cannot be considered to be property as contemplated in Article 31 and 31A. The nature of the right of the transferee in the granted land on transfer of such lands in breach of the condition of prohibition relating to such transfer, the object of such grant and the terms thereof, also the law governing such grants and the object and the scheme of the present Act enacted for the benefit of weaker sections of our community, clearly go to indicate that there is in this case no deprivation of such right or property as may attract the provisions of Articles 31 and 31A of the Constitution.

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20. In the case of *Amar Singh v. Custodian, Evacuee Property, Punjab* (1957) S.C.R. 801, this Court while considering the provisions of Administration of Evacuee Property Act 1930 (XXXI of 1950) and the nature of right in the property allotted to a quasi-permanent allottee held that the interests of a quasi-permanent allottee did not constitute property within the meaning of Articles 19(1)(f), 31(1) and 31(2) of the Constitution. This Court observed at p. 834:

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“Learned Counsel for the Petitioners has strenuously urged that under the quasi-permanent allotment scheme the allottee is entitled to a right to possession

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- A within the limits of the relevant notification and that such right to possession is itself 'property'. That may be so in a sense. But it does not affect the question whether it is property as to attract the protection of fundamental rights under the Constitution. If the totality of the bundle of rights of the quasi-permanent allottee in the evacuee land constituting an interest in such land, is not property entitled to protection of fundamental rights, mere possession of the land by virtue of such interest is not on any higher footing."
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25. In the instant case, the transaction is *ab initio* void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the
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Constitution of India.

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26. In *State of Madhya Pradesh v. Babu Lal & Ors.* [1977 (2) SCC 435] the provisions contained in section 165(6) of M.P. Land Revenue Code, 1959 came up for consideration before this Court. The High Court directed the State to file a suit for declaring the decree null and void. The decision was set aside. It was held that the case was a glaring instance of violation of law as such the High Court erred in not issuing a writ. The decision of the High Court was set aside. The transfer which was in violation of proviso to section 165(6) transferring the right of Bhuswami belonging to a tribe, was set aside.

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27. This Court in *Lincal Gamango & Ors. v. Dayanidhi Jena & Ors.* [AIR 2004 SC 3457] while considering the provisions of Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 which prohibited alienation of rural property by a tribal to a non-tribal, declared such transaction to be null and void. This Court while relying upon the decision in *Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors.* [AIR 2004 SC 3782] has laid down that no right can be acquired by adverse possession on such inalienable property. Adverse possession operates on an alienable right. It was held that non-tribal would not acquire a right or title on the basis of adverse possession. Relevant discussion is extracted hereunder :

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"7. We find both these reasons given by the High Court are not sustainable. Coming first to the second point, we find that there is a decision of this Court direct on the point. It is reported in AIR 2004 SC 3782, *Amrendra Pratap Singh v. Tej Bahadur Prajapati and Ors.* The matter related to transfer of land falling in tribal area belonging to the Scheduled Tribes. The matter was governed by Regulations 2, 3 and 7-D of the Orissa

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A Scheduled Areas Transfer of Immovable Property (By
Scheduled Tribes) Regulations, 1956 viz. the same
Regulations which govern this case also. The question
involved was also regarding acquisition of right by
adverse possession. Considering the matter in detail, in
B the light of the provisions of the aforesaid Regulation,
this Court found that one of the questions which falls for
consideration was “whether right by adverse possession
can be acquired by a non-aboriginal on the property
C belonging to a member of aboriginal tribe”? (para 14 of
the judgment). In context with the above question posed,
this Court observed in para 23 of the judgment as follows
:

D “.....The right in the property ought to be one which is
alienable and is capable of being acquired by the
competitor. Adverse possession operates on an
alienable right The right stands alienated by operation of
law, for it was capable of being alienated voluntarily and
E is sought to be recognized by doctrine of adverse
possession as having been alienated involuntarily, by
default and inaction on the part of the rightful claimant.....”

F “This Court then noticed two decisions one that of the
Privy Council reported in AIR 1923 P.C. 205 *Madhavrao
Woman Saundalgekar and Ors. v. Raghunath
Venkatesh Deshpande and Ors., and Karimullakhan
s/o. Mohd Ishaqkhan and*
Anr. v. *Bhanupratapsingh*, holding that title by adverse
G possession on inam lands, Watan lands and Debutter
was incapable of acquisition since alienation of such land
was prohibited in the interest of the State. We further find
that the decision in the case of *Madhiya Nayak* (supra)
relied upon by the High Court was referred to before this
H Court and it is observed that the question as to whether

