

(2011) 08 RAJ CK 0106

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No's. 276, 174, 586-591 of 2010

Jaipur Development Authority

APPELLANT

Vs

Lalaram and Others

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 14, 162, 166
Jaipur Development Authority Act, 1982 — Section 11, 18, 3, 31, 31(3)
Rajasthan Land Revenue Act, 1956 — Section 102A, 103

Citation : (2012) 3 RLW 2504

Hon'ble Judges : Arun Kumar Mishra, C.J; Bela M. Trivedi, J

Bench : Division Bench

Advocate : G.S. Bapna, A.G. with V. Garg, R.N. Mathur, with Sanchit Tamra and Dinesh Yadav, for the Appellant; G.K. Garg with Saransh Saini, A.K. Sharma with V.K. Sharma, Kamalakar Sharma with Ms. Alankrita Sharma, for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—The intra court appeals have been preferred by the Jaipur Development Authority (hereinafter referred to as "the JDA") aggrieved by the order passed by the 3DA Appellate Tribunal (hereinafter referred to as "the Tribunal") and the orders passed by the Single Bench dismissing the writ applications No. 539/2009, 114/2004, 10420/2009, 766/2009, 764/2009, 15305/2009, 15306/2009 and 765/2009 vide orders dated 11.1.2010, 4.1.2005, 15.3.2010 respectively. Facts in short are that the land of the respondents situated at Boytawala, District of Jaipur was acquired for which notification was issued u/s 4(1) of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as "the Act of 1953") way back on 8.5.1981. Award was passed by the Land Acquisition officer on 26.3.1983. The land was acquired for the purpose of Army for its Field Firing Range. Possession was taken on 26.3.1983. Compensation was awarded by the Land Acquisition officer @ Rs. 1500/- per bigha. Reference was sought by the claimants before the civil court and the reference was answered on 11.4.1994. Reference court answered the reference by enhancing the

compensation from Rs. 1500/- to Rs. 15,000/- per bigha. The said enhancement was accepted by the claimants. However, the same was challenged by the JDA. The writ applications/appeals preferred before this Court were dismissed on 30.8.2000. Enhancement of compensation of Rs. 15,000/- per bighas was upheld. Thereafter on 11.10.2001, compensation was deposited before the Civil Judge, Jaipur @ Rs. 1500/- per bigha. The circular was issued by the State Government on 21.9.1999 that on settlement/compromise the land owners can be given 15% developed residential land. Decision was again taken on 18.10.2001 at the Minister level and in the meeting it was decided to give 15% of the land as far as possible in the same area of which the land has been acquired. In case the land is not available at the place where acquisition was made then the land may be allotted in nearby area by the concerned Committee. Based upon decision, circular was issued on 13.12.2001 by the Urban Development Department under, the signature of Deputy Secretary of the Department pointing out that where the compensation has not been disbursed to the khatedars/land owners so far for any reason or for any reason compensation has not been received by the khatedars, they may submit the options by 28.2.2002 for obtaining 15% of the developed land in lieu of the acquisition made. Applications were submitted in January/February, 2002 for allotment of the land under the said circular issued by the Urban Development Department. The JDA issued auction notice dated 17.5.2003 for the purpose of auction of certain plots for group housing in Vidhyadhar Nagar, Jaipur. As the claimants, namely, Lala Ram (special appeal No. 276/2010) and Chotu Ram (special Appeal No. 174/2005) were desirous of obtaining the land in Vidhyadhar Nagar, they questioned the auction notice issued by the JDA in appeals before the JDA Appellate Tribunal. Appeals were preferred u/s 83(8) (a) of the Jaipur Development Authority Act, 1982 (hereinafter referred to as "the JDA Act"). In other matters, the claimants sought reference u/s 83(8)(b) of the JDA Act. In the appeals which were preferred, the Appellate Tribunal quashed auction notice dated 17.5.2003 and ordered allotment of land in Vidhyadhar Nagar Scheme, and without that, restrained the auction of the land in Sector-5 & Sector-6. In the references, after finding the claimants entitled for allotment of land in Vidhyadhar Nagar, it was ordered that 15% of the developed land be allotted to the claimants in Vidhyadhar Nagar and in case the land is not available, it be allotted at nearest place other than in Lalchandpura and Anantpura and till such time, the JDA was restrained from auctioning the land in Vidhyadhar Nagar.

2. It is also pertinent to mention here that in the case of Chotu Ram and Lalaram appellate orders were passed on 18.8.2003 and 18.10.2005 respectively, whereas in references, orders were passed on 6.1.2006 (Ref. No. 295/2005) and 18.3.2006 (Ref. No. 71/2005).

3. It appears that the matter was referred by the JDA to the State Government and the State Government on consideration of the matter of Boytawala, where the acquisition was made for establishment of Field Firing Range for Army, ordered that 15% developed land be allotted by the JDA in Lalchandpura and

Anantpura. This order was issued by the State Govt. on 1.7.2005. The writ petitions were preferred before the Single Bench by the JDA. The writ petitions have been dismissed by the Single Bench. Consequently, the intra court appeals have been preferred.

4. Case set up by the claimants is that two of the incumbents of Boytawala have been allotted land in Vidhyadhar Nagar and in two or three other cases land was allotted by the JDA in Vidhyadhar Nagar. As such, they are entitled for allotment of land in Vidhyadhar Nagar. It was also submitted that earlier the Field Firing Range was in Vidhyadhar Nagar for which the land was acquired. Later on, the Army has given the land of Vidhyadhar Nagar in exchange to the State Govt. and the land was acquired at Boytawala. The end of the claimants was situated in Boytawala. As they have not received the compensation, they are entitled for allotment of 15% of the developed land. The circular has also been issued by the Deputy Secretary, Urban Development Department. There cannot be any discrimination meted out to them.

5. The case set up by the JDA is that the Appellate Tribunal was not having any jurisdiction to entertain the prayer for allotment of land as the matter is not covered under the 3DA Act. The appeals/references were not competent under the JDA Act. Directives issued by the State Government are binding. Thus the land in Vidhyadhar Nagar could not have been ordered to be allotted. It was also submitted by the JDA that in Vidhyadhar Nagar, land is not available, details of which have been furnished. Out of the available open land, some part is reserved for group housing; some land is reserved for the purposes of Mahawar Vaishya Sanstha, Mangalam Vidhyapeeth, due to the pendency of the case in the High Court, it could not be utilized for the purpose it has been reserved. One of the plot GH-1 measuring 6500 Sq.mtrs. had been encroached upon One of the residential plot having dimension of only 345 Sq.mtrs bearing No. 6/81 was available. Thus, no piece of land was available for allotment to the claimants in Vidhyadhar Nagar. The JDA has furnished the details to show that sufficient land is not available in Vidhyadhar Nagar to allot to the claimants. Details of the lands available in the Vidhyadhar Nagar submitted by the JDA are quoted below:-

