

CASE NO.:
Appeal (civil) 2910-2913 of 2002

PETITIONER:
NARPAT SINGH ETC.ETC.

Vs.

RESPONDENT:
JAIPUR DEVELOPMENT AUTHORITY & ANR.

DATE OF JUDGMENT: 24/04/2002

BENCH:
R.C. Lahoti & B.N. Agrawal

JUDGMENT:

R.C. Lahoti, J.

Leave granted.

Notification under Section 4 of the Rajasthan Land Acquisition Act, 1953 was published in the State Gazette in June 1960, acquiring land in the localities of Bhojpura and Chak Sudershanpura, Tehsil Jaipur, adjacent to Jaipur city for urban development, viz. for multi purpose project of constructing legislative assembly, MLA quarters and planned development of city, popularly known as 'Lal Kothi Scheme'. The exact public purpose for acquisition is not discernible from the record but that is immaterial for our present purpose. The Notification under Section 4 was followed by declaration under Section 6 in May 1961. The persons whose land was acquired under the scheme include the four appellants before us. On 9.1.1964, the Land Acquisition Officer passed an award fixing monetary compensation at the rate of Rs.1800/- per bigha, i.e. approximately 60 paise per sq. yard. In addition to the amount of compensation, the Land Acquisition Officer also directed plots of 2000 or 1000 sq. yards to be allotted to the appellants in the very scheme for which the land was acquired. Dissatisfied with the quantum of compensation, the claimants and the State Government both sought for reference to the Civil Court. The reference Court modified the quantum of compensation by increasing the same to Rs.4.50p. per sq. yard while upholding the allotment of residential plots. The State Government preferred appeals questioning the enhancement. On 17.8.1971, a tripartite settlement was arrived at as amongst the claimants, the State Government and the Urban Improvement Trust (the predecessor of Jaipur Development Authority) according to which it was agreed (a) that the claimants accept the amount of compensation awarded by the Land Acquisition Officer; (b) that the allotment of residential plots to the claimants measuring 2000 or 1000 sq. yards each in the same scheme shall stand subject to payment of price by the allottees @ Rs.8/- per sq. yard which price shall be paid by the allottees to the UIT deducting therefrom the amount of compensation awarded by the Land Acquisition Officer; and (c) that the contest on the amount of compensation is given up and the State of Rajasthan and the UIT shall not prosecute the appeal. A compromise petition, incorporating the terms of settlement, was filed in the High Court and taken on record disposing of the appeal in terms of settlement. On 12.10.1982, UIT was dissolved and was replaced by Jaipur Development Authority

which took over the assets and liabilities of UIT.

The appellants filed execution application seeking implementation of the award made by the High Court based on the compromise. For want of contest before the executing Court, warrants of possession were directed to be issued and in pursuance thereof possession over the residential plots allotted to the respective appellants was delivered on 29.5.1984. Laying challenge to the order of executing Court, the State of Rajasthan and JDA preferred revision petitions before the High Court which were dismissed. In the special leave petition preferred before this Court, by order dated 15.2.1988, it was directed that the judgment debtors shall have the liberty of raising their objection to the execution application before the executing Court which shall be decided after hearing the parties and in accordance with law. On 1.6.1990, the executing Court rejected the objections filed by the respondents and upheld the maintainability of the execution application. In civil revisions preferred by the respondents, the High Court formed an opinion that the judgment of the High Court, based on the compromise and directing plots to be allotted to the appellants in addition to the monetary compensation, suffered from inherent lack of jurisdiction and, therefore, was inexecutable. The revision petitions were decided ex-parte. Armed with the order of High Court, on 12.8.1996, JDA resumed possession over the residential plots. Since then, the plots are in possession of JDA excepting plot No.C-89 and C-90 out of the total area whereof, 555 sq. mts. area has been allotted by JDA to Rajasthan State Mines and Minerals Limited which has constructed a full fledged building of its own over the land allotted to it.

The ex-parte order passed by the High Court allowing the revision petitions preferred by the respondents was recalled by High Court on the appellants explaining the reasons for their non-appearance. The revisions were heard afresh. By the impugned judgment dated 23.4.2001, the High Court has once again allowed the revision petitions preferred by the respondents. The High Court has held the compromise decree to be inexecutable as, in its opinion, allotment of land by an award in land acquisition proceedings suffers from inherent lack of jurisdiction. In taking this view the High Court has relied on two decisions of this Court, namely, Jaipur Development Authority Vs. Radhey Shyam & Ors., (1994) 4 SCC 370 and Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Ors., (1997) 1 SCC 35. These decisions, do not arise out of those very awards whereunder compensation was fixed and residential plots directed to be allotted to the appellants, nevertheless, both these decisions are referable to the same acquisition proceedings under the same notification and declaration under Sections 4 and 6 of the Land Acquisition Act whereby land was acquired for 'Lal Kothi Scheme'.