a non-tribal could at all commence prescribing acquisition of title by adverse possession over the land belonging to a tribal which is situated in a tribal area, was neither raised nor that point had arisen in the case of *Madhiya Nayak*. It is further observed that the provisions of Section 7-D of the Regulations are to be read in the light of the fact that the acquisition of right and title by adverse possession is claimed by a tribal over the immovable property of another tribal but not where the question is in regard to a non-tribal claiming title by adverse possession over the land belonging to a tribal situate in a tribal area. It is, therefore, clear in view of the decision in the case of *Amrendra Pratap Singh* (supra) that a non-tribal would not acquire right and title on the basis of adverse possession. Therefore, the second ground for setting aside the order passed by the appellate court falls through. Therefore, the other factual aspect about the possession of the respondents over the disputed land and entries in their favour may also not be of much consequence, in any case, this aspect of the matter has to be seen and considered afresh in the light of other facts and circumstances of the case.”

28. This Court in *Amrendra Pratap* (supra) has laid down that the expression ‘transfer’ would include any dealing with the property when the word ‘deal with’ has not been defined in the statute. Dictionary meaning as the safe guide can be extended to achieve the intended object of the Act. The transaction or the dealing with alienable property to transfer title of an aboriginal tribe and vesting the same in non-tribal was construed as transfer of immovable property. Extending the meaning of the expression ‘transfer of immovable property’ would include dealing with such property as would have the effect of causing or resulting in transfer of interest in immovable

- A property. When the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be
- B achieved. When the intendment of the Act is that the property should remain so confined in its operation in relation to tribals that the immovable property to one tribal may come but the title in immovable property is not to come to vest in a non-tribal the intendment is to be taken care by the protective arm
- C of the law and be saved from falling prey to unscrupulous devices, and this Court concluded any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property
- D in a tribal and vesting the same in a non-tribal, would be included within the meaning of 'transfer of immovable property'.

29. It was further submitted on behalf of the Society that though a purchaser after issuance of notification under section
- E 4(1) of the Land Acquisition Act cannot question the legality of the notification, but, can lay a claim for payment of compensation. Reliance has been placed on *U.P. Jal Nigam, Lucknow through its Chairman & Anr. v. Kalra Properties (P) Ltd., Lucknow & Ors.* [1996 (3) SCC 124]. When we consider
- F the aforesaid dictum, this Court has laid down that after notification under section 4(1) was published, sale of land is void against the State and M/s. Kalra Properties acquired no right, title or interest in the land and it is a settled law that it cannot challenge the validity of the notification or the regularity
- G in taking possession of the land before publication of the declaration under section 6. M/s. Kalra Properties, though acquired no title to the land, at best would be entitled to step into the shoes of the owner and claim compensation. However,
- H in the instant case, it was a transaction which was not only

void against the State but also void inter se vendor and vendee. A

30. The right to claim compensation cannot be enforced by the Society on the basis of such transaction as that would defeat the very object of the Act and the constitutional provisions including such castes and tribes under the protective umbrella of the Schedules to Articles 341 and 342, they cannot be deprived of right to obtain the compensation of the land legally held by them and they cannot be made to fall prey to unscrupulous devices of land grabbers. The right to claim compensation is based on right, title or interest in the land, cannot be transferred by virtue of the mandate of section 42 to a juristic person like the Society. It is the duty of the State to ensure that the benefit reaches to such persons directly and not usurped by intermeddlers as what is intended by the protection of the right to hold property of SC/ST, cannot be taken away by disbursing the compensation to Society. Persons of SC/ST, as the case may be, are the only rightful claimants to disbursement of compensation and such right cannot be tinkered with by void transaction as the purpose of compensation is the re-settlement of Scheduled Castes or tribes. B
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31. The other decision relied upon by the Society is *V.Chandrasekaran & Anr. v. Administrative Officer & Ors.* [2012 (12) SCC 133] wherein this Court laid down thus : F

“15. The issue of maintainability of the writ petitions by the person who purchases the land subsequent to a notification being issued under Section 4 of the Act has been considered by this Court time and again. G

In *Pandit Leela Ram v. Union of India* AIR 1975 SC 2112, this Court held that, any one who deals with the H

