


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 336/2019

1. Jyoti Sejwani W/o Nanak Chand Sejwani, Aged About 45 Years, R/o Plot No. 53, Shree Ram Colony, Tonk Road, Durgapura, B 2 Bypass, Jaipur.
2. Suresh Chand Pal S/o C.S. Pal, R/o Plot No. 58, Shri Ram Colony, Near Lakhanpuri, Durgapura By Pass Ke Samne Tonk Road, Tehasil Sanganer, Jaipur (Raj.)

----Petitioners

Versus

1. The Rajasthan Housing Board, Janpath, Jyoti Nagar, Jaipur Through Its Commissioner, Jaipur.
2. The Jaipur Development Authority, Jawahar Lal Nehru Marg, Jaipur Through Its Commissioner, Jaipur.
3. Mahmood Alam S/o Sh. Hafijulla Khan, Aged About 68 Years, R/o Plot No. 184, Jalupura, In Front Of Hotel Karim, Jaipur-302001.

----Respondents

Connected With

S.B. Civil Writ Petition No. 13563/2019

1. Jyoti Sejwani Wife Of Nanak Chand Sejwani, Aged About 45 Years, Resident Of Plot No. 53, Shree Ram Colony, Tonk Road, Durgapura, B 2 Bypass, Jaipur.
2. Suresh Chand Pal Son Of C.S. Pal, Resident Of Plot No. 58, Shri Ram Colony, Near Lakhanpuri, Durgapura By Pass Ke Samne Tonk Road, Tehasil Sanganer, Jaipur(Raj.)

----Petitioners

Versus

1. The Rajasthan Housing Board, Janpath, Jyoti Nagar, Jaipur Through Its Commissioner, Jaipur.
2. The Jaipur Development Authority, Jawahar Lal Nehru Marg, Jaipur Through Its Commissioner, Jaipur.
3. Registrar Cooperative Department, Cooperative Department, Sahakari Samities, 22 Godown Jaipur.
4. Neeraj K. Pawan, Registrar Cooperative Societies Sahakari Samities, 22 Godown Jaipur.

----Respondents

S.B. Civil Writ Petition No. 15576/2019

Rajasthan Housing Board, Jaipur, Through Its Secretary,
Janpath, Jaipur (Raj.)

----Petitioner

Versus

1. Jaipur Development Authority, Through The Secretary, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
2. Deputy Commissioner, Zone-18, Jaipur Development Authority, Indira Circle, Jawahar Lal Nehru Marg, Jaipur (Raj.).
3. Administrator, Jawaharpuri Bhawan Nirman Sahkari Samiti Ltd. And Deputy Registrar, Cooperative Societies, Jaipur (City Jaipur)
4. Indu Bala Jain Wife Of Shri Shanti Kumar Jain, Resident Of Shreeram Colony, Tonk Road, Jaipur.
5. Jyoti Devi Wife Of Shri Nanak Chand, Resident Of Shreeram Colony, Tonk Road, Jaipur.
6. Radhe Shyam Son Of Shri Utsav Ladda, Resident Of Shreeram Colony, Tonk Road, Jaipur.
7. Suresh Chandra Pal Son Of Shri Chiddi Singh Pal, Resident Of Shreeram Colony, Tonk Road, Jaipur.
8. Ram Kishan Son Of Shri Late Nathmal, (Now Deceased Through Legal Heir)
9. Sanjay Bhojnagarwala Son Of Late Shri Kishan Kumar Agarwal @ Ramkishan, Aged About 50 Years, Sriram Colony, Tonk Road, Jaipur (Raj.).

----Respondents

S.B. Civil Writ Petition No. 16978/2019

Shree Ram Colony B Vikas Samiti, B2 Bypass, Durgapura,
Tonk Road, Jaipur Through Authorized Signatory, Shri Dev
Prakash Meena S/o Shri Panchuram Meena, R/o A-39, Prem
Colony, Meena Nursery, Surya Nagar, Taron Ki Khoot, Tonk
Road, Jaipur.

----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Urban Development And Housing, Government Of Rajasthan, Jaipur.
2. The Rajasthan Housing Board, Janpath, Jyoti Nagar, Jaipur Through Its Commissioner, Jaipur.
3. The Jaipur Development Authority, Jawahar Lal Nehru Marg, Jaipur Through Its Commissioner, Jaipur.
4. Principal Secretary, Cooperative Department, Government Of Rajasthan, Jaipur.
5. Principal Secretary, Public Health And Engineering Department, Government Of Rajasthan, Secretariat, Jaipur.
6. Registrar, Cooperative Societies, Rajasthan, Sahakar Bhawan, 22 Godam, Jaipur.
7. Jaipur Vidhyut Vitran Nigam Limited, Through Its Managing Director, Vidhyut Bhawan, Janpath, Jaipur.
8. Jawaharpuri Bhawan Nirman Sahakari Samiti Ltd, Through Its Liquidator Cum Deputy Registrar, Cooperative Societies, Jaipur (City), Room No. 608, 5Th Floor, Mini Secretariat, Bani Park, Jaipur.

----Respondents

For Petitioner(s) : Mr. M.M. Ranjan, Senior Advocate assisted by Mr. Naman Pareek in CW No.336/2019 & 13563/2019 (private persons) and in CWP No. 16978/2019 for Shree Ram Colony "B" Vikas Samiti with Mr. Ashish Sharma, Advocate
 Mr. R.N. Mathur, Sr. Advocate with Mr. Shovit Jhahhariya for Mr. Mohammad Alam
 Mr. A.K. Sharma, Senior Advocate assisted by Mr. Dinesh Yadav, Mr. Ankit Yadav with Mr. Anand Sharma for petitioner in CW No.15576/2019-Rajasthan Housing Board

For Respondent(s) : Mr. Utkarsh Dubey & Mr. Abhishek Mewara in CW No.336/2019
 Mr. A.K. Sharma, Senior Advocate

assisted by Mr. Dinesh Yadav, Mr. Ankit Yadav with Mr. Anand Sharma for Rajasthan Housing Board
Mr. J.K. Moolchandani with Mr. Hariom Yadav in CW
No.15576/2019 for respondent No.8
Mr. S. Kaushal for Mr. Neeraj Batra, Govt. Counsel in CW
No.16978/2019 for respondent No.5
Mr. Ram Kumar Sharma for Jawaharpuri Bhawan Nirman Sahakari Samiti Ltd.
Mr. Virendra Lodha, Senior Advocate assisted by Mr. Jai Lodha & Mr. Darsh Pareek for Jaipur Development Authority in all cases.

Reportable:

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

Arguments concluded on ::: **February 04, 2026**
Order reserved on ::: **February 04, 2026**
Order pronounced on ::: **April 09, 2026**

1. The facts of the case in brief, as per the pleadings made by the original petitioners i.e. private persons, Rajasthan Housing Board and Shree Ram Colony B Vikas Samiti (for short 'the Housing Society'), in the petitions, which have been filed separately, are as under:-

** On 12.10.1979 the Urban Improvement Trust (for short 'the UIT') issued a notice under Section 52 of the Rajasthan Urban Improvement Act, 1959, with regard to acquiring the land.

** By way of an agreement to sale dated 31.07.1981 the Jawaharpuri Bhawan Nirman Sahakari Samity Limited (for short 'the Vikas Samiti), Jaipur purchased the land, came into possession, prepared the plan for residential scheme named as Shri Ram Colony and made allotment of plots to its members.

** An another agreement was executed on 31.07.1986 for extension of time for payment. Further on 13.12.1988 one another agreement was executed, which was signed by the successors and also by the original signatories to the agreement dated 31.07.1981.

** On 02.09.1989 the RHB published a scheme for construction of residential houses upon the agricultural land, measuring 42 Bighas 10 Biswas, situated in village Chainpura and Durgapura in Jaipur City.

