

(2014) 02 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petitions Nos. 6965, 6966, 6967, 6968, 6970, 6971, 6972, 6973, 6974/2009 and 9350/2011

Mohanlal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4 (1), 4(1)

Citation : (2015) 1 CDR 231 : (2015) 3 WLN 304

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : J.P. Joshi, Senior Advocate, Siddharth Joshi and Vikas Balia, Advocates for the Appellant; T.S. Champawat and Paramveer Singh Champawat, Advocates for the Respondent

Judgement

Pratap Krishna Lohra, J.—This batch of ten writ petitions is founded on analogous facts, resembling afflictions of all the petitioners, and therefore they are heard together and disposed of by this common order. For convenience, facts as narrated in S.B. Civil Writ Petition No. 6965 of 2009 are arranged in the chronological order. As per version of the petitioner, at the threshold, Municipal Council, Pali allotted a plot of land to the petitioner bearing No. 54 for construction of shop in Tilaknagar Grain Market Scheme on 9th October 1971, and pursuant thereto registered sale-deed was executed in his favour. In the lease instrument, purpose of allotment is mentioned with clarity and precision i.e. "for commercial purposes" without any other stipulation. After the allotment of the land, which was made in Dhanmandi Yojna, the project itself was abandoned without assigning any reason by order dated 4th of July 1980 and the allotments of the petitioner and other incumbents were rescinded. Against the order of cancellation of allotment, representation was submitted by the petitioner and other allottees before the State Government and the same was accepted by it vide order dated 2nd of December 1980 resulting in revocation of the cancellation of allotment order. In the year 1989, once again respondents issued

order dated 10th of April 1989 canceling the allotment of plots by citing reason that allotment was contrary to the Rules of 1974. The petitioner has categorically averred that the said cancellation order was issued without application of mind for the simple reason that allotment was anterior to promulgation of the Rules of 1974.

2. Being disgruntled from the cancellation order dated 10th of April 1989, the petitioner as well as the other allottees preferred writ petitions before this Court and one such writ petition bearing Civil Writ Petition No. 1993 of 1989 (Sukan Raj v. State of Rajasthan & Ors.), was allowed and vide judgment dated 9th of September 1997 the cancellation order dated 10th of April 1989 was set at naught being violative of principles of natural justice. The Court, while setting aside the order of cancellation has also left it open for the State Government to pass appropriate order after affording due opportunity of hearing to the petitioner. Aggrieved from the verdict of the learned Single Judge, Municipal Council preferred appeal before the Division Bench and the said appeal was also dismissed by the Division Bench of this Court. After dismissal of the Special Appeal, the Local Self Department, Government of Rajasthan, issued public notice calling upon the allottees of the land to appear before the Secretary to the Government for hearing on the question of cancellation of plot of land made in their favour. In response to the notice, one of the allottee appeared before the Secretary concerned on 15th January 2002 but no other allottee appeared. Be that as it may, the State Government once again took a decision to the detriment of petitioner and other allottees and cancelled the allotment by holding that prima facie under the Rules of 1974 the land could be sold only by auction, but in the present case the land has not been sold by auction. That apart, the other reasons, assigned for cancellation were that Agriculture Produce Market has already been established in Pali, the utility and continuity of the Tilaknagar Grain Market Scheme has gone commercially redundant.

3. The order of cancellation issued by the State Government on 27th February 2002 was once again subjected to judicial scrutiny before this Court in the form of several writ petitions. The writ petitions preferred by the respective allottees were once again allowed by the learned Single Judge on the same ground that the cancellation order is bereft of the requisite reasons and before issuance of the order fair opportunity of hearing was not afforded to the allottees. While passing the said order, learned Single Judge directed the Government to take action in the matter as early as possible and to pass appropriate order after hearing both the parties.