- A land subsequent to a Section 4 notification being issued, does so, at his own peril. In *Sneh Prabha v. State of Uttar Pradesh* AIR 1996 SC 540, this Court held that a Section 4 notification gives a notice to the public at large
- B that the land in respect to which it has been issued, is needed for a public purpose, and it further points out that there will be “an impediment to any one to encumber the land acquired thereunder.” The alienation thereafter does not bind the State or the beneficiary under the acquisition.
- C The purchaser is entitled only to receive compensation. While deciding the said case, reliance was placed on an earlier judgment of this Court in *Union of India v. Shri Shiv Kumar Bhargava and Ors.*: JT (1995) 6 SC 274.
- D 16. Similarly, in *U.P. Jal Nigam v. Kalra Properties Pvt. Ltd.* AIR 1996 SC 1170, this Court held that, purchase of land after publication of a Section 4 notification in relation to such land, is void against the State and at the most, the purchaser may be a person-interested in
- E compensation, since he steps into the shoes of the erstwhile owner and may therefore, merely claim compensation. (See also: *Star Wire (India) Ltd. v. State of Haryana and Ors.*
- F 17. In *Ajay Kishan Singhal v. Union of India* AIR 1996 SC 2677; *Mahavir and Anr. v. Rural Institute, Amravati and Anr.* (1995) 5 SCC 335; *Gian Chand v. Gopala and Ors.* (1995) 2 SCC 528; and *Meera Sahni v. Lieutenant Governor of Delhi and Ors.* (2008) 9 SCC 177, this Court
- G categorically held that, a person who purchases land after the publication of a Section 4 notification with respect to it, is not entitled to challenge the proceedings for the reason, that his title is void and he can at best claim compensation on the basis of vendor's title. In view of
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this, the sale of land after issuance of a Section 4 notification is void and the purchaser cannot challenge the acquisition proceedings. (See also: *Tika Ram v. State of U.P.* (2009) 10 SCC 689). A

18. In view of the above, the law on the issue can be summarized to the effect that a person who purchases land subsequent to the issuance of a Section 4 notification with respect to it, is not competent to challenge the validity of the acquisition proceedings on any ground whatsoever, for the reason that the sale deed executed in his favour does not confer upon him, any title and at the most he can claim compensation on the basis of his vendor's title." B C

32. Reliance has been placed on *Dossibai Nanabhoy Jeejeebhoy v. P.M.Bharucha* [1958 (60) Bom.LR 1208] so as to contend that the 'person interested' in the land under section 9 of the Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land and the interest contemplated under section 9 is not restricted to legal or proprietary estate or interest in the land but such interest as will sustain a claim to apportionment, is the owner of the land. In our opinion, the decision is of no avail. The instant transaction being void as per section 42 of the Rajasthan Tenancy Act and the property was inalienable to non-SC. Obviously, the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society. D E F

33. In *Himalayan Tiles and Marble (P) Ltd. v. Francis Victor Coutinho (dead) by LRs.* [1980 (3) SCC 223], it was laid down that 'person interested' within the meaning of section 18 of the Land Acquisition Act would include a body, local authority, or a company for whose benefit the land is acquired G H

A . The company for whose benefit the land had been acquired was liable to pay compensation, was held to be a 'person interested'. The decision is of no help to the cause espoused by the Society and the reliance on same is misplaced.

B 34. It was vehemently urged on behalf of the Society
that having failed to take recourse to the provisions of section
175 of the Rajasthan Tenancy Act, the Khatedars have lost
their remedy for ignoring the title acquired by the Society which
has been perfected by the compromise decrees passed by
C the civil court. Section 175 of the Rajasthan Tenancy Act is
extracted below :

“Section 175 - Ejectment for illegal transfer or sub-letting

D 1[(1)] If a tenant transfers or sub-lets, or executes an
instrument purporting to transfer or sublet, the whole or
any part of his holding otherwise than in accordance with
the provisions of this Act and the transferee or sub-lessee
or the purported such part in pursuance of such transfer
E or sub lease, both the tenant and any person who may
have thus obtained or may thus be in possession of the
holding or any part of the holding, shall on the application
of the land holder, be liable to ejectment from the area so
F transferred or sub-let or purported to be transferred or
sub-let.

(2) To every application, under this Section the transferee
or the sub-tenant or the purported transferee or the sub-
tenant, as the case may be, shall be joined as a party.

G (3) On an application being made under this section, the
court shall issue a notice to the opposite party to appear
within such time as may be specified therein and show
cause why he should not be ejected from the area so
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transferred or sublet or purported to be transferred or sub-let.] A

(4) If appearance is made within the time specified in the notice and the liability to ejectment is contested, the court shall, on payment of the proper court fees, treat the application to be a suit and proceed with the case as a suit: B

Provided that in the event of the application having been made by a tehsildar in respect of land held directly from the State Government no court-fee shall be payable. C

¹[4(a) Notwithstanding anything to the contrary contained in sub-section (4), if the application is in respect of contravention of the provision contained in section 42 or the proviso to sub-section (2) of section 43 or section 49A, the court shall, after giving a reasonable opportunity to the parties of being heard, conclude the enquiry in a summary manner and pass order, as far as may be practicable within a period of three months from the date of the appearance of the non-applicants before it, directing ejectment of the tenant and his transferee or sub-lessee from the area transferred or sub-let in contravention of the said provisions.] D E

(5) If no such appearance is made or if appearance is made but the liability to ejectment is not contested the court shall pass order on the application as it may deem proper." F

35. There is no doubt about it that section 175 provides for ejectment for illegal transfer or subletting in contravention of the provisions of the said Act. However, there is no question of ejectment proceedings being filed in the instant case under G H

A the aforesaid provision that would have been exercised in futility as admittedly the possession has already been taken by the State on 22.5.1982. Apart from that, voidity of the transaction can be looked into in these proceedings also when right to claim compensation is asserted by the Society and from factual
B conspectus of the instant case it is apparent that Khatedars belong to Scheduled Castes and they cannot be deprived of their right to claim compensation, intendment of section 42 can be effectuated in these proceedings.