*** On 10.01.1990 a Notification under Section 4 of the Land Acquisition Act, 1894 (for short 'Act of 1894) was issued by the State Government for construction of a housing colony by the RHB.

** On 09.04.1990 the Khatedars/Tenants filed objections against the said acquisition.

** On 19.07.1990 the State Government published a notification under Section 4 of the Act of 1894, which was followed by another notification dated 04.01.1991, whereby, invoking the urgency clause under Section 17 (a), declaration was made under Section 6 and a direction was given to the concerned authority under Section 9 to take possession of the land in question.

** Few persons claiming to be the Khatedars, submitted a representation on 09.04.1990 to the State Government in regard to the land in question.

*** On 13.04.1991 the Housing Cooperative Society issued a notice under Section 80 of CPC opposing the acquisition and for dropping the same.

** A declaration under Section 6 of the Act of 1894, was issued dispensing with the inquiry under Section 5A of the said Act by resorting to Section 17(4) of the said Act, which was published in the official gazette on 13.06.1991.

** S.B. Civil Writ Petition No.5561/1991 was filed by the Khatedars/Tenants by which validity of both the acquisition notifications were challenged.

** On 05.12.1991 physical possession of the land in question was taken by the concerned authority of the State Government which was handed over to the representatives of the RHB.

** On 16.12.1991 an interim order to maintain the status quo was passed in SBCWP No.5561/1991 by the Coordinate Bench of this Court. The Coordinate Bench of this Court passed an order for appointment of Commissioner and also directed to maintain the status quo in respect of the land and the houses thereon.

** Vide order dated 25.07.1992 the interim order dated 16.12.1991 was confirmed.

** The Khatedars submitted objections before the Land Acquisition Officer (for short 'the LAO').

** The LAO passed the award on 20.07.1993

** On 23.08.1993 the compensation was sent to the learned Civil Judge by the LAO.

** On 18.09.1993 the Khatedars submitted a reference/petition before the Civil Judge.

** The Government to deal with the problems relating to housing colonies, which have been developed on agriculture land, which have been either acquired under the Land Acquisition Act or other laws and Government lands,

took policy decision on 18.02.1994 for relaxing the prohibitions contained in Rule 5 of the Rules with regard to conversion and regularization, enacted in 1981 and provided modality for conversion of such lands.

** On 24.03.1994 the Government also sent a detailed clarification with regard to the points raised by the JDA.

** On 31.03.1994 the JDA issued a public notice, inviting the applications for conversion of land use/regularization.

** The Cooperative Society pursuant to the said notice, submitted necessary documents and list of members before the JDA for regularising the scheme named as Shri Ram Colony-B in the year 1994. The JDA issued and published a list of the members of the Cooperative Society.

** On 21.01.1995 the President of Cooperative Society submitted a representation to the Government in regard to the land in question.

** On 22.01.1995 a meeting was held by the Chief Secretary after a joint inspection of the site by authorities of various departments, JDA and the RHB.

** Similarly another representation was given on 07.04.1995 to the concerned authority of the JDA for regularization of the scheme.

** The Building Plan Committee of the JDA was held. One of the Khatedars submitted an affidavit that in case the scheme of Shri Ram Colony, Tonk Road, Jaipur is approved by JDA, he will withdraw the writ petition.

** On 06.05.1995 the JDA wrote a letter to the Secretary of the Cooperative Society that in case the writ petition filed by the Khatedars is withdrawn, the JDA will approve the scheme in question.

** Another meeting of BPC-II of JDA was held on 29.05.1995.

** In response to the communications dated 14.12.1993 and 14.02.1995, received from the Deputy Legal Adviser, UDH, communications were made in between the RHB and the JDA. The JDA issued a letter of approval of the scheme on 29.05.1995, but RHB was unaware about the same. Hence, RHB filed a writ petition bearing No.3259/1995 on 18.07.1995.

** CWP No.5561/1991 titled as Ram Avtar Bhojnagarwala vs. State, was disposed of vide order dated 15.05.1995 in view of the approval of the scheme by the JDA vide its letter dated 29.05.1995.

** On 29.05.1995 the JDA approved a map of Shri Ram Colony on Tonk Road after verifying the boundaries of the scheme, as per the Revenue Record, inquiry, verification of title, inspection of site by the members of BPC-II and the decision taken in meeting dated 19.05.1995.

** On 18.06.1995 the JDA published a notice in newspaper for holding the regularization camp of the said scheme. The members of the society participated in the camp and deposited the regularization charges as cost of land.

** The Housing Board irrespective of being a party to the aforesaid proceedings in which it was decided that the society will surrender the land for construction of road, the writ petition filed by the Khatedars will be withdrawn and the plan of the Cooperative Society will be approved and regularization will be done, took U-turn and started opposing the action of the JDA in constructing the road and deciding to regularize the scheme of the Cooperative Society and finally filed a writ petition No.3259/1995 making JDA as a sole party (without impleading the State Government and Cooperative Society as party). On 02.08.1995 the Coordinate Bench of this Court in the aforementioned writ petition passed an interim order.

** The writ petition No.5561/1991 filed by the Khatedars challenging the validity of acquisition was dismissed for non prosecution vide order dated 15.05.1996.

** The JDA published a notice withdrawing the approval of plans. Pending writ petition No.3259/1995, the JDA withdrew the order of approval dated 29.05.1995. The writ petition No.3064/1996 was filed by Indu Bala Jain and four others in which challenge was made to the notice published in Rajasthan Patrika on 31.05.1996.

*** An interim order of status quo was passed on 12.07.1996.

** Vide circular dated 23.04.1997 the Government superseded its earlier circular dated 04.03.1992 as well 18.02.1994 and issued a new circular providing therein that in case the land has been purchased upto 23.04.1997 through agreement to sale and copy of agreement has been deposited with the competent authority and conversion charges have been deposited partially and fully by 21.07.1997, the regularization will be made as per the rates mentioned in Scheduled-III to the circular. The circular was made applicable to the acquired land also.

** Vide letter dated 06.01.2000 the Chairman RHB informed the Government that it is not practicable to implement the scheme by the RHB.

** The writ petition filed by the RHB against the JDA bearing No.3259/1995, was dismissed as having become infructuous vide order dated 02.08.2001.

** Vide order dated 12.02.2002 the Coordinate Bench of this Court quashed the impugned notice/information published in the Rajasthan Patrika dated 31.05.1996 and directed the JDA to issue pattas of the land in question.

** The RHB filed D.B. Civil Special Appeal (Writ) No.435/2002 against the order dated 12.02.2002 passed by

the Coordinate Bench of this Court which was dismissed by the Hon'ble Division Bench vide order dated 05.01.2010.

** A Special Leave to Petition was filed by the RHB against the order dated 05.01.2010 passed by Hon'ble Division Bench in SAW No.435/2002.

** D.B. Civil Review Petition No.4/2010 filed by the RHB was dismissed vide order dated 10.03.2010.

** An interim order was passed by the Hon'ble Supreme Court on 19.03.2010 in the SLP filed by the RHB.

** Vide order dated 21.03.2013 One Mahmud Alam was impleaded as party respondent No.8 in the SLP on the application filed by him.

** On 22.09.2017 one Prabhu Dayal Modi claiming himself to be the power of attorney holder of Khatedars, filed an application for impleadment of party in the SLP claiming that the Khatedars did not sale the land.

*** The Hon'ble Supreme Court vide order dated 09.10.2018 dismissed the SLP and all pending applications.

** The RHB filed a Review Petition No.215/2019 before the Hon'ble Supreme Court which was dismissed vide order dated 21.01.2019.