Shri R.F. Nariman, Senior Advocate assisted by Shri M.L. Lahoty, Advocate, the learned counsel for the appellants, have submitted that the High Court has committed a serious error of law in placing reliance upon the said two decisions of this Court which dealt with power of the Land Acquisition Officer under Sub-Section (4) of Section 31 of the Land Acquisition Act and held that the Land Acquisition Officer is empowered to offer monetary compensation for the land acquired but does not have any power or jurisdiction in him to part with any part of the land acquired or any other land either in lieu of or over and above the amount of monetary compensation. It was held that such direction, if made and incorporated in the award, would be a nullity and any objection as to inexecutability of the decree as being a nullity could be successfully raised at the stage of execution. The law so laid down by this Court does not have applicability to the case of a decree based on compromise more so when in view of the offer to allot residential plots in that very scheme

the claimants have given up their right to enhanced amount of compensation. The learned senior counsel further submitted that such an allotment of residential plots finds support from Section 60 of the Rajasthan Urban Improvement Act, 1959 as also by the holding of this Court in Pista Devi's case, (1986) 4 SCC 251 (Para 9), Hans Raj H. Jain Vs. State of Maharashtra (1993) 3 SCC 634 (Paras 35 & 36) and an unreported decision in H.C. Venkataswamy & Ors. Vs. Bangalore Development Authority & Ors., Civil Appeal No. 14037-14056 of 1996 decided on 23.9.1996.

There may be merit in the submission made by the learned counsel for the appellants. However, we do not propose to enter into the merits of the submission which was advanced so forcefully. Having heard the learned counsel for the parties and keeping in view the peculiar facts and circumstances of this case, we are satisfied that the present one is not a fit case where we may exercise the discretionary jurisdiction vesting in this Court under Article 136 of the Constitution favourably to the appellants and upset the judgment of the High Court. We, therefore, propose to dismiss the appeals but subject to directions necessary to meet the ends of justice and briefly place on record our reasons for doing so.

In the counter affidavit filed on behalf of the respondents, a tabulated statement is incorporated showing the area of land acquired and the area of plot which the respondents agreed to allot to the appellants in addition to monetary compensation as per the award.

Name of the Awardee
Area of land acquired
(in sq. yards)
Area of plot allotted
(in sq. yards)

Raja Narpat Singh
872.22
1000

Rajendra Singh
3508
2000

Jyotsna Kumari
2089
2000

Chain Kumari
2089
2000

It is clear from the counter-affidavit filed on behalf of the respondents, and which fact has not been disputed on behalf of the appellants, that while the land acquired from the appellants was uncultivated fallow land with no well, super-structure or habitat built thereon, what has been offered to each of them is developed plot of 1000 or 2000 square yards area. A developed plot of 1000 or 2000 square yards means at least 1500 or 3000 square yards of undeveloped land which is more than the area which has been acquired from them. The concept behind allotting residential plots to the persons whose land has been acquired is to rehabilitate them and to give some relief on reasonable terms because of their having been expropriated by land acquisition proceedings. So far as the appellants are concerned, the allotment of plots cannot be said to have fulfilled the object of rehabilitating them because though they lost their land but there is no material placed on record to hold them as having been rendered destitutes on account of either their residence or their livelihood

having been lost on account of land acquisition proceedings.

Secondly, during the course of hearing Shri G.L. Sanghi, Senior Advocate assisted by Shri S.K. Bhattacharya, the learned counsel for the respondents, extensively read the decisions of this court in the cases of Radhey Shyam and Daulat Mal Jain, in particular the latter one wherein this Court has noticed blatant misuse of power having been made by the holders of public office, bureaucrats and unscrupulous beneficiaries having combined together and depriving the State of its valuable land going to the extent of defeating the very public purpose for which acquisitions were made and plots having been allotted to powerful or affluent persons. The judgment in Daulat Mal Jain's case makes a reference to the Inquiry Report dated 12.11.1992 of Lokayukta of Rajasthan under Section 10 of the Rajasthan Lokayukta and Up-Lokayukta Act, 1973 wherein prima facie finding has been recorded against the then Hon'ble Minister, Urban Development and Housing Department, Government of Rajasthan-cum-Chairman, JDA, the then Commissioner, JDA and the then Zonal Officer, Lal Kothi Scheme having caused wrongful gain to themselves and wrongful loss to the Jaipur Development Authority and the public at large by making allotments of residential plots. Shri G.L. Sanghi, the learned senior counsel produced for our perusal the Inquiry Report dated 12.11.1992 of the Lokayukta and read out extensively a few passages therefrom. The Report makes a reference inter alia to the land allotted to the 12 awardees including the four appellants herein, by way of compromise although any positive finding of the allotments made to these appellants being vitiated by fraud on public office or statutory power is not recorded. The fact remains that the allotments made even by way of compromise are out of the same land which was acquired for public purpose and out of which other allotments made were struck down by this Court in Daulat Mal Jain's case.

