

**Laxmi Narayan Vs. State and ors**

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**SooperKanoon Citation :** [sooperkanoon.com/1009063](http://sooperkanoon.com/1009063)

**Court :** Rajasthan Jodhpur

**Decided On :** Aug-06-2013

**Appellant :** Laxmi Narayan

**Respondent :** State and ors

**Advocate for Pet/Ap. :** Mr. Abhijeet Joshi

**Judgement :**

SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 1/46 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR JUDGMENT \*\*\*\* (i) Ram Narain Dhabhai & anr. vs. State & Ors. S.B.CIVIL WRIT PETITION NO. 7734/2010 (ii) Laxmi Narain vs. State & Ors. S.B.CIVIL WRIT PETITION NO. 2403/2001 (iii) Chain Shanker Dhabhai vs. State & ors. & anr. S.B.CIVIL WRIT PETITION NO. 1049/2012 DATE OF JUDGMENT :

6. h August, 2013 PRESENT HON'BLE DR.JUSTICE VINEET KOTHARI Mr. M.R.Singhvi, Sr. Advocate assisted by Mr. Abhijit Joshi, for the petitioners. (CW No.7734/10 & 1049/12) Mr. J.P.Joshi, Sr. Advocate assisted by Mr. Siddharth Joshi, for the petitioner (CW No.2403/2001) Mr. Vikas Balia, ] Mr. Deelip Kawadia ] Mr. Yashwant Mehta ] for the respective respondents. Mr Vijay Purohit, ]  
REPORTABLE BY THE COURT:

1. The facts are illustratively taken from SBCWP No. 7734/2010 Ram Narain Dhabhai & ors. vs. State and others and this common order will dispose of aforesaid writ petition along with two other connected writ petitions namely; SBCWP No. 1049/2012 (Chain SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 2/46 Shanker Dhabhai ( brother of Ram Narain Dhabhai) and anr. vs. State & Ors. ) and also SBCWP No. 2403/2001 Laxmi Narain vs. State & Ors.

2. Both brothers, Ram Narain Dhabhai and Chain Shanker Dhabhai s/o Shiv Narain Dhabhai have preferred this writ petition, which was filed on 11/8/2010 in this Court and have claimed that the impugned order passed against them on 5/7/2008 (Annex.14) by the respondent no.3, Special Officer, UIT, Udaipur rejecting their application under Section 90B of the Rajasthan Land Revenue Act, 1956 may be quashed and set aside and the respondents may be directed to issue an order of regularization/allotment in favour of petitioners in terms of Section 90B of the Act and also they may not be dispossessed from the land in dispute. In the alternative, the petitioners have also prayed for quashing the allotment of land made in favour of private respondent no.4 Aaishwarya College of Education Sansthan vide Annex.25 dated 8/8/2008 and Annex.26 dated 18/8/2008.

3. The present writ petitions give rise to an interesting question arising under the provisions of the Land Acquisition Act, 1894 (for short 'the Act of 1894') and Rajasthan Land Revenue Act, 1956 (for short 'the Act of 1956') with regard to land in question situated in khasra nos. 4298, 4299 to 4303, 4342 to 4358 and 4383 of village Bhuwana, Tehsil Girva District Udaipur. A large chunk of land measuring 4800 bighas in the said Tehsil Girva District Udaipur SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 3/46 including the land of present petitioners brothers situated in aforesaid khasras measuring 5.81 hectares was acquired by the State by issuing a Notification under Section 4 of the Act of 1894 on 21/2/1990 for the UIT, Udaipur

for public purpose, to develop a residential colony known as 'Bhuwana Extension Scheme' for planned development and utilization of the notified land.

4. The said land acquisition proceedings were challenged by the Gram Panchayat, Bhuwana by way of Civil Writ Petition No. 2255/1991 challenging the Notification dated 21/2/1990 issued under Section 4 of the Act of 1894 and other land holders also filed writ petitions challenging the said land acquisition proceedings and about 43 writ petitions filed before this Court between 1995 to 1997 came to be dismissed by the learned Single Judge of this Court on 10/1/1997. The intra court appeals against that judgment of learned Single Judge DB Civil Special Appeal (Writ) No. 270/97, however, came to be allowed by the Division Bench of this Court on 6/3/1998 and acquisition proceedings including the award were set aside, principally on the ground that declaration under Section 6 of the Act, 1894 was published on 24/5/1994, whereas, the last date of publication of the substance of Notification under Section 4 (1) of the Act of 1894 was 19/5/1993 and thus, the declaration under Section 6 of the Act being issued beyond the period of one year, the said acquisition proceedings were liable to be quashed. The Division Bench judgment of this Court was set aside by Hon'ble Supreme Court in Civil Appeal No. 4065/99 UIT, Udaipur vs. Bheru Lal & SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 4/46 Ors. which was allowed by the Hon'ble Supreme Court on 20/9/2002 upholding the entire land acquisition proceedings in question for 'Bhuwana Extension Scheme'. The relevant portion of the order of Hon'ble Supreme Court is quoted below for ready reference:- It is apparent that the Notification under Section 4 was first published in the official gazette in June 1992. Thereafter substance was published in November 1992 at the conspicuous places and subsequently it was published in the local newspapers. Considering this sequence of publication, even if there is some delay, it would not mean that on this ground the land acquisition proceedings under Section 4 require to be set aside. Similar view is expressed by this Court in State of Haryana and another v. Raghubir Dayal and others [(1995) 1 SCC 13.para 7]. Further, learned counsel for the appellant rightly submitted that on the ground of delay and laches in filing the

writ petitions, the Court ought to have dismissed the same. In the present case, as stated above, the Notification under section 6 was published in the Official Gazette on 24.5.1994. The writ petitions are virtually filed after two years. In a case where land is needed for a public purpose, that too for a scheme framed under the Urban Development Act, the Court ought to have taken care in not entertaining the same on the ground of delay as it is likely to cause serious prejudice to the persons for whose benefit the Housing Scheme is framed under the Urban SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 5/46 Development Act and also in having planned development of the area. The law on this point is well settled. [Re. Reliance Petroleum Ltd. v. Zaver Chand Popatlal Sumaria and others [(1996) 4 SCC 579. and Hari Singh and others v. State of U.P. and others [(1984) 3 SCR 417]. In the result, the appeals filed by the Urban Improvement Trust are allowed. The impugned judgment and order passed by the High Court in D.B. Civil Special Appeal Nos.270-277/97 etc. allowing the appeals and quashing the land acquisition proceedings is set aside. The judgment and order passed by the learned Single Judge is restored.