2. With the background of the aforementioned facts, the writ petition bearing S.B. Civil Writ Petition No. 336/2019 has been filed by the petitioners namely; Jyoti Sejwani and Suresh Chand Pal with the following prayers:-

"a) by way of writ, order or directions the order dated 31.10.2018 passed by the Rajasthan Housing Board Jaipur may kindly be quashed and set aside.

b) by way of writ, order or directions the order dated 22.11.2018 passed by the Jaipur

Development Authority, Jaipur may kindly be quashed and set aside.

C) by way of writ, order or directions the order passed by the learned single judge 12.2.2002 in S.B. Civil Writ Petition No. 3064/96 which has been affirmed by the Hon'ble Division Bench vide order dated 5.1.2010 in D.B. Special Appeal (Writ) No. 435/02 and by the Hon'ble Supreme Court vide order dated 9.10.2018 may kindly be complied forthwith."

By the letter dated 31.10.2018 which is under challenge, the Rajasthan Housing Board (for short 'the RHB') requested the Commissioner, JDA to take appropriate action to make a proper inquiry into the matter and not to allow encroachments over the land in question and by the order dated 22.11.2018 in question, the JDA informed the RHB that the demarcation of the land in question be made and to remove the encroachments in the presence of the Officers of the RHB.

3. Another writ petition bearing S.B. Civil Writ Petition No.13563/2019 has been filed by the petitioners namely; Jyoti Sejwani and Suresh Chand Pal with the following prayers:-

"a) by way of writ, order or directions the notices dated 12.6.2019 and 1.7.2019 passed by the respondents may kindly be quashed and set aside.

b) by way of writ, order or directions the Jaipur Development Authority may be directed to issue Pattas to the members of the society whose list has also been submitted earlier.

c) by way of writ, order or directions the order passed by the learned single judge 12.2.2002 in S.B. Civil Writ Petition No. 3064/96 which has been affirmed by the Hon'ble Division Bench vide order dated 5.1.2010 in D.B. Special Appeal (Writ) No. 435/02 and by the Hon'ble Supreme Court vide order dated 9.10.2018 may kindly be complied forthwith.

d) Any other appropriate writ, order or directions which this Hon'ble Court deem fit to impose upon the petitioner may kindly be passed in favour of the petitioner."

By the notices under challenge dated 12.06.2019 and 01.07.2019, the Registrar, Cooperative Societies, Rajasthan, Jaipur, has asked the Administrator of the Vikas Samiti to cancel the allotment letters which are illegal and there is a U.O. Note of the JDA for demolition of the alleged illegal constructions made over the land in question.

4. Another writ petition bearing S.B. Civil Writ Petition No.16978/2019 has been filed by Shree Ram Colony "B" Vikas Samiti, B2 Bypass (for short 'the Housing Society'), with the following prayers:-

"(i) to quash and set aside the directions/letters of respondent no.6, in so far they relate to

stoppage/demolition of constructions in Shri Ram Colony Tonk Road, Jaipur and to restrain the other respondents from acting upon the directions/letters dated 03.06.2019 (Annexure-21) and 12.06.2019 (Annexure-22) written by him as well as upon the report of inquiry annexed with letter dated 25.07.2019 (Annexure-26);

(ii) to issue a writ of mandamus to the respondents preventing them from taking any coercive steps against the plot holders of Shri Ram Colony Tonk Road, Jaipur (like demolition, dispossession, disconnection of amenities and facilities etc.) contrary to the directions issued by this Hon'ble Court in S.B. Civil Writ Petition No. 3064/1996 on 12.02.2002 as upheld upto the Hon'ble Supreme Court and also to take appropriate steps for making development and providing amenities and facilities as being provided in colonies regularized/under regularization by Jaipur Development Authority;

(iii) to issue any other appropriate relief which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case in favour of the Petitioner;

(iv) to allow the cost of the writ petition in favor of the Petitioner."

By the impugned letter dated 03.06.2019, the Registrar, Cooperative Societies, Rajasthan, Jaipur, has asked the Commissioner, JDA, Jaipur that since an inquiry is being conducted by the Enquiry Committee as regards the complaint in respect of the Housing Society (Shree Ram

Colony-B), the JDA is requested to put halt all the constructions made over the land in question. By the letter dated 12.06.2019 which is assailed herein, the Registrar, Cooperative Societies, Jaipur, has asked from the Administrator of the Vikas Samiti to cancel the allotment letters which have been declared illegal. In the letter under challenge dated 25.07.2019 the Chairman of the Enquiry Committee has submitted the inquiry report to the Registrar, Cooperative Societies, Rajasthan, Jaipur, wherein certain observations have been made against the existence of the Housing Society.

5. One another writ petition bearing S.B. Civil Writ Petition No.15576/2019 has been filed by the Rajasthan Housing Board with the following prayers:-

"i.) By an appropriate writ order or direction, in view of the enquiry report dated 25.7.2019, the order dated 29.5.1995 passed by respondent-authority be declared void ab-initio as the same was in regard to land which has vested in the State Government;

ii.) By an appropriate writ order or direction, all the subsequent actions of the respondent-authority be declared illegal;

iii.) By an appropriate writ order or direction, the land acquisition proceedings initiated vide notification dated 2.9.1989 be declared legal and valid and have completed with vesting in the State Government and thereafter in the petitioner-Board

as per Land Acquisition Act applicable at the time of passing of the Award;

iv.) By an appropriate writ order or direction, the agreement to sale dated 31.7.1981 be declared illegal, inexecutable and void ab-initio being anti-dated;

v.) Any other appropriate order or direction, which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case"

6. Mr. M.M. Ranjan Senior Advocate assisted by Mr. Naman Pareek and Mr. Ashish Sharma learned counsel appearing for the petitioners (private persons) in CWP Nos.336/2019, 13563/2019 and in CWP No. 16978/2019-for Shree Ram Colony "B' Vikas Samiti have submitted that as regards the land in question, the matter has attained finality upto the Hon'ble Apex Court. It has also been submitted that vide order dated 12.02.2002 passed by the learned Single Judge in S.B. Civil Writ Petition No.3064/1996, the JDA was directed to issue patta to the petitioners of the land in question (Society). Counsels also submitted that the against the order dated 12.02.2002 passed by the learned Single Judge, the Rajasthan Housing Board preferred D.B. Special Appeal (Writ) No.435/2002, which was dismissed on 05.01.2010 and the matter has attained finality upto the Hon'ble Apex Court. Therefore, the respondent- JDA is under an obligation to issue Pattas to the members of the Vikas

Samiti to whom the pattas were allotted by the Housing Society.

7. Shri A.K. Sharma, Senior Counsel assisted by Mr. Dinesh Yadav, Mr. Ankit Yadav and Mr. Anand Sharma, learned counsel appearing for the petitioner- Rajasthan Housing Board in CWP No.15576/2019 and the respondents in other writ petitions has submitted that the order dated 12.02.2002 passed by the learned Single Judge in CWP No.3064/1996 has been obtained by the petitioners therein by fraud and misrepresentation. He submitted that the fraud vitiates all the proceedings and the orders. It was also submitted that the Audit Report as regards the year 1986 and so also the Inquiry Committee's report dated 25.07.2019 clearly speak that no any such Scheme i.e. Shreeram Colony 'B' was ever floated over the land in question prior to its acquisition. He submitted that if an order is obtained by fraud or misrepresentation, it cannot be put to execution as such, as the same is void, even though it may have attained finality but in case at a later stage it is proved that the order has been obtained with fraud and misrepresentation, same can be declared of no force. To support the submissions, Senior Counsel has relied upon the judgment delivered by the Hon'ble Apex Court in ***State of A.P. & Anr. v. T. Suryachandra Rao, reported in (2005) 6 SCC 149.***

Senior Counsel also submitted that CWP No.3064/1996 was filed by the petitioners therein without impleading the original khatedars of the land in question so also the Housing Society as party respondents, which is said to have made allotments of the plots after the land being purchased from the khatedars by way of agreement to sale.