6. It was also submitted in the reply that value of the land in Vidhyadhar Nagar as per the District Level Committee rates (hereinafter referred to as "the DLC rates") for commercial (interior) new is Rs. 33,130/- per sq.mtrs., commercial (on main road) new is Rs. 38,130/- per sq.mtrs. w.e.f. 9.7.2009. For residential (interior) new Rs. 9,880/- per sq. mtrs. and residential (on main road) new is Rs. 11,570/- per sq. mtrs. w.e.f. 9.7.2009 which are much more than Boytawala. It was also submitted in the reply that at Boytawala the DLC rates per bigha of irrigated attached to main road IFF. from 6.12.2006 is Rs. 12,50,000/- per bigha. The DLC rates in respect of Vidhyadhar Nagar, Boytawala and Lalchandpura have been submitted by the JDA, and the same are quoted below:-

7. It was also contended that the award amount has been deposited in the civil court. It has not been received by the claimants. For the delay, the claimants

themselves were responsible. Ministerial level Sub Committee has taken decision to allot the land at Lalchandpura and Anantpura. The decision of the State Govt. is binding upon the 3DA. The land which is to be allotted by way of 15% developed land comes to 65391 sq.mtrs. (40446 sq.mtrs. (appellate cases) + 24945 (reference cases)) so much land is not available in Vidhyadhar Nagar. Thus, there is no possibility of allotment of 15% land in Vidhyadhar Nagar. Even otherwise whatever land is available at Vidhyadhar Nagar is reserved for other purposes, it cannot be allotted to the claimants.

8. The stand of the State Government in special appeal No. 174/2005 is that in compliance of the award of the Land Acquisition Officer cheques have been issued and deposited in favour of the Khatedars. However, none of them has collected the cheques. In 2001, policy decision was taken under the Chairmanship of Minister of Urban Development on 18.10.2001. Consequently, notification dated 13.12.2001 was issued. Further clarifications were issued from time to time. Circular dated 27.10.2005 was issued by the Urban Development Department superseding the earlier circulars. It was decided that maximum 20% residential land and 5% commercial land can be allotted in lieu of the acquired land. However, the provision made in the circular would be applicable prospectively and it would not be applicable to those cases in which award has been passed and compensation has been deposited in the civil court or 15% land has been ordered to be allotted in the award.

9. Mr. G.S. Bapna, Advocate General appearing with Mr. V. Garg, Mr. R.N. Mathur, Senior Advocate appearing with Mr. Sanchit Tamra and Mr. Dinesh Yadav have submitted that the order passed by the Appellate Tribunal is without jurisdiction. The land could not have been ordered to be allotted in Vidhyadhar Nagar. Appeals/References were not maintainable. The order passed by the Appellate Tribunal is bad in law. No land is available for allotment in Vidhyadhar Nagar. The value of the land in Vidhyadhar Nagar is extremely high and in case the land is ordered to be allotted there, it would amount to frittering away the valuable land. Even otherwise, small piece of land which is available in Vidhyadhar Nagar is reserved for other purposes. They have also submitted that even at Lalchandpura and Anantpura, the value of the land is higher than determined in the cases of the claimants on reference being sought. It is open for them to collect the compensation. It was also submitted that the executive instructions issued by the State Government cannot be said to be enforceable in view of the decision of the Apex Court in the case of Jaipur Development Authority and Others Vs. Vijay Kumar Data and Another, in which the similar circular and the instructions issued have been held to be not in conformity with Article 166 of the Constitution of India and were held to be illegal and unenforceable. It was then contended that it is open to the claimants to collect the compensation as they are not entitled for allotment of the land at all. Orders passed by the Appellate Tribunal are nullity and they can be questioned in the writ jurisdiction of this Court, It was not the case of exchange of the land, in the instant case, land at Boyatwala was acquired. It was clear case of acquisition of land vis-a-vis to the claimants. The

acquisition was made long back which has not been questioned in the matter.

10. Mr. G.K. Garg, Senior Advocate appearing with Mr. Saransh Saini, Mr. A.K. Sharma, Senior Advocate appearing with Mr. V.K. Sharma and Mr. Kamlakar Sharma, Senior Advocate appearing with Ms. Alankrita Sharma on behalf of the respondents have submitted that the Appellate Tribunal was having jurisdiction to hear the appeals against the auction notice and also to entertain the references u/s 83 of the JDA Act. The allotment of land was to be made under the JDA Act as such, the Appellate Tribunal was having the jurisdiction to entertain the appeals/references. The land was acquired long back. When allotment has been made to some other persons whose lands situated at Boytawala has been acquired, the claimants are also entitled for allotment of land at Vidhyadhar Nagar on the basis of equity, justice and good conscience. It is not open to the JDA to discriminate other claimants and to auction the land of Vidhyadhar Nagar. They are also ready to use the land which would be allotted to them for the purpose of group housing etc. It was also submitted by the learned counsel appearing on behalf of the claimants that enhanced compensation of Rs. 15,000/- per bigha has not been deposited, rather compensation @ Rs. 1500/- per bigha has been deposited in the civil court which has not been collected by the claimants. As such, they are entitled for benefit of policy decision taken by the State Government in the form of circular dated 13.12.2001. It was not open to the State Govt. to direct that the land situated at Lalchandpura and Anantpura should be allotted to them. The said policy decisions are enforceable and the State Government as well as the JDA cannot be permitted to depart from them. They are bound to allot 15% of developed land to the claimants as per circular dated 13.12.2001. Not only to the two incumbents of Boytawala, the land has been allotted in Vidhyadhar Nagar but three other persons whose lands were acquired in other areas have been allotted the land in Vidhyadhar Nagar, it would amount to hostile discrimination vis-a-vis to the claimants in case land is not ordered to be allotted to them in Vidhyadhar Nagar. Now prices of the lands have gone higher as such, on the basis of inflation in the prices of the land, claimants cannot be deprived of the allotment of 15% of the developed land.

11. It was also submitted that the instructions are not merely executive instructions, but the same have force of law as they have been issued under the provisions of Sections 54, 90 and 99 of the JDA Act. Consequently, they are binding. The circular dated 1.7.2005 is not applicable in the cases in which decisions were rendered earlier by the Appellate Tribunal as well as the Single Bench of this Court. It was also submitted that since the options were submitted before cut-off date fixed in the circular dated 13.9.2001 as such, decision taken by the State Government on 1.7.2005 would not be applicable. The respondents are bound by their pleadings and as per pleadings once they have pleaded that they are bound by the instructions issued on 1.7.2005, it does not lie in the mouth of the State government now to say that they are not bound by the circulars with respect to allotment of the land. The State Government is estopped to turn around and take a contrary stand as to enforceability of the circulars.

12. Mr. Garg, Senior Counsel has submitted that when the land has to be allotted, rate is irrelevant. It was also submitted that when the applications were filed rates were almost the same in Vidhyadhar Nagar and Boytawala viz. in Vidhyadhar Nagar @ Rs. 2100/- per sq. yard and in Boytawala @ Rs. 1650 per sq. yard. In 2001 appeal preferred by the JDA against enhancement of compensation was dismissed by this Court.