C 36. On behalf of the Society, reliance has been placed on a decision of this Court In *Nathu Ram (dead) by LRs. & Ors. v. State of Rajasthan & Ors.* [2004 (13) SCC 585] in which this Court has considered the provisions of the Rajasthan
D Tenancy Act as it stood prior to its amendment made in the Act. The limitation prescribed was 12 years from the date of transfer. After the amendment, it is thirty years. It was also laid down that though the transfer was by itself void but the period of limitation would be applicable. In the instant case, there is
E no question of initiating the process under section 175 of the Rajasthan Tenancy Act as much before passing of the decrees by the civil court in the year 1986, possession had been taken by the State in May, 1982 much before limitation lapsed. Thus, institution of proceedings for ejectment was not warranted.

F 37. In *Ram Karan (dead) through LR & Ors. v. State of Rajasthan & Ors.* [2014 (8) SCC 282], this Court has laid down that transfer of holding by a member of Scheduled Caste to a member not belonging to Scheduled Caste by virtue of section
G 42 of the Rajasthan Tenancy Act is forbidden and unenforceable. Such a transaction is unlawful even under section 23 of the Contract Act and an agreement or such transfer would be void under section 2(g) of the Contract Act. This Court also considered limitation for filing ejectment under

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section 175. The proceeding filed after 31 years was held to be barred by limitation. The decision is distinguishable for aforesaid reasons. A

38. It was next contended on behalf of the Society that the Society has acquired a right and such right to hold property cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold the property is claimed, the due procedure must be complied with. Reliance has been placed on *Lachhman Dass v. Jagat Ram & Ors.* [2007 (10) SCC 448], in which this Court has laid down thus: B C

"16. Despite such notice, the appellant was not impleaded as a party. His right, therefore, to own and possess the suit land could not have been taken away without giving him an opportunity of hearing in a matter of this nature. To hold property is a constitutional right in terms of Article 300A of the Constitution of India. It is also a human right. Right to hold property, therefore, cannot be taken away except in accordance with the provisions of a statute. If a superior right to hold a property is claimed, the procedures therefore must be complied with. The conditions precedent therefore must be satisfied. Even otherwise, the right of pre-emption is a very weak right, although it is a statutory right. The Court, while granting a relief in favour of a pre-emptor, must bear it in mind about the character of the right, vis-a-vis, the constitutional and human right of the owner thereof." D E F

39. Reliance has also been placed in *Tukaram Kana Joshi & Ors. through Power-of-Attorney holder v. Maharashtra Industrial Development Corpn. & Ors.* [2013 (1) SCC 353] in which it has been laid down thus : G

"8. The Appellants were deprived of their immovable H

A property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of
B or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the “law”, as the said word has specifically been used in Article 300-A of the
C Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat and Anr.* AIR 1995 SC 142, it has
D been held as follows: -

“In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without
E due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.””

F 40. In *Rajendra Nagar Adarsh Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan & Ors.* [2013 (11) SCC 1] and *Mathew Varghese v. M.Amritha Kumar & Ors.* [2014 (5) SCC 610], observations as to the similar effect had been made.

G 41. When we consider the aforesaid submission, it is apparent that the right to hold property cannot be taken away except in accordance with the provisions of the statute but in the instant case, we are of the considered view that the right to
H hold property albeit had not been acquired by the Society,

transction was *ab initio* void and a nullity. On the other hand, the land has been acquired by the State Government and even the right to claim compensation was denied to the Society in the award passed on 30.11.1982 by rejecting their objections. The recourse to section 175 was not required as already held by us. The question of entitlement of the Society is involved in the cases in view of award dated 30.11.1982 rejecting right of the Society to claim compensation. Thus, it cannot be said that there is violation of the principles laid down by this Court in aforesaid cases with respect to right to hold property which cannot be taken away except as provided in the provisions of the statute.