5. Thus, the land acquisition proceedings acquired finality with the aforesaid Supreme Court decision and the present petitioners rightly have not laid any challenge to the land acquisition proceedings nor any such argument was raised to assail the land acquisition itself.

6. The controversy involved here is in a different perspective. The petitioners filed an applications before the Secretary, UIT, Udaipur under Section 90B of the Act, 1956 on 31/3/2000 after Notification under Section 4 of the Land Acquisition Act was issued on 21/2/1990 (Annex.2) on the ground that since the petitioners have not been dispossessed from their agricultural land in question despite acquisition proceedings having been concluded and award under the SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 6/46 Land Acquisition Act having been passed on 6/4/1996 and since they were not also paid any compensation under such award, their land holding

deserves to be regularized and converted as per the provisions of Section 90B of the Act.

7. While these applications under Section 90B of the Act were pending, some of the petitioners including the petitioner Ram Narain Dhabhai, Laxmi Narain and few other persons like Anil Purohit and Chand Mohd. filed writ petitions before this court seeking a direction to the respondent Secretary, UIT, Udaipur to decide their pending applications under Section 90B of the Act. These writ petitions came to be disposed of by the learned Single Judge of this Court on 15/2/2007 and the learned Single Judge directed that such pending applications of the petitioners may be decided in accordance with law. The copy of orders disposing of such writ petitions are placed on record as Annex.4. There is one significant variation in the order passed in the case of present two petitioners brothers, Ram Narain Dhabhai and Chain Shanker Dhabhai from the other writ petitions and for comparative analysis, it is considered appropriate to reproduce both the short orders in the case of Anil Purohit (CW No. 2262/2001) and Ram Narain Dhabhai (CW No. 2824/2005) both decided on 15/2/2007 by the same bench: CIVIL WRIT No. 2262 of 2001 ANIL PUROHIT & ANR V/S STATE & ORS Mr. J.P.Joshi, for the appellant / petitioner SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 7/46 Mr. Tribhuvan Gupta, Mr. RS Makad, Mr. Sandeep Shah & Mr. Dron Kaushik , for the respondent Mr. NM Lodha, AAG Date of Order :

15. 2.2007 HON'BLE SHRI N P GUPTA,J.

ORDER ----- Mr. Gupta informs that by the judgment of Hon'ble the Supreme Court in U.I.T. Udaipur Vs. Bheru Lal reported in AIR 200.SC-3309 the acquisition proceedings in question have been upheld. In that view of the matter, learnedcounsel for the petitioner only submits that his application under Section 90 B of the Land Revenue Act still survives, and the U.I.T. may be directed to decide the same on merits. Heard. Learned counsel for the respondent submits that application under Section 90 B is still pending. Respondent will consider the application under Section 90 B of the petitioner on merits within one month and until the application under Section 90 B is decided the status quo shall be

maintained. If grievance of the petitioner remains after decision of the application under Section 90 B he will have liberty to avail such appropriate remedy in appropriate forum in accordance with law. The writ petition thus stands disposed of. Sd/- ( N P GUPTA ),J.

SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 8/46 CIVIL WRIT No. 2824 of 2005 RAM NARAIN DHABAI & ANR. V/S STATE & ORS. Mr. JP Joshi, for the appellant / petitioner Mr. RS Mankad, for the respondent Date of Order :

15. 2.2007 HON'BLE SHRI N P GUPTA,J.

ORDER ----- Heard. Learned counsel for the respondent submits that application under Section 90 B is still pending. Respondent will consider the application under Section 90 B of the petitioner on merits within one month and until the application under Section 90 B is decided the status quo shall be maintained. If grievance of the petitioner remains after decision of the application under Section 90 B he will have liberty to avail such appropriate remedy in appropriate forum in accordance with law. Learned counsel for the petitioner in second prayer has said that the award which has been passed should be set aside in view of the circulars issued by the State Government under Section 90 B of the Land Revenue Act. Since the acquisition itself is not under challenge, the natural consequence of acquisition is that the award has to be passed. The award cannot be challenged on the ground of the circulars issued by the State SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 9/46 Government and to this extent, the prayer of the petitioner cannot be accepted. With these observations, the petition stands disposed of. Sd/- ( N P GUPTA ),J.

8. The third para of the order disposing of the writ petition filed by present two petitioners Ram Narain Dhabhai & anr. specifically noticed and rejected the

contention of petitioners that the land in question deserves to be regularized in view of the Circular issued by the State Government and the learned Single Judge observed that since the acquisition itself is not under challenge, the only consequence is that the award passed under the Land Acquisition Act has to be passed and such award cannot be challenged on the ground of Circular issued by the State Government and to that extent the prayer of the petitioners cannot be accepted. The direction to decide the applications under Section 90B of the Act was accordingly passed in all these three writ petitions.

9. The writ petition no. 2403/2001 Laxmi Narain vs. State was listed before another coordinate bench of this Court on 8/7/2002 & is being disposed of today, but at that time since the matter was pending before the Hon'ble Supreme Court, which later on came to be decided on 20/9/2002, an interim order came to be passed by that coordinate bench on 8/7/2002 in the batch of writ petitions including the present writ petition of Laxmi Narain that such matters may be SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 10/46 consigned to record until pronouncement by Apex Court and after the pronouncement any of the parties may file an application for taking these matters on board and both the parties shall maintain status quo till then. This interim order only, therefore, operated till disposal of appeal filed before the Hon'ble Supreme Court, which came to be allowed on 20/9/2002 after two and a half month of the said interim order granted by coordinate Bench.

10. The applications under Section 90 B of the Act filed by the present petitioners brothers came to be rejected on 5/7/2008 ( Annex.14) with the following reasoning in the said order by the Secretary, UIT, Udaipur: \$ % \$ % , - \$ 1 , 06-04-96

4. 2 %

4. 2 % - 1 , 12 , 2002

2. % < % , , 1A , 7A < 1 , 15-06-2001 4 , 4 - 1 % , %

7. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 11/46 < % 1 - %

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7. % < 2 -, - 1Q < - A ,

1. , 05-07-08 - A : - 7 \$ (- ,) ... \$ \$ % , 7 , 1A

"11. Thus, the said applications under Section 90B of the Act were rejected on the ground that since possession of land had already been taken on 15/6/2001 and award was also passed on 6/4/1996, therefore, the applications under Section 90B of th Act could not be accepted and, therefore, same were liable to be rejected.