8. Mr. R.K. Sharma, learned counsel appearing for respondent No.8- Jawaharpuri Bhawan Nirman Sahakari Samiti Ltd. (in CW P.No. 16978/2019) also submitted that no any record as regards allotment of the plots made to the Members of the Society has been submitted by the erstwhile Office Bearers of the Society so as to verify the claims as made by the members of the Housing Society.

9. Shri R.N. Mathur, Senior Counsel assisted by Mr. Prateek Mathur appearing for Mr. Mohammad Alam submitted that the claim on behalf of the alleged members of the Vikas Samiti is based on forged documents. He submitted that the inquiry report prepared by the Enquiry Committee clearly speaks of the forgery.

10. Mr. Virendra Lodha, Senior Counsel assisted by Mr. Jai Lodha and Mr. Darsh Pareek, learned counsel appearing for the JDA has adopted the arguments advanced by the Senior Counsel appearing for the RHB and submitted that since the judgment passed in CWP No.3064/1996 has been

obtained by misrepresentation and fraud, same is vitiated and cannot be enforced.

11. Shri M.M. Ranjan, Senior Counsel assisted by Mr. Naman Pareek appearing for the petitioners in CWP Nos.336/2019 and 13563/2019 and Mr. Ashish Sharma in CWP No. 16978/2019 in rejoinder submitted that the issue of alleged fraud has already been taken into consideration in the earlier round of litigation and the RHB and the other authorities have not come out that who committed the fraud. He also submitted that complainant Mr. Mohammad Alam was made a party on an application submitted before the Hon'ble Apex Court and the alleged fraud was taken into consideration by the Hon'ble Apex Court, the SLP filed by the RHB was dismissed as the court did not notice any fraud or misrepresentation and therefore, the RHB and other authorities are now stopped from raising the issue of misrepresentation.

12. On the basis of the pleadings and the submissions made on behalf of the parties, one of the basic issue emerges for consideration of this Court is 'Whether any order / judgment obtained by fraud or misrepresentation is liable to be held ineffective as all such proceedings are vitiated and if yes, can it be held so when the order or decision has attained the finality upto the Hon'ble Apex Court?

13. Senior Counsel appearing for the Rajasthan Housing Board in CWP No.15576/2019 in respect of the aforesaid issue referring the judgment of **T. Suryachandra Rao (supra)** submitted that if any order /judgment is obtained by misrepresentation or fraud, same can be declared as invalid as the whole proceedings on such fraud or misrepresentation stands vitiated.

14. The Hon'ble Apex Court in the aforesaid judgment explaining the fraud and its effect has observed in paras 7,8,9,10,11,12,15,16 and 17 as under:-

"7. The order of the High Court is clearly erroneous. There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.

8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill-will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or

advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Vimla (Dr.) v. Delhi Admn. [1963 Supp (2) SCR 585 : AIR 1963 SC 1572 at pp. 1576-77 para 14 : (1963) 2 Cri LJ 434] and Indian Bank v. Satyam Fibres (India) (P) Ltd. [(1996) 5 SCC 550].

9. *A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1] .)*

10. *"Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud*

on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC 319])

11. *"Fraud" and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his*

legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines "fraud" as an act committed by a party to a contract with the intent to deceive another. From dictionary meaning or even otherwise fraud arises out of a deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with the knowledge that it was false. In a leading English case i.e. Derry v. Peek [(1886-90) All ER Rep 1 : (1889) 14 AC 337 (HL)] what constitutes "fraud" was described thus : (All ER p. 22 B-C)

"[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in Khawaja v. Secy. of State for Home Deptt. [(1983) 1 All ER 765 : 1984 AC 74 : (1982) 1 WLR 948 (HL)] that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. "Fraud" in relation to statute must be a

colourable transaction to evade the provisions of a statute.

*" 'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.' Present-day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive." (See *Shrisht Dhawan v. Shaw Bros.* [(1992) 1 SCC 534] SCC p. 554, para 20.)*

12. *In that case it was observed as follows : (SCC p. 553, para 20)*

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section

17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case Derry v. Peek [(1886-90) All ER Rep 1 : (1889) 14 AC 337 (HL)] what constitutes fraud was described thus : (All ER p. 22 B-C)

'[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.' "

...

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case [(2003) 8 SCC 311] .

16. In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)] Lord Denning observed at QB pp. 712 and 713 : (All ER p. 345 C)

"No judgment of a court, no order of a minister, can be allowed to stand if it has

been obtained by fraud. Fraud unravels everything."

In the same judgment Lord Parker, L.J. observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity". [[Ed. : (1956) 1 All ER 341 at p. 351 placitum E-F]]

17. *Considering the aforesaid principles of law and the background facts, the Tribunal was justified in modifying the earlier order and varying it. The Appellate Tribunal did not commit any error in upholding it. The High Court's order is clearly unsustainable and is set aside."*

15. The Hon'ble Apex Court in ***Ramjas Foundation & Anr. v. Union of India & Ors., reported in (2010) 14 SCC 38*** has observed in para 21 as under:-

"21. *The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which*

have a bearing on adjudication of the issue(s) arising in the case."

16. The Hon'ble Apex Court in ***Rameshwar & Ors. v. State of Haryana & Ors., reported in (2018) 6 SCC 215*** has observed in paras 38 and 39 as under:-

"38. Thus, in cases where there was no valid acquisition but the land was taken possession of and developed, restoration of land to the landholders was not found to be the appropriate, adequate and complete relief and this Court directed that process of acquisition be initiated taking or treating certain date to be the relevant date for initiation of the acquisition. If the power can go to the extent of directing acquisition in such manner, in a case where an acquisition having been properly and validly initiated if the supervening circumstances show that there was complete fraud on power in dropping the acquisition, can the power of the superior court not extend to/not be extended for passing appropriate directions to complete the acquisition and subserve the public interest. But for such fraud on power, the matter in the present case was ripe for pronouncement of award when the acquisition was dropped just two days before the date of pronouncement. All the steps leading to the publication of date for pronouncement of award having been validly and correctly undertaken, can a direction not be passed that there was a deemed award and completed acquisition.

39. Wherever there has been fraud on power, the duty of the Court is not only to set aside such exercise of power but to see that there is no unjust enrichment directly or indirectly as a result thereof and there is full and substantial restoration. Going by the principles laid down by this Court in Indian Council for Enviro-Legal Action [Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161 : (2011) 4 SCC (Civ) 87] unjust retention of benefit would be completely against the fundamental principles of justice, equity and good conscience. It was observed therein that so long as the deprivation of a party has not been fully compensated for, injustice to that extent continues. Having found that there was a clear case of fraud on power as a result of which unnatural and unreasonable gains have been derived by certain builders/private entities, we consider it our duty to grant full restitution. The restoration in real and substantial terms has to ensure that the public purpose, the acquisition was intended to achieve, stands subserved. In our considered view, this is an appropriate case where this Court has to declare that there was a completed acquisition and the award deemed to have been passed on the date when it was supposed to be pronounced i.e. on 26-8-2007. The suggested relief by the learned Amicus Curiae is also on similar lines.”