42. Coming to the question of direction to consider allotment of land and quantum of compensation determined in the instant case, the Reference Court had determined compensation at Rs.260 per sq.yd. whereas the High Court has determined it at Rs.100 per sq.yd. and the Division Bench has in addition ventured into directing the State Government to consider the prayer for allotment of 25% of the developed land to the Society in the light of Circular dated 27.10.2005 issued by the State Government and its decision in *Smt. Ratni Devi v. State of Rajasthan & Ors.* – DB Special Appeal No.697/1995 decided on 12.4.2007.

First, we take up the question as to the legality of the direction issued by the High Court with respect to allotment of 25% of developed land in terms of the order passed in the case of *Smt. Ratni Devi* (supra).

43. When we consider the Circular dated 27.10.2005, the State Government considered the prevalent scheme in which Khatedars could 'surrender' their land without compensation and would obtain 25% of the developed residential area in lieu thereof. Paras 1 and 4 of the Circular

A are relevant and are quoted below :

B "1. In the matters of land acquisition on making a surrender of the land by the Khatedar, he will be entitled for maximum 20% residential and 5% commercial land to the said person from whom the land has been acquired. But for the Khatedar no other person shall be allotted the land, even if nominated by him."

C x x x x x

D "4. These provisions shall only be applicable, in case of future acquisitions. These provisions shall be specifically be applicable, wherein the Land Acquisition Officer have already declared the award and the compensation amount has been paid/deposited in the Court or 15% land have been allowed to be allotted in the award."

E 44. It is apparent from para 1 that the Circular is applicable in the matter of land acquisition when the Khatedars surrendered their lands.

F 45. Para 4 of circular makes it clear that the provisions shall apply in case of future acquisitions and the provisions shall not apply where the Land Acquisition Officers have already passed the award/s.

G 46. In the instant case, even the prevalent instructions which have been modified did not confer any right on the Society or the Khatedars to claim the developed land. It was not a case of surrender of land; thus there was no question of the provisions of the circular being applied as the circular was in the form of guidelines for future acquisitions where H Khatedars surrendered their lands and award has not been

passed. For the aforesaid reasons, the aforesaid circular could not have been pressed into service by the Society and that too at the appellate stage before the Division Bench. The Division Bench has gravely erred in law while issuing the aforesaid directions which were wholly unwarranted and uncalled for.

47. When we consider the decision in *Smt. Ratni Devi* (supra), it was based upon a concession made by the counsel who appeared on behalf of the Jaipur Development Authority. The applicability of the Circular was not considered by the Division Bench. The matter was decided on the basis of concession and the agreement between the parties. It was submitted before us on behalf of the Rajasthan Housing Board that a review petition had been preferred for recalling the aforesaid concession made unauthorisedly before the court. Be that as it may. In our opinion, the Circular itself is not applicable and it was clearly a misadventure on the part of the Division Bench in the instant case to rely upon the aforesaid decision in *Smt. Ratni Devi* (supra). No negative equality could be claimed.

48. Earlier Circular dated 13.12.2001 had been issued by the Deputy Secretary to the Government of Rajasthan with respect to allotment of 15% of the developed land. It has not been issued in the name of the Governor. This Court has considered the enforceability of such circulars in *Jaipur Development Authority & Ors. v. Vijay Kumar Data & Anr.* [2011 (12) SCC 94]. This Court has referred to the decision in *Jaipur Development Authority v. Radhey Shyam* [1994 (4) SCC 370] in which the decision of the LAO to allot the plots in addition to compensation was set aside and it was held that even in execution it was open to raise the question of validity or nullity of the decree. Following is the relevant discussion in *Vijay Kumar Data* (supra) :

A “12. The question whether the Land Acquisition Officer
could issue direction for allotment of land to the awardees,
sub-awardees and their nominees/sub-nominees was
B considered by this Court in *Radhey Shyam case* [1994
(4) SCC 370]. After noticing the provisions of Sections
31(3) and (4) of the 1953 Act on which reliance was
placed by the Senior Counsel appearing for the
respondents, this Court held that the Land Acquisition
Officer did not have the jurisdiction, power or authority to
C direct allotment of land to the claimants. This is clearly
borne out from the following extracts of para 7 of the
judgment :

D “7. A reading of sub-section (4) of Section 31, in our
considered view, indicates that the Land Acquisition
Officer has no power or jurisdiction to give any land
under acquisition or any other land in lieu of
compensation. Sub-section (4) though gives power to
him in the matter of payment of compensation, it does
E not empower him to give any land in lieu of
compensation. Sub-section (3) expressly gives power
‘only to allot any other land in exchange’. In other words
the land under acquisition is not liable to be allotted in
lieu of compensation except under Section 31(3), that
F too only to a person having limited interest. ... The
problem could be looked at from a different angle. Under
Section 4(1), the appropriate Government notifies a
particular land needed for public purpose. On publication
of the declaration under Section 6, the extent of the land
G with specified demarcation gets crystallised as the land
needed for a public purpose. If the enquiry under Section
5-A was dispensed with, exercising the power under
Section 17(1), the Collector on issuance of notice under
Sections 17, 9 and 10 is entitled to take possession of
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the acquired land for use of public purpose. Even otherwise on making the award and offering to pay compensation he is empowered under Section 16 to take possession of the land. Such land vests in the Government free from all encumbrances. The only power for the Government under Section 48 is to denotify the lands before possession is taken. *Thus, in the scheme of the Act, the Land Acquisition Officer has no power to create an encumbrance or right in the erstwhile owner to claim possession of a part of the acquired land in lieu of compensation. Such power of the Land Acquisition Officer if is exercised would be self-defeating and subversive to public purpose.*"