12. The main grievance raised by the petitioners before this Court is that while the petitioners' application under Section 90B of the Act was rejected on 5/7/2008, on the same date, the same authority SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 12/46 allowed such application under Section 90B of the Act in the case of Anil Purohit and Chand Mohd., in whose favour also the learned Single Judge of this court had directed on 15/2/2007 that their pending applications under Section 90B of the Act be decided within one month in accordance with law. Copy of the order under Section 90B of the Act passed in the cases of Anil Purohit and Chand Mohd. are placed at Annex. 9 and 14 dated 5/7/2008.

13. The petitioners immediately applied for a review and recall of the said order dated 5/7/2008 rejecting their application under Section 90B of the Act vide their representation Annex.15 dated 1/9/2008. The petitioner have further contended that upon such application for review, the competent authority, namely; Secretary, UIT, Udaipur had sought guidance from the concerned Deputy Secretary of the Urban Development Department of Government of Rajasthan vide communication

dated 8/10/2008 (Annex.16) as to why in terms of Government Circular dated 4/10/2002 where paper possession of the land acquired under the provisions of the Land Acquisition Act has been taken and amount of compensation has been deposited in the court, the regularization under Section 90B of the Act be not made taking 30% extra premium price for such land in possession of the applicants. The Circular dated 22/12/1999, 26/5/2000 and 22/12/2001 were also referred in para 7 of the said communication of Secretary, UIT to the Deputy Secretary of Government of Rajasthan. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 13/46 14. The learned counsel for the petitioners, Mr. M.R.Singhvi, Sr. Advocate has vehemently contended that during the consideration of petitioners application under Section 90B of the Act in terms of the various Government Circulars, the UIT, Udaipur itself had regularized such land of various other persons notwithstanding the aforesaid land acquisition proceedings having attained finality at the hands of Hon'ble Supreme Court on 20/9/2002 under Section 90B of the Act and, therefore, the petitioners case could not be excluded and different treatment could be given to the petitioners, which is violative of Article 14 of the Constitution of India.

15. In the meanwhile, out of the land of present petitioners, an area of 20000 Sq. Mtrs of land came to be allotted by respondent UIT, Udaipur, for whom the land was acquired by the State, in favour of respondent no.4 Aaishwarya College of Education Sansthan. The said allotment was made after the said private respondent approached this Court by way of writ petition, namely; SBCWP No. 4939/2005 (Aaishwarya College vs. State & UIT, Udaipur), which came to be allowed by this Court on 24/10/2007 directing the respondent UIT to take steps for executing the lease deed in favour of petitioner Sansthan for the said land in question allotted to it vide Annex.10 dated 17/3/2005 and affirmed by its General Body meeting of UIT, Udaipur vide Annex.11 dated 22/3/2005. The petitioner Aaishwarya College in that writ petition had challenged the order of cancellation of allotment of land made on 19/9/2003 in lieu of which alternative land was allotted to it on 17/3/2005 of same size and SBCWP No.7734/2010 Ram Narain Dhabhai

& Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 14/46 which decision 17/3/2005 was affirmed by the General Body meeting dated 22/3/2005 but the lease deed was not being executed by the UIT, Udaipur and since the UIT, Udaipur vide its communication Annex.12 dated 15/4/2005 informed the petitioner that allotment made in its favour stood cancelled on its own, on account of non- deposit of money, the petitioner Aaishwarya College approached this Court and the writ petition came to be allowed by this Court giving following reasons in the order dated 24/10/2007:

11. As far as the contention of the learned Counsel for the respondent that since the petitioner Society had already held a land in the same place namely Udaipur and therefore, it was not entitled to be allotted the land in violation of Rule 19(5), the said contention need not detain this Court for long. There is no document on record to indicate that the premises where the petitioner Institution was running the educational institution in question were owned by it. Undoubtedly, without any fear of contradiction, the petitioner Society is a separate legal entity registered under the provisions of the Societies Registration Act and has a separate and distinct legal character. Merely because it takes on rent the premises, the owner of which happens to be one of the Directors of the petitioner Society, it does not render such lease agreement a sham or a camouflage, to say the least. The said lease agreement is not challenged by anybody nor learned Counsel for the respondent UIT has sought to brand it as a sham or void ab-initio. Therefore, this reason assigned for cancellation of allotment of land in SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 15/46 favour of the petitioner is not at all sustainable in the eye of law.

12. Another contention raised by the learned Counsel for the respondent that since the decision of allotment of land in question to the petitioner was not communicated to the petitioner and therefore was an in- house affair of the respondent UIT and was not given effect to, such allotment and cancellation of such allotment by the impugned decision dated 15.4.2005 was proper, also does

not impress this Court at all. Undeniably, the decision of allotment of the land in question was taken by the Land Allotment Committee on 17.3.2005 vide Annexure-10. The said committee was informed of all the relevant facts including the fact of running of educational institution by the petitioner Society in the rented premises. The said decision was confirmed by the general body meeting of respondent UIT vide Annexure-11 dated 22.3.2005. Both these decision contained in the public documents namely the decisions of the UIT, Udaipur cannot be said to be a secret or in- house affair of the respondent UIT and right to get the lease deed executed in pursuance of these decisions by the respondent UIT certainly came to be vested in the petitioner Society. By these two decisions a valuable right of property has been created in favour of the petitioner Society and the same can be revoked or cancelled only by following due process of law. Therefore, the contention of the learned Counsel for the respondent UIT that in the absence of communication of these decisions to the petitioner, the respondent UIT could decide not to give effect to the same hardly holds any SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 16/46 water and the said contention is also liable to be rejected and the same is accordingly hereby rejected. The corollary argument of the learned Counsel for the petitioner of non-compliance of the principles of natural justice before divesting the petitioner of its valuable right vested in it by virtue of the decisions Annexure-10 dated 17.3.2005 and Annexure-11 dated 22.3.2005 inter alia deserves to be accepted.

13. Another contention raised by the learned Counsel for the petitioner with respect to Rule 30 of the Rules of 1974 that Divisional Commissioner alone had the power to cancel or rescind wholly or in part any action or proceeding taken or contract entered into by the trust regarding such transfer of land or may revise or modify the order or give any other direction as it may deem fit also has substantial force. In the absence of any specific power to review its own decision, the respondent UIT could not have reviewed, revoked or withheld its order of allotment of land in question in favour of the petitioner. It is settled position in law that the power to review a decision, is a creation of statute and no inherent power of

review can be said to be vested with an authority unless the statute confers such power upon such authority. The wide powers to cancel, rescind, modify or revive the orders passed by the UIT have been vested in Divisional Commissioner alone under Rule 30. As far as Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 are concerned, it is not in dispute that the allotment of land in question was made under these very rules and these rules do not vest any power of review with the Urban Improvement SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 17/46 Trust itself.