13. In the instant case, it is not in dispute that the land had been acquired way back in the year 1981 and award was also passed by the Land Acquisition Officer in 1983 and the reference court has enhanced the compensation from Rs. 1500/- per bigha to Rs. 15,000/- per bigha in the year 1994 against which appeals were preferred by the JDA, which have been dismissed by this Court.

14. The land of the claimants was acquired in Boytawala for establishing Field Firing Range. Earlier Field Firing Range was at Vidhyadhar Nagar, which was required by the State Government for the purpose of group housing scheme and this land in turn was given to the JDA. After enhancement of compensation, circular was issued by the State Government on 13.12.2001 pursuant to the meeting held at the level of Sub Committee of Minister level of Urban Development Ministry in which decision was taken on 18.10.2001 for allotment of 15% land in the cases wherein compensation has not been accepted by the claimants for any reason whatsoever and time was extended to submit the options. Accordingly, the options were submitted.

15. The action of the JDA of issuing advertisement for auctioning the plot in Vidhyadhar Nagar was questioned on the ground that the claimants have filed applications for allotment of land in Vidhyadhar Nagar.

16. When we consider the relevant provisions of the JDA Act, Section 83 of the JDA Act provides for constitution of the Tribunal. Section 83(7) provides any dispute arising out of any provisions of this Act may be referred to the Tribunal by the Authority. The decision of the Tribunal shall be final and binding on all the parties thereto. Section 83(8)(a) provides that any person aggrieved by an order or notice of the authority may file an appeal before the Tribunal within thirty days of the communication of such order or notice to him. Section 83(8)(b) provides that any person aggrieved by any threatened act or injury from the Authority affecting his rights may refer the dispute to the Tribunal within thirty days of the communication or knowledge of such threatened act or injury and the decision of the Tribunal shall be final. Section 90 which deals with the control by the State Government provides that the Authority shall exercise its powers and perform its duties under the JDA Act in accordance with the policy framed and the guidelines laid down from time to time by the State Government for development of the areas in the Jaipur Region. Section 90(2) provides that the Authority shall be bound to comply with such directions which may be issued from time to time, by the State Government for efficient administration of the JDA Act. Section 90(3) provides that if, in connection with exercise of the powers and the performance of the duties of the Authority under the JDA Act, any dispute arises between the

Authority and the State Government, the matter shall be decided by the State Government and its decision shall be final. Section 54 of the JDA Act deals with land to vest in the Authority and its disposal. Section 54(1) provides that notwithstanding any thing contained in the Rajasthan Land Revenue Act, 1956, the land as defined in Section 103 of that Act, excluding land referred to in sub-clause (ii) of clause (a) of the said section and nazul land placed at the disposal of a local authority u/s 102A of that Act in Jaipur Region shall, immediately after establishment of the Authority u/s 3 of the JDA Act, be deemed to have been placed at the disposal of and vested in the Authority which shall take over such land for and on behalf of the State Government and may use the same for the purpose of the JDA Act and may dispose of the same by way of allotment, regularization or auction subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe.

17. Section 83(7), 83(8), Section 90 and Section 54 are quoted below:-

83. Constitution of Tribunal

(1) ...

(2) ...

(3)

(4)

(5)

(6)

(7) Except as otherwise, provided, any dispute arising out of any provision of this Act may be referred to the Tribunal by the Authority. The decision of the Tribunal shall be final and binding on all the parties thereto.

(8) Except as otherwise provided-

(a) any person aggrieved by an order or notice of the Authority may file an appeal in the Tribunal within thirty days of the communication of such order or notice to him; and

(b) any person aggrieved by any threatened act or injury from the Authority affecting his rights may refer the dispute to the Tribunal within thirty days of the communication or knowledge of such threatened act or injury; and the decision of the Tribunal shall be final, 90. Control by State Government - (1) The Authority shall exercise its powers and perform its duties under this Act in accordance with the policy framed and the guide-lines laid down, from time to time by the State Government for development of the areas in the Jaipur Region.

(2) The Authority shall be bound to comply with such directions which may be issued, from time to time, by the State Government for efficient administration of

this Act.

(3) If, in connection with the exercise of the powers and the performance of the duties of the Authority under this Act, any dispute arises between the Authority and the State Govt., the matter shall be decided by the State Government and its decision shall be final.

54. Land to vest in the Authority and its disposal-(1) Notwithstanding any thing contained in the Rajasthan Land Revenue Act, 1956, the land as defined in Section 103 of that Act, excluding land referred to in sub-clause (ii) of clause (a) of the said section and nazul land placed at the disposal of a local authority u/s 102a of that Act in Jaipur Region shall, immediately after establishment of the Authority u/s 3 of the JDA Act, be deemed to have been placed at the disposal of and vested in the Authority which shall take over such land for and on behalf of the State Government and may use the same for the purpose of the JDA Act and may dispose of the same by way of allotment, regularization or auction subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe.

Provided that the Authority may dispose of any such land-

(a) without undertaking or carrying out any development thereon; or

(b) after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider expedient to impose for securing development according to plan.

(2) No development of any land shall be undertaken or carried out except by or under the control and supervision of the Authority.

(3) If any land vested in the Authority is required at any time by the Nagar Nigam, Jaipur for carrying out its functions, or by the State Government for any other purpose, the State Government may, by notification in the Official Gazette, place such land at the disposal of the Nagar Nigam, Jaipur or any Department of the State Government on such terms and conditions, as may be deemed fit.

(4) All land acquired by the Authority, or by the State Government and transferred to the Authority, shall be disposed of by the Authority in the same manner as may be prescribed for land in sub-section (1).

18. Section 99 of the JDA Act deals with bar of jurisdiction of civil court. Section 99(1) provides that no civil court shall take cognizance of any matter which is required to be or may be decided by the Authority, Executive Committee, Jaipur Development Commissioner, Functional Board, any body thereof, the tribunal or the State Govt., under the JDA Act. Section 99(2) provides that an order passed or a direction given by the State Govt. to the Authority or an order passed or notice issued by the Authority under this Act shall be final and shall not be questioned in any suit or other legal proceeding.