4. The aforesaid judgment of the learned Single Judge was called in question at the behest of petitioners as well as Municipal Council, Pali before the Division Bench of this Court. The Division Bench, after hearing the rival parties decided batch of cross special appeals by its judgment dated 15.11.2007. The Division Bench, in its verdict, allowed the appeals preferred by the petitioners/allottees and dismissed the appeals preferred by the Municipal Council, Pali. While

deciding the special appeals, the Division Bench made it clear that title of the plot in question vests in the petitioner and it is now not open for the State Government to initiate any proceeding for cancellation of allotment.

5. After judgment of the Division Bench of this Court, the petitioner submitted an application for grant of permission to raise construction on the said plot of land in terms of Section 170 of the Rajasthan Municipalities Act 1959 (for short, "Act of 1959"). The requisite application in this behalf was submitted by the petitioner on 14th of March 2008. As per the petitioner, the application dated 14.03.2008 was not processed by the Municipal Council in accordance with the provisions of the Act of 1959 and instead the Commissioner, Municipal Council, Pali issued a public notice on 15.07.2008, which was published in daily newspaper Rajasthan Patrika, stating therein that Municipal Council, Pali propose to allot residential plots in lieu of plots allotted at Tilaknagar Dhanmandi Scheme for developing housing colony. The allottees were called upon to exercise their option within 15 days. Be that as it may, the fact remains that the application submitted by the petitioner for seeking permission to raise construction on the land in question remained pending consideration as no decision was taken. It was in these circumstances, the petitioner issued a reminder in terms of sub-sec. (8) of Section 170 of the Act of 1959 on 20th of March 2009. Acknowledging the reminder of the petitioner, the Commissioner, Municipal Council sent a communication dated 1st of April 2009 that the Municipal Council can look into the chain of title of the petitioner and the petitioner is required to produce necessary certificate to the effect that the land in question shall be used strictly in accordance with the terms and conditions mentioned in the lease issued to him. The communication/notice dated 1st of April 2009 was replied by the petitioner and alongwith reply copies of the decision of learned Single Judge of this Court and Division Bench of this Court dated 15.11.2007 were enclosed. While referring to the Division Bench judgment, the petitioner has pointed out that Division Bench while confirming the title of the petitioner on the land in question has restrained the respondents from initiating any action for cancellation of the allotment. The petitioner has also clarified that as the application for permission to raise construction submitted by the petitioner under Section 170 of the Act of 1959 has not been decided in terms of sub-sec. (1) of Section 170 of the Act of 1959, the petitioner will proceed to raise construction after expiry of 15 days from the date of receipt of this reply. The, requisite reply too in this behalf was submitted by the petitioner on 20th of April 2009. Taking note of the reply submitted by the petitioner, the Commissioner, Municipal Council, Pali, vide its communication dated 29th of April 2009, called upon the petitioner to produce satisfactory proof to the effect that he is dealing in business of grain and in absence of such satisfactory proof in this regard, it may not be possible for the Municipal Council to consider the application of the petitioner for grant of permission to raise construction.

6. Acknowledging the receipt of communication dated 29th of April 2009, the petitioner submitted its reply on 26th of May 2009. Highlighting the observations

made by the Division Bench, the petitioner has pleaded that after abandonment of the scheme of setting up a Grain Market, the petitioner is well within his rights to use the land for commercial purposes. Laying emphasis on the terms of the lease deed, the petitioner has submitted in the reply that the restriction of allottees on the user of land is confined for commercial purposes with a specific plea that there is no stipulation in the lease deed that land is required to be used for Grain Market only. The petitioner has also questioned the authority of the Commissioner, Municipal Council, Pali for issuance of the said communication on the anvil that it is contemptuous and in clear violation of judgment rendered by Division Bench of this Court.