17. The Hon’ble Apex Court in ***Ajit Kumar Bhuyan & Ors. v. Debajit Das & Ors., reported in (2019) 12 SCC 275*** has observed in para 29 as under:-

"29. We are of the opinion that it was virtually a case of fraud, at least on three counts. First, by creating ex-cadre post of Executive Engineer only for Respondent 1 and giving him that post when he was much junior to many others. Second, encadrement of Respondent 1 as Executive Engineer by showing that there were thirteen posts when, in fact, there were only ten posts of Executive Engineer on that date. This was done obviously with the purpose of accommodating him. Third, the promotion was given when Respondent 1 was not even eligible as per Rules as he had not put in minimum service of five years. Fraud vitiates every action and cannot be kept under the carpet on the ground that the action challenged was belated, more so when there is a reasonable explanation for such delay."

18. The Hon'ble Apex Court in ***Hamza Haji v. State of Kerala & Anr., reported in (2006) 7 SCC 416*** has observed in para 26 as under:-

"26. The High Court, as a court of record, has exercised its jurisdiction to set at naught the order of the Forest Tribunal thus procured by the appellant by finding that the same is vitiated by fraud. There cannot be any doubt that the Court in exercise of its jurisdiction under Article 215 of the Constitution of India has the power to undo a decision that has been obtained by playing a fraud on the Court. The appellant has invoked our jurisdiction under Article 136 of the Constitution of India. When we find in agreement with the High Court that the order

secured by him is vitiated by fraud, it is obvious that this Court should decline to come to his aid by refusing the exercise of its discretionary jurisdiction under Article 136 of the Constitution of India. We do not think that it is necessary to refer to any authority in support of this position except to notice the decision in Ashok Nagar Welfare Assn. v. R.K. Sharma [(2002) 1 SCC 749 : 2001 Supp (5) SCR 662]."

19. Senior Counsel assisted by other counsels appearing for the petitioners in CWP Nos. 336/2019, 13563/2019 and 16978/2019 were not in a position to controvert the settled position that a decision or order obtained by fraud or misrepresentation if attained finality is not vitiated and it remains in force and effective once it has attained finality.

20. In view of the law settled by the Hon'ble Apex Court, in the cases referred to above, the question is answered on the line that if the Court comes to the conclusion that in a litigation any decision/ order of any Court has been obtained by playing fraud or misrepresentation then the same is to be held vitiated and is to be undone and held not enforceable. The Court has an ample power to undo such decision.

21. The another issue which emerges for consideration of this Court is 'Whether the earlier order dated 12.02.2006

in passed in CWP No.3064/196 was obtained by the petitioners therein by playing fraud or misrepresentation and if yes, whether such alleged fraud or misrepresentation has been taken care of or considered by the Courts upto the Hon'ble Apex Court at any stage.

22. On scrutiny of the pleadings and the material available on the record, it is revealed that the case of the Vikas Samiti and other petitioners in CWP Nos. 336/2019, 13563/2019 and 16978/2019, is that by way of an agreement to sale dated 31.07.1981, the Jawaharpuri Bhawan Nirman Sahakari Samiti Limited purchased the land from its khatedars and came into possession. After taking into possession they carved out a plan for residential scheme named as Shree Ram Colony-B and made allotment of the plots to its members. One more agreement dated 31.07.1986 was executed in between the Society and the khatedars for extension of the time for making the payment. It has been pleaded that another agreement was executed on 13.12.1988 which was signed by the successors of the khatedars and also by the signatory of the agreement dated 31.07.1981, meaning-thereby the khatedars. It is submitted by the counsel appearing for the petitioners in CWP. Nos. 336/2019, 13563/2019 and 16978/2019 that the Society came into possession over the land in question on the basis of the agreement to sale and thereafter they have carved out the

residential scheme in the name of Shree Ram Colony-B. It is also submitted by them that on the basis of the aforesaid facts the petitioners who are the members of Shree Ram Colony-B, are entitled for allotment of the lease deeds for the plots which were allotted by Grah Nirman Sahakari Samiti and when the JDA did not adhere to their claim they preferred writ petition No.3064/1996 which came to be decided vide order dated 12.02.2002 which has attained finality upto the Hon'ble Apex Court.

23. Senior Counsel appearing for the Rajasthan Housing Board submitted that the Urban Improvement Trust issued a notice under section 52 of the Rajasthan Urban Improvement Act, 1959 as regards acquiring the of the land in question. On 02.09.1989 the Rajasthan Housing Board published a Scheme for construction of residential houses upon the land measuring 42 bighas and 10 biswas which includes the land in question. Notification dated 10.01.1990 was issued under section 4 of the Act of 1894 by the State Government for construction of a housing colony by the RHB and the said notification was objected by the khatedars of the land in question. Another notification was issued on 19.07.1990 followed by one more notification dated 04.01.1991 for invoking the urgency clause under section 17(a) and declaration was made under section 6 and a direction was given to the concerned authority under section

9 to take possession of the land in question. He submitted that the declaration under section 6 of the Act of 1894 was made on 13.06.1991 dispensing with the inquiry under section 5A of the said Act.

Thereafter, a writ petition bearing SBCW P.No. 5561/1991 came to be filed on 20.11.1991 by the khatedars assailing the validity of both the acquisition notifications, however, the physical possession of the land in question was taken by the concerned authority of the State Government and handed over to the representatives of the RHB. He submitted that on 20.07.1993 the Land Acquisition Officer passed the award and the compensation amount was sent to the concerned Civil Judge. Thereafter, the khatedars submitted a reference petition before the learned Civil Judge.

24. Senior counsel appearing for the RHB submitted that the fraud and misrepresentation by the members of the Society (Vikas Samiti) came to the notice in the Audit Report of 1986 for the period 01.07.1981- 30.06.1982. He also submitted that an Inquiry Committee was constituted so as to make an inquiry into the allegations against the Society with regards the land in question and the Inquiry Committee submitted its report on 25.07.2019 which speaks that the members of the society have played fraud and misrepresentation while obtaining the order dated 12.02.2002 in CWP No.3064/1996. It is also submitted by the

Senior counsel that just to put a cover on the fraud and misrepresentation played by the members of the society, they even did not care to implead the original khatedars and the Housing Society which said to have allotted the plots to them as party to the earlier litigation.

25. The brief facts brought before the Court in CWP No.3064/1996 as revealed in the order dated 12.02.2002 are quoted as under:-

"The undisputed facts are that the petitioners are the members of Jawaharpuri Grah Nirman Sahakari Samiti (hereinafter referred to as "the Samiti") and they have filed this writ petition in representative capacity as the members of the Samiti which is a registered Housing Society.

The case of the petitioners is that the petitioner- Samiti entered into an agreement of sale dt. 31.7.1981 with the Khatedars of the land in dispute. Urban Improvement Trust Jaipur (hereinafter referred to as "the UIT") sought to acquire the land in dispute for planned development of Jaipur City by issuing a notice under Sec. 52(2) of the Urban Improvement Trust Act, 1959 (hereinafter referred to as "the Act of 1959"). Pursuant to this, khatedars of the land raised objections but the acquisition proceedings had come to an end thereafter, the land in dispute was demarcated for the "residential colony" known as Sriram Colony, Tonk Road, Jaipur, plan of which was submitted to the Additional Collector, JDA for Land Conversion who in turn forwarded the matter

to the JDA for approval. In compliance of the layout plan some of the members deposited conversion charges. However, the matter for regularisation of the said ind was pending for necessary approval of the JDA.

Thereafter, the State Govt. issued notification dt. 10.1.1990 (Annexure-3) U/s. 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act of 1894") for acquisition of the said land to which, khatedars of the land raised objections. Hence, the respondents issued a notification on 4.1.1991 (Annexure-4) u/s. 17(4) of the Act of 1894 whereby the proceedings under Sec. SA of the Act of 1894 were dispensed with and notification under Sec. 6 of the Act was issued.

Feeling aggrieved against the impugned notification issued by the respondents under Sec. 6 of the Act of 1894, the Khatedars of the land in dispute filed a petition before this Court bearing SBCWP No. 5561/1991 (Ramavtar Vs. State & Ors.) wherein, this Court directed the parties to maintain status-quo.