19. The question for consideration is what is the nature of decision taken by the

Department of Urban Development in the meeting dated 18.10.2001 pursuant to which the circular dated 13.12.2001 has been issued. Circular dated 13.12.2001 has not been issued in the name of the Governor as required under Article 166(1) of the Constitution of India. The decision dated 18.10.2001 has not ultimately culminated into an order contemplated under Article 166(1) which requires that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. Article 166(2) provides that 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. Article 162 which deals with the extent of executive power of a State provides that the executive power of the State shall extend to the matters with respect to which the Legislature of the State has power to make laws. However, when an order is issued by the State Government, the same is required to be in conformity with Article 166. Apart from that, it is apparent that the decision was not taken under the purview of the JDA Act. In aforesaid circular dated 13.12.2001, there is no reference of the JDA Act. Thus, the decision was taken at the Minister level with respect to the acquisition made under the Land Acquisition Act. In the instant case, the acquisition had been made under the Land Acquisition Act way back in the year 1981. It was made under the Rajasthan Land Acquisition Act, 1953. Thus, the said decision dated 13.12.2001 cannot be said to have been taken under the provisions of Sections 54, 83(7), 83(8), 90 and 99 of the JDA Act which have been relied upon.

20. No doubt about it that the land is required to be allotted by the JDA once it is decided to make allotment, but in the instant case, the circular in question was not having statutory force under the aforesaid provisions of Sections 54 or 90 of the JDA Act. Similar decision of Council of Ministers and the circular issued in the identical manner has come up for consideration before their Lordships of the Apex Court in JDA vs. Vijay Kumar Data (*supra*) in which the decision was taken by the Government of Rajasthan to allot to each awardee a plot measuring 250 square yards in other schemes of the JDA. Such plot be allotted at the rate of 25% of the prevalent residential reserved rate under the scheme. Pursuant thereto, circular was issued on 6.12.2001 which was also signed by the same Deputy Secretary Mr. H.S. Bhardwaj of urban Development Department, Aforesaid circular was also issued pursuant to the similar meeting at the Minister level. The Apex Court has held that the letter written by Deputy Secretary (Administration), Urban Development Department to the Secretary, Jaipur Development Authority, Jaipur cannot, by any stretch of imagination, be treated as a policy decision taken by the State Government. The Apex Court has also observed that no approval of the State Government culminating in issuance of a policy circular had been produced. The Apex Court further observed that it is trite to say that all executive actions of the Government of India and the State

Government are required to be taken in the name of the President or the Governor of the State concerned, as required by Articles 77(1) and 166(1). The Apex Court has referred to the decision in *State of Bihar and Others Vs. Kripalu Shankar and Others*, . The Apex Court has further observed that 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) of the Constitution of India. Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) relates to the making of the rules by the Governor for the more convenient transaction of the business of the Government. A study of this article, therefore, makes it clear that the nothings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2). It is thus clear that unless an order is expressed in the name of the President or the Governor and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government. A reading of letter dated 6.12.2001 shows that it was neither expressed in the name of the Governor nor it was authenticated 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 meaning of Article 166 of the Constitution of India. The Apex Court has further observed that even if the instructions contained in letter dated 6.12.2001 could be treated as policy decision of the Government, the High Court should have quashed the same because the said policy was clearly contrary to the law declared by this Court in *Radhey Shyam's* case and *Daulat Mal Jain's* case and was a crude attempt by the concerned political functionaries of the State to legalise what had already been declared illegal by this Court. The Apex Court in *Vijay Kumar Data* (supra) has laid down thus:

28. What is most significant is that till the disposal of the writ petitions by the learned Single Judge, the seeds of the so called policy decision, which was allegedly circulated vide letter dated 6.12.2001 had not even been sown. A reading of Annexure "C", which forms part of the written arguments filed by Shri M.L. Lahoty, learned counsel for respondent - *Vijay Kumar Data*, shows that the Committee of Ministers was formed vide order dated 30.10.2001 to suggest solution of the problems in the regularization of illegal constructions/encroachments of land under the Lal Kothi and Prithviraj Nagar Schemes in

relation to which several cases were pending in different Courts. The recommendations made by the Committee were given the colour of the Government's decision (though, no material has been placed on record to show that the recommendations made by the Committee were accepted by the State Government) as would appear from letter dated 6.12.2001 written by Deputy Secretary (Administration), Urban Development Department to the Secretary, Jaipur Development Authority, Jaipur, That letter reads as under:

GOVERNMENT OF RAJASTHAN

URBAN DEVELOPMENT DEPARTMENT

No. F.3(32)UDD/3/2001 Jaipur Dated: Dec., 2001

6 DEC 2001

The Secretary,

Jaipur Development Authority, Jaipur.

Subject: Regarding regularization of illegal construction/encroachment under Lal Kothi Scheme. Sir,

In the above context it is stated that under the Ministerial Secretariat Order No. F. 4(1) M.M./99 dated 30th October, 2001 for the solution of problems rising from complications of regularization of illegal construction/encroachments under Lal Kothi and Prithviraj Nagar Schemes, a sub committee was constituted. This Sub Committee comprised of Minister, Urban Development as convenor and Home Minister, Finance Minister, Minister for Industries and State Minister for minerals were nominated its members and Secretary Administration, Urban Development Department was nominated as member secretary of this sub committee. The Committee discussed in detail over various aspects of Lal Kothi Scheme and after taking into consideration the entire facts unanimously took the following decision:

1. As per the awards pronounced so far under the Lal Kothi Scheme, whatever amount is due for payment to the awardees, that may be paid to the concerned cultivators.
2. The awardees who besides compensation amount could not be allotted plot of land or after allotment were cancelled, may now be allotted per awardee a plot measuring 250 square yards in other schemes of J.D.A. Such plot be awarded at rate of 25 percent of the prevalent residential reserved rate under the scheme.
3. The developed and vacant plots be Regularized in the similar manner. These may be regularized at the following rates:
 - (A) up to 200 sq. yards 25 percent of the reserved residential rate.
 - (B) More than 200 sq. yards 35 percent of the reserved residential rate.
4. In the remaining cases of worth regularizing plots of Everest and Salt colonies

(which are about 80 plots) which could not be regularized inspite of decision of 1976, the rate of regularization is fixed at 25 percent of the reserved residential rate.

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

6. Those who fail to get regularisation within stipulated time limit, it is decided to afford them opportunity of depositing the amount by 31.3.2002 with 5 per cent, additional amount to obtain regularization, After expiry of the said date, it is decided that no regularization be done and after notice to such occupants over the plots their construction shall be demolished and such plot's shall then vest in the Authority and for the purpose of rehabilitation they shall be allotted as residential plots under other schemes of Jaipur Development Authority.

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

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

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

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

(b) In cases of acquired or under acquisition and/plot of land/constructed building which is under effect of any order or stay order from the court, in connection with them it is decided to follow action as under: where in connection with acquired or under acquisition land/plot of land/constructed building stay order/order for status quo is issued in favour of cultivator, it is decided to follow regularization proceeding in favour of such cultivator treating the land/plot of land/constructed building in his favour. If the order/stay order/order for status quo is in favour of J.D.A. then treating the concerned plot/land to be of J.D.A. it is decided to follow further taken and such plot/land is decided not to be regularized. On the contrary if such orders are in favour of other person and he is in possession, and he withdraws the case from the court, then regularization of that plot/land be done in his favour. In cases of plots where J.D.A. has gone in appeal and no decision is taken by the court in favour of the Authority then honouring the judgment of the court below, case shall be withdrawn by the J.D.A. the plot/land/constructed building is decided to be regularised in favour of

concerned person. In such cases the basis of regularization will be physical possession. In connection with regularization on above basis, the Samjhota Samiti will review each and every case and give its decision which shall be binding on J.D.A.