7. The facts pleaded in the writ petition further reflect that second respondent instead of complying with the directions contained in the Division Bench judgment resorted to yet another device to thwart/prolong the application of the petitioner for seeking permission to raise construction. The respondent in this behalf issued a public notice dated 8th June 2009, which was published in daily newspaper Rajasthan Patrika on 11th June 2009 whereby the petitioner and other allottees of Tilaknagar Dhanmandi Yojna, who applied for seeking permission to raise construction, were intimated that they should produce necessary documents in relation to their title of land in question with a further rider that all of them should also produce necessary certificate to the effect that land shall be used only for the purposes of business of grains. A word of caution was also incorporated in the public notice that in absence of these documents it will not be possible for the Municipal Council, Pali to consider the application of the petitioner and other allottees for permission in terms of sub-sec. (8) of Section 170 of the Act of 1959. In the public notice, a fortnight's time was allowed to the petitioner and other allottees for doing needful with a clear indication that non-compliance shall entail cancellation of the application for permission to raise construction. It was also mentioned in the public notice that if any incumbent start raising construction on the basis of deemed permission, necessary action shall be taken against him in accordance with the provisions of the Act of 1959.

8. After publication of the public notice, petitioner and other allottees contacted the Commissioner, Municipal Council and apprised him about the Division Bench decision of this Court wherein title of the petitioner and other allottees were declared by the Court and this issue was set at rest. The petitioner and other allottees also invited the attention of the Commissioner, Municipal Council, Pali that in terms of the judgment of Division Bench there is no restriction on the petitioner to use the land in question for any specific commercial purpose. Despite persuasion by the petitioner and other allottees, the second respondent refused to proceed according to the verdict of the Division Bench and while showing its stubborn attitude, pressurized the petitioner and other allottees to abide by the terms and conditions incorporated in the public notice for processing their application for grant of permission to raise construction. The petitioner has placed heavy reliance on the Division Bench judgment of this Court for redressal

of his afflictions and has also taken shelter of sub-sec. (8) of Section 170 of the Act of 1959 wherein deeming provision for grant of permission to raise construction is incorporated with clarity and precision under certain contingencies.

9. Contesting the writ petition on behalf of both the respondents, separate replies were submitted.

10. The first respondent State in its reply raised certain preliminary objections. In the first place, the respondent has placed reliance on a verdict of coordinate Bench of this Court dated 16th January 2009, whereby according to it prayer for allowing construction was declined by this Court; castigating the petitioner for concealing this material fact.

11. The State has also incorporated a preliminary objection that as Tilaknagar Dhanmandi Scheme has been abandoned and now in its place scheme for allotment of residential plots is under contemplation and the State Government is considering acquisition of the land for that purpose. With this plea, the respondent has made endeavour to persuade this Court for non-suiting the petitioner. The respondent State has also placed reliance on the order passed by Division Bench of this Court dated 8th of August 2008, whereby the Division Bench has dismissed the contempt petition laid on behalf of one of the incumbents, who is similarly circumstanced with that of the petitioner. Precisely, the entire reply of the first respondent hovers around the proposed housing scheme and the fact that proposal for acquisition of land is pending consideration before the Government. However, while joining the issue on merits also, the first respondent has refuted the averments Contained in the writ petition and prayed for declining the prayer made in the writ petition.

12. On behalf of the second respondent, a detailed reply to the writ petition is submitted. In the return, the second respondent has made an attempt to question the title of the petitioner by alleging that writ petitioner is Mohanlal S/o. Multanmal whereas lease-deed was issued in favour of Multanmal S/o. Mohanlal. According to the submission of second respondent, petitioner Mohanlal has not shown his relationship with original allottee Multanmal and therefore the petition is not maintainable. Defending its actions, the second respondent has submitted that under Section 170 of the Act of 1959 the Municipal Council is well within its rights to ask the petitioner to furnish title of the land in question for the purpose of grant of permission to raise construction. With this plea, the respondent has stoutly defended Notice Annex. 8.