Thereafter, the State Govt. had taken policy decision vide order dt. 24.3.1994 (Annexure-5) and issued a circular to regularise the land in dispute; to which Housing Society entered into an agreement to sale on 31.7.1981 and deposited the partial conversion charges vide Annexure-2 dt. 13.4.1982 for regularisation of the land in their favour.

In pursuance of the above Policy decision of the State Govt. taken vide Circular dt. 24.3.94, the JDA asked the petitioner Samiti to furnish the

documents pertaining to agreement to sale and in compliance of which the petitioners furnished the requisite documents alongwith the receipt indicating the deposit of conversion charges. When the respondents did not take any further action in the matter, the petitioners submitted a representation to the JDA requesting it to regularise the scheme pursuant to the State Government's Policy mentioning therein that the members have constructed their boundary walls and some of them have started residing by constructing theirhouses alongwith their families. In the meanwhile, in order to fulfill the object of Master Plan, the JDA discussed the matter with the Chief Secretary, Govt. of Raj. for the purpose of construction of Link Road. Thereupon, the authorities perused the boundary walls and dwelling units. After discussion, the matter was placed in the meeting of Building Plan Committee of JDA on 22.4.1995 and it was decided to approve the scheme and possession of the land in dispute was to be taken no sooner the petition is withdrawn from the respective Court.

Ramavtar who was petitioner in SBCWP No. 5561/91 submitted an affidavit for withdrawal of the petition immediately after the scheme is approved. Thereafter, Meeting was convened at the instance of the respondent in which following decision was taken:-

"(1) The Society will surrender the land to Jaipur Development Authority falling within the right of way of the proposed By-pass. The society

will not claim any compensation for this surrender of this land for road.

(2) The Director (Engg.), Jaipur Development Authority will immediately take up the construction work of the proposed road as per the alignments to be finalized by the Town Planning Wing of Jaipur Development Authority.

(3) The Chief Engineer, Rajasthan Housing Board also agreed to provide all necessary help for the construction of the important By-pass so that there is a smooth flow of traffic from Mansarovar to Malviya Nagar, Tonk Road and Airport areas.

(4) After considering the layout plan of the society scheme the Jaipur Development Authority will take the possession of the land falling within the right of way and the society will withdraw the court stay."

In view of the aforesaid decision taken in the meeting, it was decided to regularize the scheme and the construction over the by-pass was taken to be free of cost and thus, the Building Committee of the JDA in its meeting approved the plan.

Thereafter, on the request of the Members of the Samiti (the petitioners & other persons) the JDA declared the programme for holding camp of Housing Society (Sriram Colony) and advertised the same Rajasthan Patrika dt. 18.6.1995 (Ann. 16) for holding the camp on 22.6.1995. Pursuant to the above advertisement, the petitioners (Samiti) deposited the conversion charges.

Hence, on account of the above decision taken by the JDA, Ramavtar (petitioner in SBCWP No. 5561/91) withdrew the said Petition as not pressed."

26. On the complaints against the Society, an Inquiry Committee was constituted by the Registrar, Cooperative Societies, Rajasthan, Jaipur, and the Inquiry Committee submitted its report on 25.07.2019. The report of the Inquiry Committee is quoted as under:-

"शिकायतकर्ता श्री महमूद आलम व शिकायतकर्ता श्री राजेन्द्र गुप्ता तथा श्री डी.पी.मीणा व सभी निवासी श्रीराम कॉलोनी की ओर से अपना प्रतिवेदन समाचार पत्रों में प्रकाशित खबरों के उपरान्त प्रस्तुत किया है। जिसका कमेटी द्वारा परीक्षण एवं विवेचन रजिस्ट्रार महोदय के जांच के बिन्दुओं के संबंध में किया गया।

किसी भी गृह निर्माण सहकारी समिति के जांच के लिए निम्नांकित मूल रिकॉर्ड आवश्यक हैं:-

1. कार्यवाही रजिस्टर
2. सदस्यता रजिस्टर
3. लेजर
4. कैश बुक
5. रसीद सदस्यता शुल्क
6. सदस्यों द्वारा दिये गये आवेदन पत्र
7. जायदाद रजिस्टर (जमीन खरीद से संबंधित मूल अनुबंध पत्र आदि)
8. भूखण्ड आवंटन रजिस्टर
9. हिस्सा रजिस्टर

अध्यक्ष जांच कमेटी द्वारा अवसायक जवाहरपुरी भवन सहकारी समिति लि. एवं उप रजिस्ट्रार सहकारी समितियां, जयपुर शहर से उक्त समिति की जांच से संबंधित रिकोर्ड उपलब्ध करवाने बाबत दिनांक 22.7.2019 को जांच के संबंध में समिति व काश्तकारों के मध्य दिनांक 31.7.1981 को हुए इकरारनामों की मूल प्रति, समिति की उक्त योजना के सृजन के संबंध में भूखण्ड आवंटन रजिस्टर, सदस्यता रजिस्टर, कार्यवाही रजिस्टर, ऑडिट रिपोर्ट एवं उक्त जांच से संबंधित मूल दस्तावेज एवं प्रतियां जो आवश्यक हो उपलब्ध कराने बाबत पत्र लिखा गया। जिसके प्रति उत्तर में दिनांक 23.7.2019 को अवसायक जवाहरपुरी भवन सहकारी समिति लि. एवं उप रजिस्ट्रार सहकारी समितियां, जयपुर शहर द्वारा अवगत कराया गया है कि उक्त समिति का दिनांक 11.01.2004 को अवसायन में आने के पश्चात समिति में नियुक्त प्रशासक एवं समापकों द्वारा समिति से रिकोर्ड प्राप्त हेतु अनेक पत्र लिखे गये एवं समिति में नियुक्त समापक श्री सुरेन्द्र ठेनुआ ने 27.11.2024 को समिति के रिकोर्ड प्राप्त हेतु एक एफ.आई.आर. दर्ज करवायी गई, जिसमें पुलिस द्वारा दिनांक 29.05.2015 को एफ.आर. लगा दी गई। जिसके प्रोटेस्ट पिटिशन तत्समय के अवसायक श्री मुकेश कुमार द्वारा दिनांक 30.10.2017 को रिकोर्ड प्राप्त हेतु लगाई गई। आज दिनांक तक उपलब्ध रिकोर्ड के अनुसार उक्त समिति के मूल रिकोर्ड समिति के पूर्व पदाधिकारियों से प्राप्त नहीं हुआ हैं, रिकोर्ड प्राप्त की कार्यवाही की जा रही है। उक्त समिति का रिकोर्ड प्राप्त होने के पश्चात चाही गई सूचना उपलब्ध करवाई जावेगी।

जाँच-बिन्दुओ-पर-तथ्यात्मक-विवरण

1. जवाहरपुरी भवन निर्माण सहकारी समिति लि., जयपुर की योजना श्रीराम कॉलोनी-बी के सृजन के लिए काश्तकारों एवं जवाहरपुरी भवन गृह निर्माण सहकारी समिति लि., जयपुर के मध्य निष्पादित इकरारनामा की वैधता।