14. Consequently, this writ petition deserves to be allowed and the same is accordingly allowed. The impugned decision of respondent UIT Annexure.-13 dated 15.4.2005 and Annexure-14 dated 18.6.2005 in so far as it concerns the petitioner Society are quashed. The respondent UIT is directed to take further steps for executing the lease deed in favour of the petitioner Society for the said land in question allotted to it vide Annexure-10 dated 17.3.2005 and affirmed by its general body meeting vide Annexure- 11 dated 22.3.2005 in so far as it concerns the case of the petitioner expeditiously, within a period of three months from today. With these observations, the writ petition is allowed. No order as to costs.

16. Thereafter, though the present petitioners, the two brothers; Ram Narain Dhabhai and Chain Shanker Dhabhai appear to have filed an intra court appeal against the said order of learned Single Judge of this Court, seeking leave to appeal, as they were not party before the Court in SBCWP No. 4939/2005 but their DB Civil Special Appeal No. 087/2011 Ram Narain Dhabhai & anr. vs. Aaishwarya College of Education Sansthan came to be dismissed by the Division Bench of this Court on 26/4/2011 by the following order:- Hon'ble The Chief Justice Mr. Arun Mishra Hon'ble Mr. Justice Kailash Chandra Joshi SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 18/46 Mr. M.R.Singhvi, Sr. Advocate, assisted by Mr. Sunil Bhandari for the appellants. This appeal has been preferred after delay of 117 days and no

application has been filed for seeking condonation of delay in filing the appeal. Apart from that, we find that the petitioner Aaishwarya College of Education Sansthan assailed the order of cancellation of allotment of land to the petitioner society. That was the subject-matter of the writ petition which has been adjudicated vide order dated 24.10.2007. The present appellant was not a party in that writ petition. The appellants are raising the ground in the appeal that they are the owners of the land in question, thus, the land could not have been allotted to the Aaishwarya College of Education Sansthan. The appellants cannot raise this question in the appeal as it was not the subject matter of the writ petition itself. However, it is open for the appellants to take recourse of appropriate proceedings in accordance with law for ventilating their grievance. We find no ground to entertain the appeal at the behest of the appellants. With the aforesaid liberty, this appeal is dismissed.

17. Yet, no lease deed is said to have been executed in favour of private respondent no.4 Aaishwarya College in respect of said land of 20000 sq. mtrs even by now and now the said allotment is challenged by the present petitioners by way of present two writ petitions. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 19/46 18. Mr. M.R.Singhvi, Sr. Advocate assisted by Mr. Abhijeet Joshi appearing for the petitioners vehemently urged that the respondent Secretary, UIT, Udaipur had grossly erred and discriminated against the petitioners while dismissing their application under Section 90B of the Act even though several such other applications of different applicants in respect of land situated in the total land of 4800 Bighas acquired for 'Bhuwana Extension Scheme' came to be allowed by the respondent UIT, Udaipur and the rejection of their application is illegal and arbitrary because the present petitioners are still in the possession of their land in question and have constructed rooms and boundary wall on their land and they have not been paid a single penny against the compensation under the Award passed under the land acquisition proceedings on 6/4/1996, therefore, in terms of various Government Circulars placed on record permitting such regularization under Section 90B of the Act, the case of the petitioners was also

situated on the same footing and the respondents have not assigned any cogent reasons for such discrimination and thus, the rejection in petitioners' case under Section 90B of the Act merely because part of their land was allotted in favour of private respondent Aishwarya College of Education Sansthan, the petitioners cannot be deprived of their right to get their land regularized under Section 90B of the Act and, therefore, the impugned order dated 5/7/2008 deserved to be quashed by this Court.

19. Mr. M.R.Singhvi, Sr. Advocate also urged that the allotment SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 20/46 land of 20000 sq.mtrs. was procured by private respondent illegally and even though on account of non-deposit of price in terms of allotment earlier made in favour of Aaishwarya College the allotment made earlier in their favour stood automatically cancelled, the respondent UIT, Udaipur again allotted alternative land to the respondent Aaishwarya College and such alternative allotment of 20,000 sq. mtrs is over the land belonging to the petitioners and since no lease deed has been executed in favour of respondent no.4, yet the present petitioners' land can still be regularized under Section 90B of the Act. He, therefore, submitted that allotment in favour of private respondent deserves to be quashed by this Court and he further urged that the judgment of this Court in the writ petition filed by respondent Aaishwarya College, namely; SBCWP no. 4939/2003 was obtained by misrepresentation of facts and respondent UIT, Udaipur failed to produce the complete and correct facts before this Court while the order was passed in favour of Aaishwarya College on 24/10/2007 and, therefore, their allotment deserves to be cancelled and the application of the petitioners under Section 90B of the Act deserve to be allowed.

20. Mr. J.P.Joshi, learned Sr. Advocate appearing for the other petitioner Laxmi Narain submitted that the application filed by the petitioner Laxmi Narain under Section 90B of the Act has not so far been rejected by the respondent UIT, Udaipur, therefore, the same also deserves to be considered now favourably as per the various Government Circulars permitting such regularization under Section

SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 21/46 90B of the Act and suitable directions for the same may be issued in his writ petition.

21. Mr. M.R.Singhvi, Sr. Advocate appearing for the brother petitioner Chain Shanker Dhabhai in SBCWP no. 1049/2012, in which a prayer has been made for quashing of the allotment letter dated 17/3/2005 in favour of private respondent Aaishwarya College and the order of UIT, Udaipur dated 15/4/2005 (Annex.13) cancelling the allotment made in favour of Aaishwarya College may be restored and Patta of land in question may be issued in favour of petitioner.