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

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

A *the invalidity, nullity of the decree in execution in that*
 behalf. Accordingly we hold that the execution
 proceedings directing delivery of possession of the land
 as contained in the award is, invalid, void and
 inexecutable. (emphasis supplied)”

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49. In *Vijay Kumar Data* (supra), this Court referred to the decision in *Jaipur Development Authority v. Daulat Mal Jain* [1997 (1) SCC 35] in following terms :

C “14. The legality and correctness of the order dated 24-
 9-1993 passed by the Division Bench of the Rajasthan
 High Court in DBCSAW No. 680 of 1992 was considered
 in *Jaipur Development Authority v. Daulat Mal Jain*
 (supra). This Court noted that the Lokayukta of Rajasthan
D had severely criticised the actions of the then Minister of
 Urban Development and Housing Department,
 Commissioner, Jaipur Development Authority and Zonal
 Officer of the Lal Kothi Scheme, referred to the Rajasthan
 Improvement Trust (Disposal of Urban Land) Rules, 1974
E and held :

 “22. *Therefore, there was no policy laid by the*
 Government and it cannot be laid contrary to the
 aforestated rules and no such power was given to
F *individual Minister by executive action, as the land was*
 already notified conclusively under Section 6(1) for
 public purpose, namely, earmarked scheme. Since the
 persons whose land was acquired were not owners
G *having limited interest therein, qua the owners having*
 lost right, title and interest therein, the sub-awardees or
 nominees, after the acquisition under Section 4(1),
 would acquire no title to the land nor such ultra vires
 acts of the Minister would bind the Government. The
H *actions, therefore, taken by the Minister-cum-Chairman*

of the appellate authority and bureaucrats for obvious reasons would not clothe the respondents with any vestige of right to allotment. Acceptance of the contentions of the respondents would be fraught with dangerous consequences. It would also bear poisonous seeds to sabotage the schemes defeating the declared public purpose. The record discloses that such allotment in many a case was in violation of the Urban Land Ceiling Act which prohibits holding the land in excess of the prescribed ceiling limit of the urban land. In some instances, a person whose land of 500 sq yd was acquired, was compensated with allotment of 2000 sq yd and above, which is against the public policy defeating even the Urban Land Ceiling Act. Would any responsible Minister or a bureaucrat, with a sense of public duty and responsibility, transfer such land to sabotage the planned development of the scheme? Answer has obviously to be in the negative. The necessary inference is that the policy does not bear any insignia of a public purpose, but appears to be a device to get illegal gratification or distribution of public property defeating the public purpose by misuse of public office.”

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

“23. There is no iota of evidence placed on record that under the so-called policy, anyone from general public

- A could equally apply for allotment of the plots or was eligible to apply for such allotment nor any such general policy was brought to our notice. The allotment has benefited only a specified class, namely, the awardees, sub-awardees or nominees and none else. *The decision by*
- B *the Minister or the actions of the bureaucrats was limited to the above class which included the respondents. Legitimacy was given to the void acts of Chotney Lal, the erstwhile owner as well as the LAO. Directions were*
- C *given by the Minister and the bureaucrats acted to allot the land under the very void acts. They are ultra vires the power. These acts are in utter disregard of the statute and the rules. Therefore, by no stretch of imagination it can be said to have the stamp of public policy; rather it*
- D *is a policy to feed corruption and to deflect the public purpose and to confer benefits on a specified category, as described above."*

50. The plea of discrimination was adversely
- E commented upon by this Court in *Vijay Kumar Data* (supra) referring to the decision in *Daulat Mal Jain* (supra) thus :

- F "16. The plea of discrimination which found favour with the High Court was also negatived by this Court in *Daulat Mal Jain case* (supra) by making the following observations:

- G "24. The question then is whether the action of not delivering possession of the land to the respondents on a par with other persons who had possession is an ultra vires act and violates Article 14 of the Constitution? We had directed the appellants to file an affidavit explaining the actions taken regarding the allotment which came to be made to others. An affidavit has been filed in that
- H behalf by Shri Pawan Arora, Deputy Commissioner, that

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

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A infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.”