तथ्यात्मक विवरण:- समापक जवाहरपुर भवन सहकारी समिति लि. एवं उप रजिस्ट्रार सहकारी समितियां, जयपुर शहर के द्वारा अध्यक्ष जांच कमेटी द्वारा अवसायक जवाहरपुरी भवन सहकारी समिति लि. एवं उप रजिस्ट्रार सहकारी समितियां, जयपुर शहर से उक्त समिति से जांच व रिकोर्ड उपलब्ध करवाने बाबत दिनांक 22.7.2019 को जांच के संबंध में समिति व काश्तकारों के मध्य दिनांक 31.7.1981 को हुए इकरारनामे की मूल प्रति, समिति की उक्त योजना के सृजन के संबंध में भूखण्ड आवंटन रजिस्टर, सदस्यता रजिस्टर, कार्यवाही रजिस्टर ऑडिट रिपोर्ट एवं उक्त जांच से संबंधित मूल दस्तावेज एवं प्रतियां जो आवश्यक हो उपलब्ध कराने बाबत पत्र लिखा गया जिसके प्रति उत्तर में अवसायक जवाहरपुरी भवन सहकारी समिति लि. एवं उप रजिस्ट्रार सहकारी समितियां, जयपुर शहर द्वारा अवगत कराया गया है कि उक्त समिति दिनांक 11.01.2004 को अवसायन के पश्चात उक्त समिति में नियुक्त प्रशासक एवं समापकों द्वारा समिति से रिकोर्ड प्राप्ति हेतु अनेकों पत्र लिखे गये एवं समिति में नियुक्त समापक श्री सुरेन्द्र ठेनुआ ने 27.11.2014 को समिति के रिकोर्ड प्राप्ति हेतु एक एफ.आई.आर. दर्ज करवायी गई। जिसमें पुलिस द्वारा दिनांक 29.05.2015 को एफ.आर. लगा दी गई। जिसकी प्रोटेस्ट प्रिटिशन तत्समय के अवसायक श्री मुकेश कुमार द्वारा दिनांक 30.10.2017 को रिकोर्ड प्राप्ति हेतु लगाई गई। आज तक उपलब्ध रिकॉर्ड के अनुसार उक्त समिति के मूल रिकोर्ड समिति के पूर्व पदाधिकारियों से प्राप्त नहीं हुआ हैं, रिकॉर्ड प्राप्ति की कार्यवाही की जा रही है। उक्त समिति का रिकॉर्ड प्राप्त होने के पश्चात चाही गई सूचना उपलब्ध करवाई जावेगी।

(संलग्न-1)

अतः काश्तकारों व समिति के मध्य 31.07.1981 में हुए मूल इकरारनामा उपलब्ध नहीं होने के कारण तथा समिति द्वारा योजना के सृजन संबंधी भूखण्ड रजिस्टर, सदस्यता रजिस्टर, कार्यवाही रजिस्टर उपलब्ध नहीं होने के कारण इकरारनामों की

वैधता व योजना के सृजन के संबंध में किसी प्रकार की टिप्पणी किया जाना न्याय संगत नहीं है।

इस संबंध में क्षेत्रीय अंकेक्षण अधिकारी से प्राप्त ऑडिट रिपोर्ट वर्ष 1 जुलाई, 1981 से 30.06.1982 तक की ऑडिट रिपोर्ट में श्रीराम कॉलोनी-बी के सृजन के संबंध में व समिति व काश्तकारों के मध्य निष्पादित इकरारनामों का उल्लेख नहीं है।

वर्तमान में इस संबंध क्षेत्रीय अंकेक्षण अधिकारी जयपुर के कार्यालय में तत्समय हुए ऑडिट वर्ष 1979-1980, 1980-1981, 1981-1982 तक के ऑडिट रिपोर्ट का अवलोकन किया गया जो कि वर्तमान में उपलब्ध एक मात्र प्रामाणिक रिकॉर्ड है। वर्ष 1982-1983 व वर्ष 1983-1984 व आगे की ऑडिट रिपोर्ट क्षेत्रीय अंकेक्षण अधिकारी के कार्यालय पत्रावली के अनुसार अंकेक्षण नहीं होने के कारण उपलब्ध नहीं है।

जवाहरपुरी गृह निर्माण सहकारी समिति के वर्ष 1979-1980 की ऑडिट रिपोर्ट के अनुसार ऑडिट अवधि के समिति द्वारा दी गई सूचना के आधार पर 4 स्कीमें और आवंटित की गई जो निम्न प्रकार है- (संलग्न-2)

1. श्रीराम कॉलोनी-रामनगर सोडाला
2. विश्व नगर, न्यू सांगानेर रोड
3. नन्दपुरी कॉलोनी, विजयमहल आमेर रोड
4. शारदा कॉलोनी, खातीपुरा विवन्स रोड

तथा ऑडिट अवधि तक कुल 7 योजनाओं के भूमि क्रय का विवरण प्राप्त है जिसमें से निम्न 3 योजनाएं पूर्व की है-

1. हनुमान वाटिका, गंगापोल गेट के बाहर
2. गोविन्द वाटिका, दिल्ली बाईपास रोड
3. सीताराम कॉलोनी, सोडाला

जवाहरपुरी गृह निर्माण सहकारी समिति के वर्ष 1980-1981 की ऑडिट रिपोर्ट में समिति का भूमि संबंधी विवरण 30.06.1981 तक कुल 16 योजनाओं का बताया गया है।

(संलग्न-2 अ)

1. जय हनुमान वाटिका, मदनपुरा
2. गोविन्द वाटिका, मदनपुरा
3. शारदा कॉलोनी, खातीपुरा
4. नन्दपुरी कॉलोनी, विजयमहल
5. श्रीराम कॉलोनी, सोडाला
6. सीताराम कॉलोनी, सोडाला
7. श्याम कॉलोनी, सुरजपुरा घाटी
8. जयन्ती नगर, बगराना
9. विश्व नगर, सोडाला
10. जयसिंह नगर, किशनगढ
11. जयसिंह नगर, मालपुरसडवा
12. जयभोले मार्केट, बगरू
13. आचार्य विनोबाभावे नगर, खातीपुरा
14. जय अम्बे कॉलोनी, बगरू
15. गोपालनगर, लालवास
16. प्रस्तावित अस्तर कॉलोनी, लालवास

जांच से संबंधित वर्ष 1981-1982 के ऑडिट रिपोर्ट का अवलोकन किया गया जिसके ऑडिटर श्री हीरालाल वर्मा थे। ऑडिट रिपोर्ट में उल्लेख है कि समिति का यह ऑडिट वर्ष 1981-1982 है, जो दिनांक 14.06.1983 के प्रारम्भ किया जाकर दिनांक 16.06.1983 को समाप्त किया गया। **(संलग्न-2 ब)**

ऑडिट रिपोर्ट के अनुसार प्रबन्धकारिणी समिति का निर्वाचन दिनांक 9.2.1979 को हुआ था। जिसके निम्नांकित सदस्य हैं-

1. श्री बाबूलाल अध्यक्ष
2. श्री मदनसिंह उपाध्यक्ष
3. गोपाललाल मंत्री
4. श्री कन्हैयालाल कोषाध्यक्ष
5. श्री तुलसीराम सदस्य
6. श्री गंगासहाय सदस्य

7. श्री देवाराम सदस्य
8. श्री जगरामसिंह सदस्य
9. श्री भूराराम सदस्य

ऑडिटर ने यह उल्लेख किया है कि समिति का समस्त रिकॉर्ड कार्यालय में सुरक्षित है। परन्तु समिति द्वारा नियमानुसार प्रोपर्टी रजिस्टर, स्कीम वाईस भूखण्ड आवंटित रजिस्टर, हिस्सा रजिस्टर आदि नहीं बनाये गये हैं, जिन्हें आरम्भ कर पूर्ण रखा जावे। इस ऑडिट रिपोर्ट में समिति द्वारा किसी श्रीराम कॉलोनी-बी के सृजन का उल्लेख होना नहीं पाया जाता। परन्तु निम्नांकित कॉलोनियों के भूखण्ड बिक्री से संबंधित विवरण का उल्लेख है जो निम्नांकित है—