22. Per contra, Mr. Vikas Balia, learned counsel appearing for the private respondent Aaishwarya College vehemently opposed all these submissions and relying upon the judgments of this Court and principally amongst them being the Division Bench judgment in the case of Ranjeet Singh Meena vs. State of Rajasthan & Ors. - (2013) 1 RLW 146. Mr. Balia submitted that there is no question of allowing or considering the application under Section 90B of the Act once the land acquisition proceedings have been finalized and the possession of the land having been taken on 6/5/2001 by Tehsildar of UIT, Udaipur & the entire land in question vested in the State free from all encumbrances and subsequent allotment out of that land in favour of private respondent Aaishwarya College cannot be questioned in view of the judgment of this Court in the case of Aaishwarya College itself on 24/10/2007, which has been upheld by SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 22/46 Division Bench on 26/4/2011 while dismissing petitioners' intra court appeal No. 87/2011 O Ram Narain Dhabhai vs. Aaishwarya College of Education Sansthan.

23. Raising the preliminary objection of alternative remedy also being available to the petitioners against the rejection of their application under Section 90B of the Act, Mr. Vikas Balia submitted that since appeal lies under Section 90-B(7) of the

Act before the Divisional Commissioner, the writ petitions filed before this Court by the petitioners under Article 226 of the Constitution deserve to be dismissed on this ground alone.

24. Elaborating his submissions, Mr. Vikas Balia also urged that the respondent Aaishwarya College has suffered tremendously on account of delay in giving possession of the allotted land of 20,000 sq. mtrs to them and on account of non-development of infrastructure of the college, not only the respondent no.4 has lost its affiliation from the concerned University of Rajasthan but even the Bank, which has financed its project, has threatened for coercive measures for recovery and the lease deed in favour of the respondent no.4 has not been executed by the respondents UIT, Udaipur despite the directions of this Court and present petitioners have wrongly instituted the present litigation against the private respondent as well as the State and UIT, Udaipur since there is no question of considering regularization of land under Section 90B of the Act in favour of the petitioners once the Notification under SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 23/46 Section 4(1) of the Land Acquisition Act was issued in the present case way back in the year 1990 on 21/2/1990 and since the land vested free from all encumbrances in the State Government when the possession was taken on 15/6/2001 by the Tehsildar of UIT, Udaipur vide Annex.R/4/2, the petitioners cannot be said to be in possession of the land in question any longer.

25. Mr. Vikas Balia also urged that the compensation under the award dated 6/4/1996 passed in the land acquisition proceedings, which acquired finality at the hands of Hon'ble Supreme Court, stands deposited by the respondent UIT, Udaipur in the Court as per the procedure given under the Land Acquisition Act and merely because the petitioners failed to take the disbursement of compensation under the award passed in their favour, they cannot blame the State Government or the UIT, Udaipur and the finality of the land acquisition proceedings cannot be disturbed on this ground. He also submitted that Section 90B of the Act has since been deleted from the Statute book vide Rajasthan Laws

(Amendment) Act, 2012 notified by the State Government on 30/4/2012, therefore, the question of now directing the respondent UIT, Udaipur to consider the applications of the petitioners under Section 90B of the Act de novo cannot arise. He also stoutly submitted that under the garb of present writ petitions, the petitioners cannot challenge the judgment of this Court dated 24/10/2007 as upheld by Division Bench on 22/4/2011 in favour of respondent Aaishwarya College, and there was no misrepresentation of facts or concealment on the SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 24/46 part of respondent Aaishwarya College and, thus, having failed before the Division Bench while assailing the said judgment, the petitioners cannot be permitted now to achieve indirectly, what they could not get directly.

26. Learned counsel Mr. Deelip Kawadia appearing for the UIT, Udaipur, Mr. Vijay Purohit for the respondent UIT in connected writ petition No. 1049/2012 & Mr. Yashwant Mehta for the State supported the contentions raised by Mr. Vikas Balia and prayed for dismissal of the present writ petitions.

27. I have heard the learned counsels at length, perused the record and judgments cited at the bar.

28. In the opinion of this Court , the regularization and conversion of land use from agricultural to non-agricultural purposes upon surrender of land by a land holder to the State Government and giving it back or a part of it to the land holder under Section 90B of the Rajasthan Land Revenue Act, 1956 is apparently in conflict with the fact of the land having been acquired by the State Government for public purpose like in the present case the land having been acquired for the UIT, Udaipur for developing 'Bhuwana Extension Residential Scheme'. The Land Acquisition Act prohibits any transfer of land by the land holder once the Notification under Section 4(1) of the 1894 Act is issued as per the provisions of Section 4 of the Rajasthan Lands (Restrictions on Transfer) Act, 1976. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 25/46 29. Section 48 of the Act of 1894 is also reproduced hereunder for ready reference:

48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.- (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. (2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land. (3) The provision of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section. It is only if the land acquired is de-acquired as per the provisions of Section 48 of the said 1894 Act that the land can vest back in the land holders, otherwise the land in question vests, free from all encumbrances, with the State Government. Therefore, if the land has been acquired by the State Government for UIT, Udaipur and those acquisition proceedings have become final and a seal of imprimatur has been put on its by the Hon'ble Apex Court, the question of surrender of the said land by the land holder himself to SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 26/46 the State Government for being regularized in his favour, after the Notification under Section 4(1) has been issued, under Section 90B of the Act of 1956 does not arise. On the one hand, for the land acquired by the State Government, the compensation has to be paid to the land holder as per the provisions of Land Acquisition Act, 1894 as per the Award passed by the competent authority and on the other hand if regularization under Section 90B of the Act of 1956 of the same land was to be permitted at the premium to be paid by the land holder to the State Government, as is envisaged in the Government Circulars cited before this Court for such regularization under Section 90B of the Act, then it is clearly a contradiction in terms & will amount to biting back into the land acquisition proceedings, which has acquired finality and sanctity thereof

cannot be questioned by anybody.

30. Therefore, this Court is clearly of the opinion that Section 90B of the Act cannot be invoked and applied so long as the land acquired vests with the State Government and is further vested in the UIT, Udaipur after its possession having been taken over and award of compensation having been passed, irrespective of the fact that compensation has not so far been disbursed to some of the land holders including the present petitioners before this Court.

31. This view of the Court is supported by the Division Bench of this court in the case of Ranjeet Singh Meena vs. State of Rajasthan & Ors. - (2013) 1 RLW 146. Relevant para 13 to 17 of SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 27/46 the judgment are quoted below and while upholding the constitutional validity of Section 16 of the 1894 Act, the Division Bench of this Court in para 16 clearly observed that since the land stands acquired under the provisions of 1894 Act and the petitioners are no more owners or khatedars of the disputed land. Since the land acquired stood entered in the khatedari of UIT, Udaipur for which the land in question was acquired, there was no question of giving direction for consideration of petitioners' application for regularization of land under Section 90B of the Act and, further since the said provision of Section 90B of the Act has been deleted vide Notification dated 2/5/2012, more so, such a direction could not be given.