B 51. In *Vijay Kumar* (supra), this Court after quoting circular of the State Government dated 6.12.2001 issued by the Deputy Secretary of the Administration has observed thus :

C “49. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1)). Orders and other instruments
D made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in the rules to be made by the President or the Governor, as the case may be (Articles 77(2) and 166(2)).

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

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

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‘166. Conduct of business of the Government of a

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

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. B
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(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.' D

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

53. It is thus clear that unless an order is expressed in the
C name of the President or the Governor and is authenticated in
the manner prescribed by the rules, the same cannot be treated
as an order made on behalf of the Government. A reading of
the Letter dated 6-12-2001 shows that it was neither
D expressed in the name of the Governor nor was it authenticated
in the manner prescribed by the rules. That letter merely speaks
of the discussion made by the Committee and the decision
taken by it. By no stretch of imagination the same can be
treated as a policy decision of the Government within the
E meaning of Article 166 of the Constitution.

54. We are further of the view that even if the instructions
contained in the Letter dated 6-12-2001 could be treated as
policy decision of the Government, the High Court should have
F quashed the same because the said policy was clearly contrary
to the law declared by this Court in *Radhey Shyam case*
(*supra*) and *Daulat Mal Jain case* (*supra*) and was a crude
attempt by the political functionaries concerned of the State to
legalise what had already been declared illegal by this Court."

G 52. Thus, it is apparent that the circular in question
cannot be pressed into service by the Society. Apart from
inapplicability, it is also apparent that the very purpose of
issuing such circulars is not to benefit the purchaser who has
H acquired the right after issuance of notification under section

4 of Rajasthan Land Acquisition Act, and in violation of mandate of section 42. Consequently, the High Court had no jurisdiction to direct allotment of land. Even Khatedars were not entitled to such direction/benefit as the circulars are not applicable in such cases. A

53. We may refer to the decision in *Hari Ram & Anr. v. State of Haryana & Ors.* [2010 (3) SCC 621] relied upon on behalf of the Society in which this Court considered passing of different orders, in respect of persons similarly situated, relating to same acquisition proceedings. The action was held to be violative of Article 14 being discriminatory. There is no doubt about it that different standards cannot be applied for withdrawal from acquisition. The present is not such a case. The circular is not applicable. We cannot direct the State to act upon the circulars which are not applicable. Under the Code that all actions of the State are to be fair and legitimate, we cannot create negative equality and confer a benefit that too on the strength of a concessional statement which is not provided by circular. Concession made by the counsel in *Ratni Devi's* case (supra) cannot widen scope of circular. B C D E

54. We may also refer to other decisions relied upon in *Usha Stud and Agricultural Farms Pvt. Ltd. & Ors. v. State of Haryana & Ors.* [2013 (4) SCC 210] laying down that once a State Government has taken a conscious decision to release the land, there would be no justification whatsoever for the State for not according similar treatment to the appellants is also of no avail to the Society. F

55. Coming to the quantum of compensation to be awarded in the instant case, it was submitted on behalf of the Society and Khatedars in respective appeals that the compensation determined by the High Court is on lower side. Adequate compensation has not been determined. It was G H

- A submitted that oral evidence which was relied upon by the Reference Court ought to have been acted upon by the High Court. It was contended that the oral evidence cannot be ignored. By virtue of decisions in *State of Gujarat & Ors. v. Rama Rana & Ors.* [1997 (2) SCC 693], *Satyanarayana & Ors. v. Bhu Arjan Adhikari & Ors.* [2011 (15) SCC 133] and *Ramanlal Deochand Shah v. State of Maharashtra & Anr.* [2013 (14) SCC 50].

56. The price of the land per sq. yd. was determined by the Reference Court. The documentary evidence which has been referred to by the Reference Court comprises of Ex. 1 agreement dated 26.8.1982 at the rate of Rs.135 per sq.yd., Ex. 3 agreement dated 7.1.1982 at the rate of Rs.165 per sq.yd., agreement dated 28.9.1981 at the rate of Rs.135 per sq.yd. for 244 sq.yd. and agreement dated 5.5.1979 at the rate of Rs.94 per sq.yd. Certain transactions of 1983 were also referred which have to be ignored being subsequent to the date of notification under section 4. However, referring to the oral statement of the witnesses in which value was stated to be much more, the Reference Court has arrived at the conclusion of Rs.260 per sq.yd. The Single Bench of the High Court considered and referred to both the oral and documentary evidence. Ex.1 agreement dated 26.8.1982 about the sale of plot No.55 situated in Krishna Vihar Gopalpura @ Rs.115/- per sq. yds., Ex.3 is agreement to sale of land of 200 sq. yds. Agreement dated 7.1.1982 at the rate of Rs.165/- per sq. yds. situated at Maharani Farm Duragapura. Ex.4-A agreement to sale of 244 sq. yds. dated 29.8.1981 @ Rs.135/- per sq.yds. situated at Brijalpur from Krishnapuri Housing Society, Ex.5 agreement dated 24.7.1982 of 18000 sq.yds. of land @ Rs.125/- per sq.yds. for a total amount of Rs.22,55,000/- entered between Meena Kumari Housing Society and trustee Devi Shanker Tiwari, Ex. 7