13. The second respondent has also raised the plea of res-judicata by alleging that in the earlier petition similar prayer was there and said petition has been dismissed by this Court. Towing the lines of reply submitted on behalf of the first respondent State, the second respondent has further submitted in the reply that as Tilaknagar Dhanmandi Scheme has been abandoned, there is a proposal for allotment of the said land for residential plots. The respondent Municipal Council has also submitted in the reply that proposal for acquisition of the land for

allotment of residential plots is under contemplation and in near future notification under Section 4 of the Land Acquisition Act, 1894 (for short, "Act of 1894") is likely to be issued. Reiterating the stand of the first respondent that the Division Bench has dismissed the contempt petition, the respondent has pleaded that Municipal Council is competent to propose acquisition of the land for some other scheme in accordance with law. Joining the issue with the petitioner, the respondent has urged in the reply that in the earlier two round of litigation the fact regarding acquisition of the land for residential plots being under contemplation, was brought to the notice of the Court and the Court has taken cognizance of this fact, therefore, by filing this writ petition the petitioner has abused the process of the Court. The whole thrust of the reply of the second respondent remained on the proposed acquisition of land for development of housing scheme. It is also submitted in the reply that Krishi Upaj Mandi Samiti has already established Dhanmandi Yojna at different place and since Tilaknagar Dhanmandi Yojna has been abandoned, the council is well within its right to propose a housing colony over the disputed land to cater the need of increased population of Pali. Once again reiterating that the requisite proposal is under consideration, it is averred that the writ petition merits dismissal as premature.

14. After submission of reply to the writ petition, an additional affidavit is submitted on behalf of the second respondent. In the additional affidavit, the Commissioner, Municipal Council, Pali has stated on oath that plot in question was allotted to the petitioner on his furnishing undertaking that he will be using the land for sale of grains. Emphasizing the purpose of allotment to the petitioner, which according to respondent was for establishing grain market, godowns and shops for selling grains, it is averred in the affidavit that the council or the State Government are well within their rights to take back the land for any other public purpose. The master plan approved by the Town Planner, Jodhpur is also placed on record indicating the disputed land demarcated for Dhanmandi Yojna. While advertng to the use of the land for residential purpose, the Commissioner has stated on oath that the respondent council is empowered to float proposal for establishment of housing scheme which is in the interest of public at large. A copy of letter dated 5th of September 2002 from Senior Town Planner, Jodhpur is also produced showing approved amended plan for the earlier Dhanmandi Yojna. The auction notices issued by the council were also placed on record. The aforesaid additional affidavit was further followed by yet another additional affidavit on behalf of respondent Municipal Council. With this additional affidavit, master-plan duly approved by the Town Planner is submitted.

15. Mr. J.P. Joshi, learned Senior Counsel has vehemently argued that the impugned public notification dated 8th of June 2009 (Annex. 8), issued by the Commissioner, Municipal Council, Pali, is a blatant attempt by the respondent to disobey/circumvent the verdict of Division Bench of this Court. Mr. Joshi would contend that after decision of the Division Bench dated 15.11.2007, title of the petitioner and other incumbents over the allotted land by the Municipal Council, Pali remain no more res-integra, and therefore, in these circumstances, issuance