13. There is a complete procedure given in the Acquisition Act for acquisition of the land and there is a time limit prescribed under Section 6 & 11 of the Act for issuing a declaration and passing an award, which is necessary. Soon after passing of the award, the land can be taken in possession at any time. The amount in pursuance of the award is liable to be deposited and the persons concerned, are entitled to receive the amount of award. The notifications under sections 4 & 6 can be challenged on limited grounds, but when there is no challenge to the notifications under sections 4 & 6, the award is passed under Section 11 of the Act, which cannot be challenged by way of writ petition in the High Court as remedy to challenge the award is available under Section 18 of the

Act on limited grounds and/or limited relief. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 28/46 After passing of award and deposit of amount of compensation in pursuance of award, nothing remains to be done on the part of the respondents, except that, they become entitle to take possession of the acquired land at any time. At this juncture, petitioners have no right to challenge the validity of Section 16 of the Act of 1894.

14. Sections 6 to 17 of the Act lay down a clearly formulated and logical procedure to be followed in proceedings for acquisition. If all these provisions are read together, it will be clear that they form a complete well regulated code providing for various contingencies and eventualities that are bound to occur in such matters and it is not possible to accept the plea that Section 16 imposes unreasonable restrictions on the owners.

15. Since nothing is to be done by the land acquiring authority after deposit of amount of compensation in pursuance of award, they are at liberty to take possession of the acquired land at any time. In these circumstances, we do not find any arbitrariness or discrimination or unconstitutionality in the provisions of Section 16 of the Act of 1894. In our view, Section 16 of the Act of 1894 is intravires and does not violate any provisions of the Constitution.

16. So far as submission, to issue direction to consider the case of petitioners for regularisation of land is concerned, the said direction cannot be SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 29/46 issued for the simple reason that land in dispute stood acquired and it has been entered in the Khatedari of U.I.T. The petitioners are no more owners or Khatedars of the disputed land. We may also add that now Section 90-B of the Rajasthan Land Revenue Act, 1956 is no more in existence, as it has already been deleted vide Notification dated 2.5.2012. Therefore, we do not find any force in this submission of petitioners also.

17. In view of above discussion, we do not find any merit in this writ petition and the same is, accordingly, dismissed with no order as to costs.

31. The Hon'ble Supreme Court in Jaipur Development Authority & ors. vs. Vijay Kumar Data & anr. - 2011 (3) RLW 238.(SC) also strongly deprecated & declared nullity the transactions of transfers of land after the Notification under Section 4 (1) of the Land Acquisition Act is issued and in so called Policy decision to regularize such land in favour of encroachees and transferees was quashed and the writ petition filed by such transferees was dismissed with exemplary costs. The relevant portion from the said judgment including its factual matrix is quoted below for ready reference:- 2. By notification dated 13.5.1960 issued under Section 4 of the Rajasthan Land Acquisition Act, 1953 (for short, the 1953 Act), which was published in the official gazette dated 29.6.1960, the State Government proposed the acquisition SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 30/46 of 552 bighas 8 biswas land of village Bhojpura and Chak Sudershanpura for planned development of Jaipur city. The land was to be utilized for the purpose mentioned in the preceding paragraph. Declaration under Section 6 was issued on 3.5.1961 and was published in the official gazette dated 11.5.1961. Thereafter, notice dated 18.7.1961 was issued to the land owners (Khatedars) under Section 9(1) and (3). Initially, 65 Khatedars filed claims for compensation but this figure swelled to more than 137 because those who purchased land from the Khatedars after publication of the notification issued under Section 4 and their nominees/sub-nominees also filed claims for compensation. The second category of persons included Shri Ganesh Narayan Gupta, Advocate and Dr. Bhagwan Das Khera, both of whom managed to purchase portions of the acquired land from one of the Khatedars, namely, Shri Vijay Lal son of Ram Sukhji. The Land Acquisition Officer, Jaipur passed an unusual award dated 9.1.1964 whereby he not only determined the amount of compensation payable to the landowners and the beneficiaries of illegal transfers, but also directed allotment of plots measuring 1000 to 2000 square yards to the owners, their transferees and nominees/sub-nominees out of the acquired land.

3. After passing of the award, Shri Ganesh Narayan Gupta filed execution application and succeeded in getting an order for delivery of SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 31/46 possession of 1500 square yards land in the Lal Kothi Scheme. The revision filed against the order of Executing Court was dismissed by the High Court and in that sense, the order passed by the Executing Court became final. However, as will be seen hereinafter, in view of the judgment of this Court in Jaipur Development Authority v. Radhey Shyam (1994) 4 SCC 370.all such orders and judgments will be deemed to have become nullity.

6. During the pendency of litigation before different courts, another attempt was made by the functionaries of the State to confer legitimacy on the illegal transactions involving purchase of the acquired land. The then Minister of Urban Development of Housing, who was also Chairman of the Trust, constituted a Committee for suggesting the methodology for allotment of land in terms of the directions given by the Land Acquisition Officer. The members of the Committee obliged their master i.e. the Minister and recommended that land be allotted to the beneficiaries of illegal transactions at the rate of Rs.8/- per square yard. Thereafter, a circular disguised as policy decision was issued in 1978 for allotment of land to sub-awardees and their nominees/sub-nominees at the rate of Rs.8/- per square yard.

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 SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 32/46 amendment of the pleadings and granted 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 under Section 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 Shyams case and Daulat Mal Jains case and refused relief to the respondents.

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. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 33/46 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 Shyams case and Daulat Mal Jains 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.

35. Although, we are prima facie satisfied that execution of lease deeds by the appellant in favour of some persons in 2002 and 2003 is a clear indication of deep rooted malaise in the functioning of the appellant and is also indicative of sheer favouritism and nepotism, we refrain from pronouncing upon the legality of those transactions because the beneficiaries are not parties to these appeals.

36. In the result, the appeals are allowed. The impugned judgment is set aside. The writ petitions filed by Vijay Kumar Data and Daya Kishan Data are dismissed and they are directed to pay cost of Rs.5 lacs for pursuing unwarranted litigation

for last over 15 years. The amount of cost shall be deposited with the Rajasthan State Legal Services Authority within a period of two months. The respondents shall be entitled to recover the price paid to Shri Ganesh Narayan Gupta along with the amount of cost by availing appropriate SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 34/46 legal remedy.