10. In connection with land under acquisition, land of 9 bigha 6 biswa of Pratap Nursery, 5 bigha of Anand Nursery, 2 bigha 12 biswa of Kailashwati, Maharchand & Sons is decided not to acquire. Simultaneously it is decided to regularize on payment of 25 percent of reserved residential rate of these land.

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

Yours faithfully,

Sd/-6.12.01

(H.S. Bhardwaj)

Dy. Secretary Administration

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

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

32. In our opinion, the High Court had undertaken a wholly unwarranted and unjustified exercise for putting the seal of approval on the so called policy contained in letter dated 6.12.2001 and, that too, by ignoring the law laid down by this Court in Radhey Shyam's case and Daulat Mal Jain's case. What the High Court has done is to legitimised the transactions, which were declared illegal by

this Court and this was clearly impermissible. The High Court's understanding of the so called policy framed by the Government was clearly erroneous. The letter written by Deputy Secretary (Administration), Urban Development Department to the Secretary, Jaipur Development Authority, Jaipur cannot, by any stretch of imagination, be treated as a policy decision taken by the State Government. No document was produced before the High Court and none has been produced before us to show that the recommendations made by the Committee of Ministers had been approved by the State Government culminating in issuance of a policy circular. It is trite to say that all executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the State concerned, as the case may be (Articles 77(1) and 166(1)). Orders and other instruments made and executed in the name of the President or the Governor of a State, as the case may be, are required to be authenticated in such manner as may be specified in rules to be made by the President or the Governor, as the case may be (Articles 77(2) and 166(2)). Article 77(3) lays down that:

The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

32.1 Likewise, Article 166(3) lays down that:

The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

32.2: Article 166 was interpreted in *State of Bihar and Others Vs. Kripalu Shankar and Others*, and it was observed:

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

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

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

(3) The Governor shall make rules for the more convenient transaction of the

business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

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

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

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

21. In Jaipur Development Authority Vs. Radhey Shyam and Others, , the Apex Court considered the question of allotment of land by the Land Acquisition Officer and laid down that the Land Acquisition Officer has no jurisdiction or power to allot land in lieu of compensation, the decree even, if any, u/s 18 to the extent of any recognition of the directions in the award for the allotment of the land given u/s 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly, the execution proceedings directing delivery of possession of the land as contained in the award is, invalid,

void and inexecutable. In *Radhey Shyam* (supra), the Apex Court has laid down thus:-

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 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 u/s 31(3), that too only to a person having limited interest. If the contention of the learned counsel for the respondents, that while awarding compensation the Collector (Land Acquisition Officer) has a higher power than the limited power given under subsection (3) of Section 31, it would run counter to the scheme envisaged thereunder and would result in defeating the public purpose. The problem could be looked at from a different angle. u/s 4(1), the appropriate Government notifies a particular land needed for public purpose. On publication of the declaration u/s 6, the extent of the land with specified demarcation gets crystallized as the land needed for a public purpose. If the enquiry u/s 5-A was dispensed with, exercising the power u/s 17(1), the Collector on issuance of notice under Sections 17, 9 and 10 is entitled to take possession of the acquired land for use of public purpose. Even otherwise on making the award and offering to pay compensation he is empowered u/s 16 to take possession of the land. Such land vests in the Government free from all encumbrances. The only power for the Government u/s 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 exercised would be self-defeating and subversive to public purpose.

8. The question then is, whether it is open to the appellant to raise the objections on the execution side as to allotment of acquired land under the award. We have already said that what is executable is only an award u/s 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 u/s 11 or those referred to and determined u/s 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, u/s 18 to the extent of any recognition of the directions in the award for the allotment of the land given u/s 11 is a nullity. It is open to the appellant to raise the invalidity, nullity of the decree in execution in that behalf. Accordingly, we hold that the execution proceedings directing delivery of possession of the land as contained in the award is, invalid, void and inexecutable. Accordingly it is set aside.

22. Question also came up for consideration with respect to Lal Kothi Area of Jaipur in Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, . The Apex Court has held that once the notification of acquisition of land issued u/s 4, declaration made u/s 6 and possession of the land taken u/s 16, the preexisting right, title and interest of the landowner cease to exist and the same vest in the State free from all encumbrances. Thereafter, allotment of part of the land to the owner, apart from award of compensation is void ab initio. It is not saved by Section 31(3) of the Act or Rules 31 & 36 of the Rules, The Apex Court further laid down that the public policy must be for public good and welfare. It cannot be a camouflage for abuse or misuse of power. Court has to ascertain whether the policy of the Government was a means to fritter away the public property for personal gains. The Apex Court has observed that where land acquired for public purpose under the Land Acquisition Act and the property vesting in the State free from all encumbrances, Government policy to allot a part of the same land to the owner apart from award of compensation would be against public policy. The Apex Court has also laid down that if some persons derive benefit illegally, others similarly circumstanced cannot claim the same benefit on the ground of equality as that would amount to perpetuating the illegality through judicial process which Court cannot do. The Apex Court has further held that the Governor runs the Executive Government of the State with the aid and advice of the Chief Minister and the Council of Ministers which exercise the powers and performs its duties by the individual Minister as public officers with the assistance of the bureaucracy working in various departments and corporate sectors etc. Though they are expressed in the name of the Governor, each Minister is personally and collectively responsible for the actions, acts and policies. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. The Council of Ministers are jointly and severally responsible to the legislature. The Minister holds the public office though he gets constitutional status and performs functions under the Constitution, law or executive policy. The acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the authority concerned by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse the office. The Government acts through its bureaucrats, who shape its social, economic and administrative policies to further the social stability and progress socially economically and politically. Actions of the Government should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individual can have and shape the aims to further the social, economic and political goals.

The Apex Court has laid down that the limitations of public policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification. The Apex Court has further laid down that the public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. It is not open to fritter away the public property for personal gain or to misuse public power. The acquired land should be used only for public purpose declared under Sec. 6(1) of the Act or any other public purpose, and under no circumstances, for any private purpose. The Apex Court in *Daulat Mal Jain* (supra) has laid down thus:

17. The Court, therefore, would be required to consider whether the policy sought to be relied on and directed by the Minister was to further public good or was a means to fritter away the public property for personal gain or to misuse public power. The object of publication of the notification u/s 4(1) in the Official Gazette is to give notice to the owner that the land is needed for public purpose and he is prevented to create any sort of encumbrance on the land with effect from that date etc. The land, if ultimately acquired, vests in the State u/s 16 or 17(2) of the Act free from all encumbrances. The public policy of the Government should only be to further the public purpose and issue of declaration is the conclusive proof of public purpose u/s 6(1) or any other similar public purpose. Limited public purpose given u/s 31(3), by operation of which the LAO/Collector is empowered, after the sanction is accorded by the appropriate Government, with the liberation of non obstante clause, is to allot any other land, in lieu of money compensation only, to such persons having a limited interest in such land, either by the grant of some other lands in exchange or remission of land revenue on other lands held under the same title, or in such other way as may be equitable "having regard to the interest" of the persons having limited interest in the land.