Thirdly, a finding recorded by the Executing Court in its order dated 1.6.1990, that before the appellants took over possession over the plots allotted they had not deposited the full price as was agreed upon, was brought to our notice and the order says that the correctness of this finding was rather conceded to by the learned counsel appearing for the appellants before the Executing Court.

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

For this reason the appeals are held liable to be dismissed. Still in exercise of jurisdiction conferred by Article 142 of the Constitution two directions are warranted for doing complete justice in the case and not to leave the appellants in lurch remediless. And those directions we hereby make. Firstly, the appeals preferred by the State Government in the Rajasthan High Court were disposed of in terms of compromise and the monetary compensation was reduced in consideration of the awardees having been allotted plots. As we are holding the compromise to be vitiated it would be in the interest of justice that the appeals filed by the State Government are restored for hearing on merits. The High Court shall hear and decide the appeals appointing the quantum of monetary compensation excluding, from its consideration, the allotment of plots to the awardees. Secondly, though the allotment of 1000 and 2000 square yards of land in Lal Kothi Scheme as a term of the compromise has been set aside by the High Court it is directed that the appellants shall be allotted each a residential plot of an area about 250 square yards in some other scheme of the JDA at the rates effective and applicable on 17.8.1971, the date on which the compromise was arrived at. Such allotment shall be made and possession given within a period of three months from today. This direction we make in order to maintain consistency and uniformity inasmuch as we find almost all the awardees having been allotted plots and similar directions were made by this Court also in Daulat Mal Jain's case (supra), vide para 31. In case of any dispute arising in the matter of allotment of plots in terms of this direction, we allow liberty to the parties to approach the High Court of Rajasthan and seek directions preferably by the same Bench which will be hearing the appeals against the award made by the Reference Court.

It was vehemently contented on behalf of the respondents that the allotment of plots forming part of compromise should be sustained because the appellants have, in view of the plots having been allotted to them, followed by delivery of possession, alienated the plots or created third-party interest therein and they would be put to serious inconvenience or placed in an awkward situation as the third-parties would be after them while the allotted plots are lost by them. We are not inclined to agree. If the appellants have just alienated the plots allotted to them then securing of such plots was their adventure for profit and not a need for rehabilitation. Then, though they may lose the plots but they would be getting monetary compensation, solatium and interest in lieu of the land of which they have been expropriated. This must satisfy them. It was also submitted that the policy decision dated December 6, 2001 of the State of Rajasthan recognises encroachers being settled in other schemes of JDA and if the encroachers enjoy the patronage of the State Government why not the appellants who should not be compared with encroachers who are law-breakers. We need not comment on the policy of the State Government recognizing an encroacher's right to allotment of land. It is the wisdom of State and we are not aware whether the policy is guided by socially beneficial consideration of providing roof over the head of the deprived and poor or is a politically motivated policy of appeasement. For our purpose the relevant consideration is the decision of this Court directing allotment of 250 square yards plot elsewhere to some such allottees whose allotment of plots in Lal Kothi Scheme was not upheld and maintaining consistency therewith. May be some awardees unscrupulously or by connivance or collusion and by lapse of time have succeeded in retaining allotment of larger plots in this very scheme but such arbitrary or unreasonable allotments cannot be cited as precedent in support of misguided plea of equality. Appellants' prayer for upholding the compromise-based allotment of plots or in the alternative plots of lesser size being allotted out of the land acquired for this very scheme cannot be entertained much less allowed as that would be to some extent destructive of the purpose of

acquisition. The land acquired must be used for the public purpose for which it has been acquired.

The appeals are disposed of maintaining the judgment of the High Court but subject to the two directions made hereinabove. Costs as incurred.

.....J
(R.C. LAHOTI)

.....J.
(B.N. AGRAWAL)

April 24, 2002.

JUDIS