37. Since we have found that the so called policy decision contained in letter dated 6.12.2001 is contrary to the law declared by this Court, the State Government and the appellant are restrained from taking any action in future on the basis of the said letter.

32. While dealing with the provisions of Rajasthan Land ( Restriction on Transfer) Act, 1976, a coordinate bench of this Court in the case of M/s Omway Build Estate (P) Ltd. vs. Divisional Commissioner Jaipur & ors. - 2012 (1) ILR (Raj.) held that on the date when the said land was purchased, such transfer of land might be void qua the State Government but after issuance of Notification under Section 48 of the Land Acquisition Act, the land holders again become the owners of the said land and were competent to submit their applications under Section 90B (3) of the Act of 1956. In other words, the learned Single Judge held that the voidness of the sale of property qua the State Government at one stage can lose that character only after the Notification by the State Government under Section 48 withdrawing the said land from acquisition & such voidability of transfers of land can go away and, thereafter, the transfer of the land even made before such withdrawal of Notification under Section 48 of the Act can be validated and can be regularized under Section 90B of the Act. The relevant paras of the said judgment are quoted below for ready reference:- SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 35/46 23. It is settled legal position of law that powers U/s 48 of LA Act could be exercised at any stage even after passing of the Award but before taking possession of the subject land. In the instant case, the possession of subject land under acquisition admitted was not taken by State Government even after the

Award U/s 11 of LA Act came to be passed or at the stage when State Government took decision to withdraw the subject land from acquisition, which is not under challenge in pending proceedings.

24. The Act, 1976 appears to have been enacted with an object to prevent transaction of purported transfers or transfer of such land to unwary public and it halts in preventing unauthorized transaction and rather to overcome the difficulties cause in the way of acquisition of lands.

25. What is to be examined by this Court is as to what will be the effect of S.4 of Rajasthan Lands (Restrictions on Transfer) Act, 1976 (Act, 1976) which has been enacted to impose restrictions on transfer of lands proposed to be acquired or under acquisition for public purposes.

26. Provisions under the Scheme (supra) clearly indicates that where acquisition proceedings having been commenced for public purposes and declaration being made U/s 6, if any transfer of land is undertaken without previous permission in writing with the competent authority, such transaction/transfer of the lands will not be recognized and would be void qua State Govt., but SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 36/46 not in general with a further rider that State Govt has not withdrawn such land from acquisition U/s 48 of LA Act.

27. A converse position would have been that the case where State Government has withdrawn the land from acquisition U/s 48 of LA Act which as per judgment of Apex court in Shanti Sports Club Vs. Union of India (2009(15) SCC

705) has to be duly published in Gazette so that it may be made widely known to the public at large that such lands stands withdrawn from acquisition and transfer of lands can be recognized in general for all practical purposes. 29.....Taking note of judgments (supra), in the opinion of this Court, after issuance of Gazette notification U/S.48 of LA Act the very inception of acquisition proceedings stands withdrawn & effect of S.4 of the Act, 1976 ceases to subsist and slate becomes

clean and such transaction/ transfers of lands which took place during the interregnum period are held to be valid even against the State Government & in general for all practical purposes; however it will not preclude the State Govt., if intends to acquire the subject land afresh at a later stage, but that too by initiating acquisition proceedings afresh if required for public purposes.

30. As regards judgment on which Counsel for respondent placed reliance in Meera Sahni Vs. Lt. Governor (2009(8) SCC 177), it was a case where the land was purchased after declaration of SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 37/46 acquisition U/s 6, but no notification U/s 48 which empowers State Government to withdraw the land from acquisition, was issued/published in gazette and in such circumstances, examining scope of restriction regarding transfer of land, imposed U/s 4, it was held that such transaction being void would not be recognized by State Government but in instant case, on the date when the subject land was purchased, such transfer of land might be void qua State Government, but after issuance of notification U/s 48 of LA Act petitioners became holders of subject land & competent enough to submit their application U/s 90-B(3) of LR Act. Thus, the sale might be void qua State Government; at one stage but after issuance of notification by State Government U/s 48 withdrawing subject land from acquisition, such transfer of lands certainly be considered to be valid in general for all practical purposes and whatever rights being available to the land owners are available to the land holders.

31. Further submission made by Counsel for respondents that even if the order of Divisional Commissioner is not sustainable but this Court would not like to restore the order which will perpetuate illegality having been committed by authorized officer while passing order dt. 31/10/1998, is wholly without merit for the reason that application was filed much after the subject land was withdrawn from acquisition vide notification dt.01/12/2006 and that was maintainable under the law and will not affect the rights & title of the land holders in whose favour it SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other

connected writ petitions. Judgment dated :

6. 8/2013 38/46 stood transferred pendente acquisition proceedings.

33. In view of the aforesaid judgment, the position of law is clear that unless the land is de-acquired under Section 48 of the Land Acquisition Act, the provisions of Section 90B of the Act, 1956 cannot be applied on the surrender of the land made by the land holders after issuance of Notification under Section 4(1) of the Land Acquisition Act, 1894.

34. In the light of aforesaid legal position, if the Government Circulars in question, which have been invoked and some part of the land in question acquired for the UIT, Udaipur is said to have been regularized under the provisions of Section 90B of the Act, 1956, viz. Circulars dated 22/12/1999, 26/5/2000 and 4/10/2002 referred to in the proceedings of the UIT, Udaipur (Annex.8) apparently fall foul with the aforesaid legal position and under the garb of the same being described as Policy decision of the State Government also they cannot be sustained. The relevant extracts of these Govt. Circulars as given in the proceedings of the UIT, Udaipur (Annex.8) are reproduced hereunder:- " , .3(28)/3/96 1 , 22-12-99 4A1 A 1 - A 7.- < ,,\$ 4 \$ % < SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

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"35. The submission of learned counsel for the petitioners, Mr. M.R.Singhvi that like the land of other land holders have been SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 41/46 regularized under Section 90B of the Act in pursuance of these Circulars, their applications also deserve to be allowed cannot be upheld. One illegality or even if many of them does not justify further illegality and this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India cannot restore or even perpetuate any illegality.