18. in other words, the public policy under the Act is that the acquired land should be used only for public purpose declared u/s 6(1) of the Act or any other public purpose and, under no circumstances, for any private purpose. The limited relaxation of public power entrusted with the LAO to allot any other land, if available to the owner with limited interest or remission of land revenue when limited interest is acquired for public purpose.

23. In *Umrao Singh and Others Vs. State of M.P. and Others*, , the question came up for consideration before the Apex Court with respect to circular issued for allotment of beed land (grassland) by way of compensation to the Ex-Zamindars which was already in their possession. The Apex Court considered the matter and held that circular dated 31.10.1956 was withdrawn by subsequent circular dated 23.6.1975, which was based on several High Court judgments holding that the circular dated 31.10.1956 creates only a concession and not a right. The Apex Court has held that the High Court decisions could not be ignored that the 1956 circular being contrary to the Act had no binding force. Allotment of land to the

appellants could not therefore, be justified on the basis of the 1956 circular which was mere executive instruction. The Apex Court has laid down thus:-

7. We also find from a perusal of the impugned judgment that the High Court has relied upon several other judgments of the Madhya Pradesh High Court holding that the aforesaid executive instructions of 1956 created only a concession in favour of the landowner and not a right in them and as such they could not claim entitlement as a matter of right. Be that as it may, the fact remains that in the present case the allotment had, in fact, been made by the Tehsildar way back in the year 1960 and had been set aside by the Collector though the land admittedly continued to remain in possession of the erstwhile owner.

8. It appears that in the meanwhile and as a consequence of the aforementioned judgments, the Circular of 1975 was issued withdrawing the Circular of 31-10-1956 and for closing all pending cases. It is equally true as on the date of the issuance of the aforesaid circular, the Collector had already declined to confirm the allotment made to the appellants and the matter was pending before the Commissioner. The learned counsel for the appellants has, however, argued that as the Circular of 1975 had never been produced on record, it could not, therefore, be made applicable to the present proceedings. We find that the decisions rendered by three Division Benches of the Madhya Pradesh High Court holding that the executive instructions of 1956 had not binding force and being contrary to the provisions of the Madhya Bharat Zamindari Abolition Act, 1951 could not be applied to justify an allotment to an erstwhile landowner, cannot be ignored. We have, therefore, no option but to dismiss the appeal with no order as to costs.

24. In the aforesaid backdrop, we are of the opinion that it was not open to the Appellate Tribunal to direct the allotment of the land in Vidhyadhar Nagar. The circular of the State Government to allot the land in lieu of acquisition was not issued under the JDA Act. The land had been acquired in 1981 under the provisions of the Rajasthan Land Acquisition Act which also does not contain any provision for allotment of land as ordered. Even otherwise, the Deputy Secretary of the State Government has issued the instruction dated 1.7.2005 for allotment of the land in Lalchandpura and Anantpura, Tehsil Chomu, District Jaipur, Though this was again not an order in conformity with Article 166. Firstly, it was not open for the Appellate Tribunal to decide where land is to be allotted. Even if the instruction dated 1.7.2005 are held to be enforceable, land could not have been ordered to be allotted in the cases which were subsequent thereto in Vidhyadhar Nagar, Jaipur. Thus, the Appellate Tribunal has exceeded its jurisdiction in these cases to take upon itself to decide where the land has to be allotted. There are various considerations which are required to be taken into account in case land is to be allotted by the authority concerned. Even in the cases in which orders were passed earlier to 1.7.2005, communication of Deputy Secretary of the Government was not in conformity with Article 166. It was not enforceable and it was not under the provisions of the JDA Act. It was not open to the JDA

Appellate Tribunal to allot the land in Vidhyadhar Nagar. The land was acquired under the Rajasthan Land Acquisition Act, not under the JDA Act, thus the Appellate Tribunal had no power to direct allotment of land.

25. Merely by the fact that the land had been allotted to two of the incumbents of Boytawala in Vidhyadhar Nagar, it would not have clothed any right to fritter away rest of the valuable land which is public largesse considering the difference in rate of land acquired and ordered to be allotted in Vidhyadhar Nagar. In one out of the instant cases, 37 bighas of land had been acquired and the enhanced compensation awardable in the reference case comes approximately to Rs. 5,55,000/- whereas the 15% land which has been ordered to be allotted, its value is in per square yard as per DLC rate quoted above would come to more than "Rs. 16 crores". The land value is not at all comparable. The orders passed by the Appellate Tribunal not only smells of arbitrariness but also without jurisdiction. We smell rat into the whole episode. Such a valuable land at Vidhyadhar Nagar could not have been ordered to be allotted at all. It was not open to the Appellate Tribunal to take upon itself to determine where the land has to be allotted. Even if allotment of 15% land is permissible, it would amount to frittering away valuable property and would amount to unjust enrichment of chosen few. By no stretch of any equity, justice or good conscience so much valuable land which has aforesaid price per square yard can be permitted to be gifted away. The Government and the JDA are mere custodian of public property to safeguard it. They cannot be permitted to act arbitrarily. They are accountable in such actions.

26. The land could not have been ordered to be allotted at Vidhyadhar Nagar for yet another reason, as no land is available. In view of the aforesaid detailed information furnished by the JDA quoted in tab(sic) form, it is apparent that only a plot of 345 sq. metres bearing no. 6/81 at Serial No. 18 is available. No other land is available for allotment to individuals. The land at Vidhyadhar Nagar was obtained by the Government for the scheme of JDA mainly for providing group housing. Land which has been left is mainly reserved for group housing and for other purposes mentioned in the aforesaid chart, it could not have been ordered to be allotted to the claimants. Thus, we find the order of the JDA Appellate Tribunal to be misadventurous. Such an order should not have been passed as it was the basic stand of the JDA that the land for allotment is not available in Vidhyadhar Nagar which has been ignored. It has been held by the Apex Court in Daulat Mal Jain (supra) that if some persons derive benefit illegally, others similar circumstanced cannot claim the same benefit on the ground of equality as that would amount to perpetuating the illegality through judicial process which Court cannot do.

27. The concept under Article 14 is of positive equality, which cannot be enforced in negative manner. The Apex Court also laid down in Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, . thus:-

9. Apart from that even if it is assumed that concession was shown to such

stallholders by the N.D.M.C. the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been discrimination. None of the 98 stall-holders were impleaded as parties to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuian Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution.