of the public notification is nothing but a glaring example of colourable exercise of powers by a wing of a welfare State. Narrating the checkered history of the case and emphasizing the fact of third round of litigation learned Senior Counsel has argued that there was no justification for the second respondent to withhold the application of the petitioner seeking permission to raise construction on the land in question. Mr. Joshi submits that the respondents by issuing the impugned communication have made an affirmative attempt to brow beat the petitioner and other similarly circumstanced allottees in gross violation of the provisions contained under Section 170 of the Act of 1959. Laying stress on sub-sec. (8) of Section 170 of the Act of 1959, Mr. Joshi has argued that after serving the reminder on 20th of March 2009, the second respondent has unnecessarily issued public notice dated 01.04.2009 and thereafter the impugned public notification, for which there was no necessity whatsoever in the given circumstances. Reiterating his submission that title of the petitioner on the land in question was perfect and declared by the Division Bench of this Court, how and in what manner the second respondent has not proceeded to deal with the application of the petitioner whereby permission to raise construction was sought. Categorizing the impugned public notification arbitrary and unreasonable, learned Senior Counsel has argued that while processing application of an individual for grant of permission to raise construction, a local authority is expected to act rationally and not at its whims and fancy ignoring the facts and circumstances which are relevant and germane to the matter. Taking exception to the recitals contained in the impugned public notification that allotment of land is restricted for its use for grain market, Mr. Joshi would urge that after the verdict of Division Bench the petitioner is well within his right to make use of land for any commercial purpose and as such insistence for its use for grain market is wholly uncalled for and unwarranted. In totality, submission of learned Senior Counsel Mr. Joshi is that impugned public notification is dehors the law and there is no plausible reason for denial of permission to the petitioner to raise construction on the land in question. Joining issue with the respondent on the proposed acquisition of land for residential scheme, Mr. Joshi, learned Senior Counsel submits that the argument is hypothetical inasmuch as no notice under Section 4(1) of the Act of 1894 has so far been issued. With these submissions, Mr. Joshi submits that on such an assumed ground that land is liable to be acquired for residential scheme, the application seeking permission to raise construction submitted by the petitioner cannot be faulted, nor on such a jejune ground requisite permission can be withheld/declined by the Municipal Council.

16. Mr. Vikas Balia, learned counsel appearing for one of the petitioners, has adopted the arguments of learned Senior Counsel Mr. Joshi and has strenuously urged that impugned public notification is nonest in the eye of law which cannot be sustained. Mr. Balia, while placing heavy reliance on the Division Bench judgment of this Court dated 15th of November 2007 would contend that use of land for commercial purpose has not been restricted by the Division Bench and

as such the recitals contained in the impugned public notification confining its use for grain market is wholly unsustainable.

17. E converso, learned counsel Mr. T.S. Champawat with Mr. P.S. Champawat has argued that plot in question was allotted to the petitioner and other incumbents at concessional rate for developing grain market and therefore the petitioner and other incumbents cannot be permitted to use the land for any purpose other than grain market. Stoutly defending the public notification, Mr. Champawat would contend that while processing the application of an incumbent for permission to raise construction, the Municipal Council is well within its rights to insist for the requisite title deeds and as such there is no infirmity much less legal infirmity in the impugned public notification. Mr. Champawat has also urged that the Municipal Council, Pali has already developed a grain market elsewhere after abandoning Tilaknagar Dhanmandi Scheme, and therefore, to cater the needs of the residents of Pali it has resolved to develop housing scheme at the disputed site and requisite proposal has been sent to the State Government for acquiring the land, and requisite notification under Section 4 (1) of the Act of 1894 is in offing in near future. With this plea, Mr. Champawat submits that withholding permission for raising construction is a just decision which calls for no interference. Mr. Champawat has also questioned the title of the petitioner on the land in question and has vehemently argued that without there being a valid title it is not possible to process the application of the petitioner for grant of permission to raise construction.

18. I have heard the learned counsel for the parties and perused the materials on record.

19. The pivotal question, which has emerged for consideration in all these writ petitions, hovers around grant of permission to raise construction for which requisite application has been submitted by the petitioner. Section 170 of the Act of 1959 deals with the procedure for consideration of the application to grant or refuse the permission to raise construction. The complete text of Section 170 is reproduced as under:

"170. Provisions relating to erection of Buildings.--(1) Before beginning within the limits of the municipality-

(a) to erect a new building or new part of a building, or

(b) to re-erect or make a material alteration in a building, or

(c) to erect or re-erect any projecting portion of a building in respect of which the board is empowered by section 166 to enforce a removal or set-back, or

(d) to make or enlarge a well, the person intending so to erect or re-erect or make or enlarge shall give notice of his intention to the board.

(2) The notice referred to in sub-section (1) as required in the case of a building shall only be necessary where the building abuts on, or is adjacent to a public

street or place or property vested in the State Government or in the board, unless, by a bye law applicable to the area in which the building is situated, the necessity of giving notice is extended to all buildings.