Agreement dated 16.9.1983 about the sale of land measuring 147 sq. yds. for Rs.22,100/- approx. @ Rs.150/- per sq. yds. and the land situated in gram panchayat Bhagyawas, Ex.8 agreement dated 5.5.1979 of 34,000 sq.yds. @ Rs.90-94 per sq. yds.

57. It also considered oral evidence in detail and has not relied upon the same and has arrived at the average price to be Rs.135 per sq.yd. making certain deduction as large area has been acquired. In case area in question had been developed, certain area was bound to go in the development. Thus, deduction which has been made to arrive at the figure of Rs.100 per sq.yd. is proper. We find in the facts and circumstances of the case that the finding arrived at by the single Bench to be appropriate. No doubt about it. Oral evidence can also be taken into consideration but in the facts of this case, the best evidence is documentary evidence which has to prevail. In the face of the documentary evidence evincing the price of the land per sq.yd. the oral evidence which was based upon ipse dixit and without any sound basis, could not have been accepted by the Reference Court. Thus, the grave error which was committed had been rightly set at naught by the single Bench of the High Court, which determination of compensation has also not been interfered by a Division Bench.

58. Reliance has been placed upon *State of Gujarat & Ors. v. Rama Rana & Ors.* [1997 (2) SCC 693] with respect to acceptance of oral evidence in which case there was failure on the part of the Agricultural Department to produce statistics as to the nature of the crops and the prices prevailing at that time. In that context, it was observed that oral evidence cannot be rejected due to such failure and the court has a duty to subject the oral evidence to great scrutiny and to evaluate the

- A evidence objectively and dispassionately to reach a finding on compensation.

59. Reliance has also been placed on *Satyanarayana v. Bhu Arjan Adhikari & Ors.* [2011 (15) SCC 133] in which it has been laid down that an analysis of the evidence by the Reference Court has to be satisfactory. Reliance has also been placed on *Ramanlal Deochand Shah v. State of Maharashtra & Anr.* [2013 (14) SCC 50] laying down that it is for the claimant to prove that the amount awarded by the Collector needs an enhancement and for that purpose, oral and documentary evidence can be adduced and when there is non-consideration of material evidence, the case can be remanded to lead evidence. In this case, there is proper scrutiny and evaluation of oral and documentary evidence by the High Court. The decision of the High Court with respect to determination of compensation deserves to be upheld.

60. The High Court has rejected the application under Order 1 Rule 10 filed by the Khatedars. In the facts of this case, particularly when the issue of violation of section 42 of Rajasthan Tenancy Act was raised by the State Government and reference was also as to the award passed in 1982 in favour of Khatedars in which the Society was denied the right to receive compensation. Obviously, Khatedars were required to be heard as the adjudication of their right was involved in the matter to decide to whom the compensation is payable, and whether the Society was entitled to claim compensation on the basis of void transaction. It was also submitted before us that the Khatedars have sought reference under section 30 against the Society, that question can be decided in those proceedings. However, the factual matrix and its determination of the question as to entitlement of Society is necessary in the instant case, as such we have decided it. More so, the plight

of downtrodden class of the Scheduled Castes Khatedars cannot be prolonged and considering the provisions which have been enacted for their protection, and the constitutional mandate, we are inclined to exercise our power to set at rest the dispute between the parties and hold that only Khatedars, in case some of them have died, their legal representatives would be entitled to receive the compensation which has been determined in the instant case.

61. In order to protect the interest of the Scheduled Caste persons, we further direct that the Society or other intermeddler, or power of attorney holder shall not be paid compensation on their behalf and the Collector/Land Acquisition Officer to ensure that the compensation is disbursed directly to the Khatedars or their legal representatives, as the case may be, and that they are not deprived of the same by any unscrupulous devices of land grabbers etc. Let the compensation be disbursed within a period of three months from today along with other permissible statutory benefits.

62. The direction issued by the High Court to grant 25% of the developed land is hereby set aside. The appeals preferred by the Rajasthan Housing Board and the Khatedars are allowed to the aforesaid extent and the remaining appeals are dismissed. Parties to bear their own costs as incurred.

Kalpana K. Tripathy

Appeals disposed of.

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