28. In *State of Bihar Vs. Upendra Narayan Singh and Others*, considering "spoils system", the Apex Court has laid down thus:-

34. The phrase "spoils system" was derived from the statement of Senator W.L. Marcy of New York, in a speech in the Senate in 1832. Speaking of the New York politicians, he said: "They see nothing wrong in the rule that to the victor belong the spoils of the enemy." By 1840, the spoils system was widely used in local, State and Federal Governments. As a result of this, America fell far behind other nations in civil service standards of ability and rectitude.

29. In *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, the Apex Court has laid down thus:-

71. Article 14 of the Constitution declares that:

14. Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities.....

30. In *State of Maharashtra Vs. Digambar*, , the Apex Court considered the question of filing appeals in some cases for redressal and tolerating decision in other cases cannot be urged as estoppel to challenge other illegal orders. In view of decision of the Apex Court, the submission that in two other cases land was allotted in Vidhyadhar Nagar and the JDA has permitted the order of the Tribunal to attain finality, thus the JDA could not have preferred writ petition, cannot be accepted. The Apex Court in dealing with similar submission has laid down thus:-

16. We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other SLPs filed in similar matters. Sometimes, as it was stated on behalf of the State, the state Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also not possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstances which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardize the interest of the State or public interest.

31. In *Surendra Nath Pandey & Ors. vs. Uttar Pradesh Cooperative Bank Limited & Anr.*, (2010) 12 SCC 400, the Apex Court held that existence of legal right is must otherwise relief cannot be given on the ground that it has been wrongly given to others. It has been laid down by the Apex Court thus:-

11. If the appellants do not have a legal right to seek the benefit of pay scales before their regularisation, the question is whether they are entitled to such a relief on the ground that such a relief has been extended to some similarly placed employees in pursuance of the decision in *Jai Kishan*. This question is answered by this Court in *Col. B.J. Akkara (Retd.) vs. Govt. of India* while dealing with the similar contention:

23. ... It is contended that the respondents having accepted and implemented the decision of the Delhi High Court in the case of civilian Medical Officers, cannot discriminate against the Defence Service Medical Officers placed in identical position and, therefore, the benefit given to the Civilian Medical Officer in pursuance of the decision of the Delhi High Court should also be extended to them. The petitioners rely on the broad principles underlying estoppel by judgment, legitimate expectation, and fairness in action in support of their contention.

24. The respondents --- contended that the fact that a decision of the High court had been accepted or implemented in the case of some persons, will not come in the way of the Union of India resisting similar petitions filed by others in public interest.

12. A similar contention was considered this Court in *State of Maharashtra Digambar*. This Court held:

16....Sometime, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter(s) where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.

The said observations apply to this case.

32. In *Jaipur Development Authority vs. Mahesh Sharma & Anr.*, (2010) 9 SCC 782, the Apex Court considered the plea of discrimination in case of wrong

orders and has laid down thus:

48. Moreover, this Court in *Yadu Nandan Garg vs. State of Rajasthan* on a case dealing with the lapse on the part of the Land Acquisition Officer in wrongly granting a benefit to one party has held that the benefit thus wrongly granted cannot entitle others to get the same or to press claim to invidious discrimination.

Thus, it is settled proposition of law that if any benefit has been granted to some incumbents illegally, the same cannot be a ground for similar treatment to others, which is not admissible in accordance with law as that would amount to perpetuating the illegality through judicial process which Courts cannot do. Writs cannot be issued for perpetuating illegality or a wrong.

33. Mr. Kamalakar Sharma, Senior Advocate appearing on behalf of the respondents has relied upon decision rendered by the Division Bench of this Court in *Rajasthan Polo Club vs. State of Rajasthan & Ors.* RLW 2001 (4) Raj. 424 in which Division Bench of this Court has observed that the Government under the scheme of the Constitution, has the executive authority, to enter into negotiations and settlements, as held by the Apex Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, Reliance has also been placed on Para 92 to 96 which are quoted below:-

(92) In the case of *L.G. Chaudhary (supra)*, Hon"ble the Supreme Court has held as follows:-

In the absence of a formal order drawn up in terms of Article 166 of the Constitution, it was certainly open to the appellant to prove by evidence allunde that he had been appointed on permanent and substantive basis. In *R. Chitralekha and Another Vs. State of Mysore and Others*, it was pointed out that the provisions of Article 166 of the Constitution were only directory and not mandatory and, if they were not complied with it could be established as a question of fact that the order was issued by the State Government.

(93) In case *P. Joseph John (supra)*, it was held by the Supreme Court as under:-

Clauses (1) and (2) of Art. 166 are directory only and noncompliance with them does not result in the order being invalid, and in order to determine whether there is compliance with these provisions all that is necessary to be seen is whether there has been substantial compliance with those requirements. Held that the notice signed by the Chief Secretary of the State and expressed to be on behalf of the Government and giving opportunity to the petitioner to show cause against the action proposed to be taken against him was in substantial compliance with the provisions of the article.

(94) In the case of *M.V. Srinivasa (supra)*, Hon"ble the Supreme Court held as under:-

The power to grant any special allowance and amenities to those employees who serve the Government and are posted in places with unfavourable conditions is

within the discretion of the Government. Considering the nature of duties discharged by those who have been posted with a project area as well as non availability of several basic amenities of life, the Government would be well within its power to grant some incentives like project allowance and other amenities like free quarters, free electricity and free water supply. But such incentives and amenities cannot be claimed as of right by all the employees who might have been employed in the project but are stationed outside the project area and are serving Taluk Headquarter or elsewhere. It is the place of work which entitles group of employees to get incentives and amenities in question and not the employment in the project itself. There is no discrimination in the matter of grant of project allowance and amenities to those employees who are posted in the project site itself.

After examining the original file, the State Administrative Tribunal found that the decision relating to withdrawal of the amenities was taken by the Minister of the Department concerned who was empowered under the Rules of business to pass such order. Therefore, there is no force in the contention that the impugned letter dated 20.8.1987, not being a letter in terms of Article 166 of the Constitution, had not force in the eye of law.

(95) The case of Dr. Yashwant Trimbak (supra) related to post-retirement departmental enquiry. The order of such enquiry was expressed in the name of the Governor and duly authenticated by the Officer authorized under the authentication rules. The Supreme Court held that such an order is not subject to judicial review, on the ground of not having been executed by the Governor. The Supreme Court further held that the order which is expressed in the name of the Governor and is duly authenticated cannot be questioned in any court on the ground that it not made or executed by the Governor. The signature of the Secretary or Under Secretary concerned, who is authorized under the authentication rules, to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the Minister. Therefore, the Supreme Court held that the Administrative Tribunal was wholly incompetent to examine the legality of the impugned order.