36. The five Judges Full Bench of this Court in Jagan Singh vs. State Transport Appellate Tribunal AIR 198.(Raj.) 1 held in a transport matter that allowing writ petition would result in restoring the illegal order of the RTA as there had been no failure of justice in the instant case. The High Court refused to interfere with the appellate order. The relevant portion from para 11 of the judgment is quoted below for ready reference:- Assuming for argument's sake, that the non- petitioner No- 2, Sagruddin, had no locus standi to file an appeal or revision before the State Transport Appellate Tribunal against the order of the Regional Transport Authority dated May 27, 1978, the fact remains that the said order of the Regional Transport

Authority is illegal and if we were to allow this writ petition and set aside the impugned order by the State Transport Appellate Tribunal, the result would be that the illegal order of the Regional Transport Authority would be restored. It may be noted that there has been no failure of justice in the present case and we would be justified in refusing to interfere unless we are SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 42/46 satisfied that the justice of the case requires it. We are of opinion, that having regard to the facts of the case and the law bearing on the subject, we should decline to interfere.

37. The contentions of the petitioners, two brothers; Ram Narain Dhabhai and Chain Shanker Dhabhai, that they are still in possession of the land in question and were never dispossessed, is belied by the document Annex.R/4/2, wherein, it is stated clearly that the possession of khasra no. 4298 to 4303, 4342 to 4358 and 4383 total measuring 5.81 hectares has been taken over by the Tehsildar of UIT, Udaipur on 15/6/2001. The respondents have also contended before this Court that thereafter roads have been developed in this area by the UIT, Udaipur, therefore, the contention of the petitioners that they continued to be in possession is found to be incorrect and is liable to be rejected. The other contention of the petitioners that Tehsildar, UIT, Udaipur was not authorized to take over the possession and that the petitioners had constructed room and boundary wall on the said land is also incorrect as no evidence in support of the same is produced before this Court and a bald averment in this regard cannot be taken as a gospel truth.

38. The contention that petitioners have not been paid any compensation yet, also does not give any advantage to the petitioners. As per the procedure prescribed under Section 11 of the Act, if the compensation awarded by the competent authority is deposited in the Court, it is for the beneficiaries of such SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 43/46 compensation to take disbursement of the same in accordance with the Rules made for this purpose and the acquisition proceedings cannot be indirectly questioned on this ground nor does it furnish any valid ground to the petitioner to apply for regularization of their land under Section 90B of the Act on this ground.

39. As far as challenge to the allotment of 20,000 sq. mtrs made by the UIT, Udaipur out of the land acquired for it by the State Government, which became final at the hands of Hon'ble Supreme Court is concerned, the challenge laid by the petitioners is absolutely misconceived. Once the land has been acquired for the UIT and it has framed a scheme for development of the same to achieve the purpose for which the land was acquired for them, the allotment made in favour of respondent no. 4 Aaishwarya College cannot be questioned by the petitioners. More so, when the said allotment has been specifically upheld by allowing the writ petition filed by the respondent Aaishwarya College vide judgment dated 24/10/2007 when the UIT itself treated the said allotment as cancelled on account of non-deposit of money by allottee Aaishwarya College within stipulated time but the Court quashed the cancellation order Annex.13 dated 15/4/2005 and Annex.14 dated 18/6/2005 in SBCWP No. 4939/2005, which judgment has been upheld by the Division Bench of this Court on an appeal filed by the present petitioners only, therefore, the said challenge now cannot be entertained. Therefore, this contention of the petitioners is also liable to be rejected and same is accordingly rejected. SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 44/46 40. The other contention of the Mr. M.R.Singhvi, Sr. Advocate, learned counsel appearing for the petitioners that since the learned Single Judge of this Court on 15/2/2007 had directed that the petitioners' application under Section 90B of the Act is to be considered in accordance with law while deciding their writ petition No. 2824/2005, therefore, in parity with the others, like Anil Purohit & Chand Mohd. the petitioners' application under Section 90B of the Act also deserved to be allowed is also equally devoid of merit. This Court finds considerable force in the contention raised on behalf of the respondents that the relief in this regard on the basis of the aforesaid Government Circulars had already

been raised and negatived in the order passed by the learned Single Judge on 15/2/2007 in the case of petitioners only and that puts the case of the petitioners apart from the other orders passed on the same date by the same learned Single Judge. Therefore, this contention that their case also deserved to be considered in the light of the said Government Circulars stood negatived at that point of time itself on 15/2/2007 and same cannot be raised now again. This is apart from the fact that this Court finds that no such application under Section 90B of the Act at all could lie after the Notification Section 4(1) of the Act, 1894 was issued in the present case on 21/2/1990 and which proceedings have become final at the hands of Hon'ble Supreme Court.

41. Similarly, the application of the other petitioner Laxmi Narain in SBCWP No. 2403/2001, which was earlier consigned to record till SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 45/46 the matter was decided by the Hon'ble Supreme Court, also cannot be now directed to be decided for the aforesaid reasons.

42. In view of the above legal position, this Court is of the opinion that unless and until the land acquired by the State Government for the UIT, Udaipur is de-acquired as per the provisions of Section 48 of the Act of 1894, there is no question of regularization of land under Section 90B of the Rajasthan Land Revenue Act. Moreover, Section 90B now stands deleted w.e.f. 30/4/2012 by the Rajasthan Laws (Amendment) Act

43. For the contention of the learned counsel for the petitioners that some of the lands have been regularized under the aforesaid Government Circulars under Section 90B of the Act, despite the aforesaid land acquisition proceedings having become final by taking premium as per those Government Circulars, if the State Government considers it appropriate to even now issue any Notification under Section 48 of the Land Acquisition Act, 1894 for de-acquisition of land in question, wholly or partially to the extent of land already regularized in favour of other persons under section 90B of the Act and in the cases where the possession of the land has not been taken and compensation of the same has not been paid to

the land holders, the State Government may do so even now. It is only if such land is de-acquired, then the question of considering the application under Section 90B of the Act can arise. In the case of any such eventuality, if the land of present petitioners is also de- SBCWP No.7734/2010 Ram Narain Dhabhai & Anr. vs. State & ors. along with two other connected writ petitions. Judgment dated :

6. 8/2013 46/46 acquired under Section 48 of the Act of 1894, the competent authority can re-consider the applications of the present petitioners under Section 90B of the Act de novo, however, without disturbing the allotment already made in favour of respondent no. 4 Aaishwarya College of Education Sansthan & which has become final and allotment of some alternative land to the petitioners in lieu of the same can be considered by the competent authority but no such consideration of their applications under Section 90B of the Act can be permitted by the Court much less directed unless the de- acquisition under Section 48 of the Act takes place in respect of such land.

44. Accordingly, these writ petitions are liable to be dismissed and they are accordingly dismissed with no order as to costs. (DR.VINEET KOTHARI), J.

item no.25-27 baweja/-

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