(3) An alteration in a building shall, for the purposes of this section and of any bye-law in relation thereto, be deemed to be material-

(a) if it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene, or

(b) if it increases or diminishes the height of the area covered by, or the cubical capacity of, the building or reduces the cubical capacity of any room in the building below the minimum prescribed in any bye-law, or

(c) if it converts into a place for human habitation a building or part of a building, originally constructed for other purposes, or

(d) if it is an alteration declared by a bye-law made in this behalf to be a material alteration.

(4) Where a bye-law has been made prescribing and requiring any information and plus in addition to a notice, no notice under sub-section (1) shall be considered to be a valid until the information and plans, if any, required by such bye law have been furnished to the satisfaction of the board.

(5) Where no such bye-law has been made the board may within a fortnight of the receipt of the notice under sub-section (1), require the person who has given such notice to furnish a plan and specification of any existing or proposed building or part of a building or well together with a site plan of the land with such reasonable details as the board may specify in its requisition and, in such case, the notice shall not be considered to be valid until such plans and specifications have been furnished to the board.

(6) Save as otherwise provided in this Act or the rules or bye-laws thereunder, the board may-

(a) give permission to execute any work of which notice has been given under sub-section (1), or

(b) impose in writing conditions in accordance with this Act and the rules and bye-laws thereunder as to level, drainage, sanitation, design, materials and cubical capacity of rooms, doors, windows, and apertures for ventilation or as to the number of storeys to be erected or with reference to the location of the building in relation to any existing building or existing street or as to the purpose for which the building is to be used, or

(c) direct that the work shall not be proceeded with, unless and until all questions connected with the respective location of the building and any public street have been decided to the satisfaction of the board.

(7) In the case of a city the council may before issuing any orders under sub-section (6) and within one month from the receipt of the notice under sub-section (1)

(a) issue a provisional order directing that for a period which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or

(b) demand further particulars.

(8) Should the board neglect or omit for one month after the receipt of a valid notice under sub-section (1) or after the receipt of further particulars demanded under clause (b) of sub-section (7) to make and deliver to the person who has given such notice an order of the nature specified in sub-section (6), such person may by a written communication call the attention of the board to the omission or neglect and, if such omission or neglect continues for a further period of fifteen days from the date of such communication, the board shall be deemed to have sanctioned the purposed work absolutely and such work may be proceeded within the manner specified in the notice:

Provided that nothing in this sub-section shall be construed to authorize any person to act in contravention of any provision of this Act or of any bye-law thereunder.

(9) No person who becomes entitled under sub-section (6) or sub-section (8) to proceed with any work of which notice is given under sub-section (1) shall commence such work after the expiry of the period of the one year from the date on which he has been become entitled so to proceed therewith except in pursuance of a fresh permission granted in accordance with the foregoing provisions of this section.

(10) The chairman, the executive officer and, if authorised in this behalf by resolution, any other member, officer or servant of the board, may at any time and without giving notice of his intention to do so inspect any work in respect of which notice is required under sub-section (1) while under construction, or within one month of the receipt of a report that it has been completed or, in default of such report at any time after the completion and may by written notice specify any matter in respect of which the execution of such work may be in contravention of any provision of this Act or of any bye-law thereunder, and require the person executing or, who has executed the work or, if the person who has executed the work is not the owner thereof, the owner of the work, to cause anything done contrary to any such provision or bye-law to be amended or to do anything which by any such provision or bye-law, he may be required to do, but which has been omitted.

(11) Whoever begins, continues or completes the erection or re-erection of, or any material alteration in, a building or a part of building or the erection or re-erection of any projecting portion of a building in respect of which the board is

empowered by section 166 to enforce a removal or setback or the construction or enlargement of a well without giving the notice required by sub-section (1) or in contravention of any provision of this section or of an order of the board made under sub-section (6) or sub-section (7) shall be liable on conviction to fine which may extend to two hundred rupees and the board may at any time by written notice-

(a) direct the owner or occupier to stop the erection, re-erection or alteration of a building or any projecting portion thereof, or of any part of such building or projecting portion or the construction or enlargement of a well, and

(b) require such building, projecting portion, alteration or well to be demolished.