(96) In the case of Ishwarlal Girdharilal Joshi (supra), it was held by the Supreme Court as follows:-

.....the business of Government is regulated by the Rules of Business made under Article 166 of the Constitution. Rule 13 of the Rules of Business (Govt. of Gujarat) specifically places all Secretaries on equality for authentication orders and instruments of Government. Thus, the Under Secretary to the State Government was competent to sign the notification u/s 6 as a Secretary. Further, the Under Secretary would undoubtedly be competent as an officer "duly authorized" by virtue of Rule 13 of the Rules of Business (Govt. of Gujarat) and that is all that Section 6 requires. No further special authentication under the Act was necessary.

34. In the instant case, we find that considering the nature of order which has been issued it was required to be in conformity with Article 166 and the decision of the Apex Court in *Vijay Kumar Data (supra)* squarely covers aspects on four corners of this case. The discussion of the Division Bench of this Court is in different context wherein it was open to issue executive instructions. Even if we assume that the policy decisions in question are enforceable, in our opinion, in the instant case, it was not open to the Appellate Tribunal to direct allotment of land in Vidhyadhar Nagar, Jaipur. The value of land at Vidhyadhar Nagar is highly disproportionate. Thus, by no stretch of equitable rights, the land at Vidhyadhar Nagar could have been ordered to be allotted to the claimants. It is not for the courts to decide at what place the land is to be allotted while making judicial review. The land of equal value of compensation payable alongwith interest could have been ordered to be allotted, if at all such an act is permissible. Moreover, when compensation has been enhanced by the reference court at the instance of claimants which has been approved by this Court and has become final, the exercise undertaken by the JDA Appellate Tribunal was unwarranted.

35. It was also submitted on behalf of the claimants that even if the order is not authenticated under Article 166 of the Constitution of India, it is not open to the Government to rescile therefrom. In this connection, reliance has been placed on the decision of the Apex Court in *State of Bihar & Ors. vs. Bihar M.S.E.S.K.K. Mahasangh & Ors.* AIR 2005 SC 1605. In the instant case, pivotal question is whether any land in Vidhyadhar Nagar could have been ordered to be allotted by the Appellate Tribunal. Our answer is in negative.

36. Reliance has also been placed on decision rendered by the Division Bench of Patna High Court in *Gopal Prasad & Ors. vs. State of Bihar & ors.*, 1993 LAB i.e. 1211. wherein it has been held that it would not be proper and justiciable to unsettle the things after so many years. In the instant case, the allotment has not been made so far as such it is not question of unsettlement. In this case, the land was acquired in 1981 and enhanced compensation has been upheld by this Court. But in the case in hand, there is different expanse of facts.

37. Reliance has also been placed on the decisions rendered by the Apex Court in *Virender S. Hooda and Others Vs. State of Haryana and Another*, : *Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another*, : *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, . *Raja Shri Shivraj Pratishthan vs. State of Maharashtra & Ors.* (2008) 10 SCC 799: *M/s. Real Food Products Ltd. and others, etc. etc., Vs. Andhra Pradesh State Electricity Board and others*, : and *Kusumam Hotels (P) Ltd. Vs. Kerala State Electricity Board and Others*, with respect to the policy to be binding if not contrary to the rules, and policy is binding on Government till it is altered. It was submitted that the policy is binding on the Government unless contrary to the rules and the policy of the Government binding on the Board.

38. In *Virendra S. Hooda vs. State of Haryana (supra)*, the Apex Court has held that when a policy has been declared by the State as to the manner of filling up

the post and that policy is declared in terms of rules and instructions issued to the Public Service Commission from time to time, and so long as these instructions are not contrary to the rules, the same are required to be followed.

39. In *Amrit Banaspati Co. Ltd. vs. State of Punjab* (supra), the Apex court has held that the Government is bound by its representation/promise. Change in policy, in absence of any official announcement or intimation in that regard, cannot be claimed by the Government so as to absolve it from its binding obligation.

40. In *Home Secretary, U.T. of Chandigarh vs. Darshjit Singh Grewal* (supra), the Apex Court has held that the policy guidelines are binding till altered. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it.

41. In *Raja Shri Shivraji Pratishthan VS. State of Maharashtra* (supra), the Apex Court has held that once the Government laid down the policy for selection, the same was binding on all its functionaries including the Director, Social Welfare and the applications of the appellants could not have been indirectly rejected without any rhyme and reason.

42. In *Real Food Products Ltd. vs. A.P. State Electricity Board* (supra), the Apex Court has held that the State Government on a question of policy is in the nature of a direction to be followed by the Board in the area of the policy to which it relates. It has further been held that where the direction of the State Government, as in the present case, was to fix a concessional tariff for agricultural pump-set at a flat rate per H.P., it does relate to a question of policy which the Board must follow.

43. In *Kusumam Hotels Private Limited vs. Kerala State Electricity Board* (supra), the Apex Court has held that any policy decision adopted by the State would not be binding on the Board, save and except provided for in the Act. The Board being an independent entity, the duties and functions of the Board vis-a-vis the State are enumerated in the Act. The Board, however, would be bound by any direction issued by the State Government on the question of policy.

44. The instant case is quite different. Whether executive instructions in question are enforceable and are in conformity of Article 166 of the Constitution. Even if enforceable, it was not open to the Appellate Tribunal to direct allotment of land contrary to order dated 1.7.2005. The Appellate Tribunal could not have ordered to allot the land at Vidhyadhar Nagar that too when the land was not available in Vidhyadhar Nagar. Besides in view of the decision of the Apex Court in *Vijay Data* (supra), we find decision of the Appellate Tribunal to be *ex facie* illegal.

45. Reliance has also been placed on the decision of the Apex court in *State of Haryana & Ors. vs. Gurcharan Singh & Ors.*, (2004) 12 SCC 540 wherein it has

been held that discrimination cannot be made between similarly situated persons with respect to policy decision. There was no policy in the instant case for allotment of land in Vidhyadhar Nagar and having considered the nature of decision, it not being in conformity with Article 166(1), we are of the opinion that the Appellate Tribunal erred in directing the allotment of land.

46. We are of the opinion that it was not open to the JDA Appellate Tribunal to direct allotment of land in view of the aspect that it is not for the Courts/Tribunals to choose the places, secondly instructions on the basis of which allotment is sought are mere executive one. They have not been issued in compliance of Article 166 of the Constitution of India. Thirdly, at Vidhyadhar Nagar land is not available for allotment. The order issued by the JDA Tribunal to allot land in Vidhyadhar Nagar or nearby area except Lalchandpura and Anantpura is also without jurisdiction. The value of land is extremely high in Vidhyadhar Nagar. Valuable property cannot be permitted to be frittered away. Apart from that, the awards have been passed. Enhancement of compensation has been made by reference court @ Rs. 15,000/- per bigha. It is open to the claimants to obtain compensation which has also been affirmed by this Court. The Rajasthan Land Acquisition Act, 1953 does not provide for allotment of land. It provides for compensation which has been determined. Consequently, the intra court appeals are allowed. Orders passed by the JDA Appellate Tribunal as well the orders passed by the Single Bench are hereby set aside. Parties to bear their own costs.