(12) Any person aggrieved by an order of a board under clause (a) or clause (b) or clause (c) of section (6) or clause (a) or clause (b) of sub-section (11) may, within thirty days from the date of such order, exclusive of the time requisite for obtaining a copy thereof appeal to the Collector and no such order shall be liable to be called in question otherwise than by such appeal.

Provided that in relation to a corporation, this sub-section shall have effect as if for the expression "the Collector", the expression "the State Government or such officer as may be authorised by it in this behalf" were substituted therein.

(13) The appellate authority may, if it thinks fit, extend the period allowed by sub-section (12) for appeal.

(14) The order of the appellate authority shall be final.

(15) No order passed by the board shall be modified or set aside in appeal under sub-section (12) until the appellant and the board have had a reasonable opportunity of being heard.

20. From a bare perusal of sub-sec. (8) of Section 170 of the Act of 1959 (supra), it is amply clear that if a reminder is sent by the incumbent, who has applied for permission to raise construction, and the same is not responded within a period of fortnight, there is a deeming provision whereby the incumbent can presume that requisite permission has been granted to him.

21. From the materials available on record, it is abundantly clear that the petitioner has issued the reminder on 20th of March 2009 and the same was acknowledged by the Municipal Council within fifteen days by communication dated 1st April 2004 raising objections against the proposed plan submitted by the petitioner for construction. Subsequent to that, the petitioner has submitted a detailed reply on 20th of April 2009 and thereafter the impugned notification has been issued. Therefore, in these circumstances, I am not inclined to invoke the deeming provision contained under sub-sec. (8) of Section 170 of the Act of 1959 in the facts and circumstances of the instant case and other cognate matters..

22. Now, adverting to the merits of the case, it is desirable to examine the

purpose of allotment of land to the petitioner and other incumbents, and how the land is to be used by an incumbent allottee. Factually, it is not in dispute that the land in question at the threshold was allotted to the petitioner and other incumbents for commercial purposes under Tilaknagar Dhanmandi Yojna i.e. grain market but subsequently the scheme for developing grain market was abandoned. The allotment made in favour of the petitioner and other incumbents was also cancelled by the respondents and there was a series of litigations between rival parties. Ultimately, the Division Bench of this Court in D.B. Civil Special Appeal No. 980/2007 Phooli Devi v. State of Rajasthan & Ors., with other cognate 29 appeals decided the matter finally by its verdict dated 15.11.2007. The Division Bench, in its verdict has made it clear that simply because the project for Dhanmandi has been abandoned, it cannot be said that allottees cannot use the land for other commercial purposes. The Division Bench in this behalf made following observations:

"So far the second ground of abandonment of the project of Dhan Mandiis concerned it is hardly relevant for cancellation of allotment for made commercial purposes. Abandoning the scheme of implementation of the scheme of setting up the grain market itself does not mean that land cannot be used for other commercial purposes. The lease executed in favour of the allottees put no such restriction on the user of land except for commercial purposes. If the land could not be used for grain market it can be used for commercial purposes. Moreover if the land allotted for commercial purposes is sought to be used by the allottees for other purposes in terms of the provisions of Municipalities Act, the allottee is required to make, an application and such use can be permitted only on payment of conversion charges which amply take care of interest of Municipality."

23. In view of adjudication made by the Division Bench, the issue relating to commercial use of the land in question by the petitioner and other allottees remain no more res-integra and stand settled. As regards the title of the petitioner and other incumbents, the Division Bench has concluded in clear and unequivocal terms that allotment is valid and merely because the allotment has not been made through auction, it cannot be presumed that allotment is contrary to the Rules of 1971.

24. Castigating the respondents for their repeated acts of cancellation of allotment in the penultimate paragraph of the judgment, the Division Bench has made strong observations, which are quoted as under:

"The next question" that need consideration is that progressively regular prolonged intervals of 9 years the respondents have made efforts to cancel the allotment of 1971 and no exceptional ground now been made to permit the respondent to continue with the same exercise at this distant of time merely because some new grounds were discovered. In our opinion, permitting them now to continue with the fourth innings successively when the authorities have persistently refused to adhere to basic principle of fair place since 1980. It would be permitting them to persecute the allottees rather than to proceed in

accordance with Jaw and to defeat the case of a good and fair governance. Therefore, in our opinion, these proceedings must be brought to a close now. The notice issued in 1999 for hearing being bad for want of vagueness" and not informing the grounds on which proposed action is taken and the ulterior reason on which the order is founded as noticed above are also not justified to sustain the order itself, consequently dated 27.2.2002 was rightly quashed by learned Single Judge. However, we modify the direction to proceed in pursuance of notice, which we have found to be invalid and quash the notice itself to be invalid."

25. Evaluating the checkered history of the case and the series of litigations, there remains no doubt that the title of the petitioner and other incumbents on the allotted lands is perfectly valid and it cannot be categorized as "under cloud" from any stretch of imagination. Moreover, the observation of the Division Bench that land can be used for any other commercial purpose other than grain market is also crystal clear from the verdict of the Division Bench. In this view of the matter, if the impugned public notification is examined objectively, then it will ipso facto reveal that the reasons cited in the notification for not processing application submitted by the petitioner and other incumbents seeking permission to raise construction are absolutely alien to the matter. As a matter of fact, the respondent Municipal Council while issuing public notification has exercised its powers for an extraneous, irrelevant or non-germane consideration. It is undeniable that the Municipal Council, while issuing the impugned notification has not taken into account the facts and circumstances which were relevant and germane to the matter and has rather placed undue reliance on certain facts and circumstances which were wholly irrelevant and extraneous to the matter. One more glaring fact is that while issuing the impugned public notification, the Municipal Council has also not at all cared to examine the provisions contained under Section 170 of the Act of 1959. Thus, in the considered opinion of this Court the impugned notification is vitiated by reason of malice in fact, and malice in law both. In *Shearer & Anr. v. Shields*, [1914 AC 808], Viscount Haldane L.C. described malice in law as under:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, he acts ignorantly, and in that sense innocently."

26. Hon"ble Apex Court, in case of *State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti*, has examined the legal meaning of the word "malice" in a case pertaining to the land acquisition and made following observations in Para 12 to 14 of the verdict:

"12. The legal meaning of malice is " ill will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully

without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)

13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition proceedings, explains that an action by the State can be described mala fide if it seeks to "acquire land" "for a purpose not authorised by the Act". The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other.

14. Legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings."

27. The submission of the learned counsel for the respondent that Municipal Council has already taken a resolution for acquisition of land for residential scheme and proposal has been sent to the State Government, appears to be quite attractive but there is no material placed on record to show that any action in furtherance thereof has been taken by the State Government and till date admittedly requisite notification under Section 4(1) of the Act of 1894 has not been issued. Therefore, this ambitious plea cannot be sustained and same is accordingly rejected. Upon examining the matter in its entirety in the light of above discussion, in my considered opinion, the reasons spelt out in the impugned public notification for denial of permission to raise construction on the land in question and the proposed action as contemplated in the impugned public notification cannot be sustained and the writ petition and other connected writ petitions deserves acceptance. Upshot of the above discussion is that all these writ petitions are allowed, the impugned notice dated 01.04.2009 (Annex. 5) and dated 08.06.2009 (Annex. 8) are hereby quashed and set aside and the respondent Municipal Council, Pali is directed to process the application of the petitioners for grant of permission to raise construction strictly in accordance with law and the observations made to supra. As the application submitted by petitioner and other incumbents are pending since 2008, the respondent Municipal Council is expected to decide the same as expeditiously as possible preferably within a period of two months from the date of passing of this order. No order as to costs.