क्र. सं.	स्कीम का नाम	भूखण्ड बिक्री पेटे जमा की गई राशि	भूखण्ड बिक्री पेटे वापस की गई राशि	शेष नाम	शेष जमा
1.	जय हनुमान वाटिका	4284.00	7625.28	3341.28	—
2.	गोविन्द वाटिका	33090.00	27790.00	—	5300.00
3.	श्रीराम कॉलोनी	275012.00	6112.00	—	268900.00
4.	सीताराम कॉलोनी	28351.50	23724.50	—	4627.00
5.	रामनगर एक्सटेंशन	10600.00	—	—	10600.00
6.	श्याम कॉलोनी	328059.00	6220.00	—	321839.80
7.	जयन्ती नगर	13400.00	—	—	13400.00
8.	विश्वनगर	—	5515.50	5515.50	—
9.	जय सिंह नगर	197943.00	21020.00	—	176923.50
10.	जयसिंहनगर एक्सटेंशन	44080.00	—	—	44080.00
11.	आचार्यविनोबा भावेनगर	503217.25	—	—	503217.25
12.	संत सुन्दर दास नगर	92554.92	1000.00	—	91554.87
		1530592.92	99007.28	8856.78	1440442.42

इसके अतिरिक्त इस ऑडिट रिपोर्ट में श्रीराम कॉलोनी-बी से संबंधित भूमि खरीद बाबत समिति एवं काश्तकारों के मध्य हुए इकरारनामों संबंधी कोई दस्तावेज का उल्लेख नहीं है।

यहां यह भी उल्लेखनीय है कि माननीय सर्वोच्च न्यायालय के स्पेशल लीव पिटिशन सिविल नम्बर 6944 ऑफ 2010 शिकायतकर्ता महमूद आलम से संबंधित याचिका के पेजिंग क्रमांक 722613, 722619, 722614, 722612 व 722576 पर शिकायतकर्ता महमूद आलम माननीय उच्चतम न्यायालय के समक्ष पक्षकार थे जिसमें इनके द्वारा दिनांक 31.07.1981 को काश्तकारों व समिति के बीच निष्पादित इकरारनामों को चुनौती दी गई। (संलग्न-3, 4, 5, 6, 7)

जिस पर माननीय उच्चतम न्यायालय द्वारा निम्नांकित निर्णय दिया गया—(संलग्न-8)

Applications for intervention/impleadment are rejected.

We do not find any legal and valid ground for interference. The special Leave Petition and all pending applications are dismissed.

उक्त योजना की भूमि के मूल काश्तकारों द्वारा श्री प्रभुदयाल मोदी को दिनांक 10.01.2017 को दिये गये मुख्यत्यारनामा की वैधता तथा श्रीराम कालोनी-बी के सजून पर उसका प्रभाव।

तथ्यात्मक विवरण:— श्री प्रभुदयाल मोदी के द्वारा दिनांक 10.01.2017 के मुख्यत्यारनामा की वैधता का प्रश्न है, के संदर्भ में मत है कि—

1. श्री मोदी द्वारा प्रस्तुत मुख्यत्यारनामा की वैधता का परीक्षण जांच कमेटी क्षेत्राधिकार से परे है। अतः इस संबंध में किसी भी प्रकार की टिप्पणी किया जाना न्यायोचित नहीं है।

उल्लेखनीय है कि माननीय उच्चतम न्यायालय के पेजिंग क्रमांक 722577 के अनुसार खातेदारों के द्वारा श्री प्रभुदयाल मोदी को दिये गये पॉवर ऑफ अटोनी दिनांक 10.01.2017 के आधार पर पक्षकार के रूप में श्री प्रभुदयाल मोदी माननीय उच्चतम न्यायालय में पेश हुए थे जिसे माननीय उच्चतम न्यायालय द्वारा खारिज कर दिया गया। (संलग्न-9)

3. समिति की योजना श्रीराम कॉलोनी-बी के समिति के पदाधिकारियों, प्रशासक एवं अवसायक द्वारा जारी पट्टों/डुप्लीकेट पट्टों के संबंध में विभिन्न जांचों के माध्यम से हुए निर्णयों की पालना तथा योजना में फर्जी/कूटरचित पट्टों के माध्यम से अवैध कब्जों की रोकथाम हेतु सुझाव।

तथ्यात्मक विवरण:— जवाहरपुरी भवन निर्माण सहकारी समिति लि., जयपुर की योजना श्रीराम कॉलोनी, टोंक रोड़, जयपुर के संबंध में राजस्थान सहकारी सोसायटी अधिनियम, 2001 की धारा-55 की विस्तृत जांच एवं धारा-55(5) के तहत तत्कालीन रजिस्ट्रार, सहकारिता द्वारा दिनांक 05.12.2005 को जारी परिणाम जिसकी पालना राजस्थान कॉर्पोरेटिव सोसायटी एक्ट 2001 की धारा 64 एवं राजस्थान सहकारी सोसायटी नियम 2003 के नियम 81 के तहत समिति के अवसायक के द्वारा सम्पादित की जानी है।

अवैध कब्जों व निर्णय की रोकथाम हेतु अवसायक अपने स्तर पर जे.डी.ए., पुलिस-प्रशासन के साथ समन्वय स्थापित कर आवश्यक कार्यवाही सम्पादित करें।

4. समिति की योजना श्रीराम कॉलोनी-बी के संबंध में माननीय उच्चतम न्यायालय के निर्णय दिनांक 09.10.2018 की अनुपालना हेतु कार्ययोजना।

तथ्यात्मक विवरण:— उक्त वाद/निर्णय में अवसायक, जवाहरपुरी भवन निर्माण सहकारी समिति लि. व सहकारिता विभाग पक्षकार नहीं थे। उक्त आदेश में राजस्थान आवासन मण्डल को निर्देशित किया गया है कि वह अपनी जमा राशि सिविल जज, जयपुर शहर जयपुर से ब्याज सहित प्राप्त करे।

अतः उक्त निर्णय की अनुपालना राजस्थान हाउसिंग बोर्ड द्वारा की जानी है।

5. उक्त भूमि पर अनाधिकृत अतिक्रमण को रोकने की कार्यवाही।

तथ्यात्मक विवरण:- उक्त संबंध में अवैध व अनाधिकृत अतिक्रमण को रोकने एवं तोड़ने की कार्यवाही जे.डी.ए. स्तर से संपादित की जानी है। इस संबंध में अवसायक अपने स्तर पर जे.डी.ए. से समन्वय कर आवश्यक कार्यवाही करे।”

27. The material facts which came out in the inquiry report are that no any residential scheme in the name of Shree Ram Colony-B was floated by the Jawaharpuri Bhawan Nirman Sahakari Samiti Limited prior to acquisition of the land because in the list of residential schemes which were floated by the Society, as submitted to the JDA, the name of Shree Ram Colony-B does not find mention. The members of the Vikas Samiti are taking shelter of the Colony named as Shree Ram Colony but that too is in the area of Sodala and not at the land in question and also the name of that residential scheme is Shree Ram Colony, whereas the alleged scheme is Shree Ram Colony-B at B2 Bypass and no report of the society finds mention of floating of Shree Ram Colony-B prior to acquisition of the land in question.

28. Senior Counsel appearing for the Housing Society also submitted that no any record as regards the floating of the residential scheme in the name of Shree Ram Colony-B was handed over by the erstwhile office bearers. It is also very surprising that the petitioners therein while filing CWP No.3064/1996 did not care to implead the khatedars or Jawaharpuri Nirman Sahakari Samiti Limited (housing society) as party to the litigation and this non-impleadment of

the necessary and proper party in that earlier writ petition clearly reflects that the petitioners therein tried to hide the material facts from the Court and they succeeded in the same and this act of the petitioners therein can be safely held to be fraud and misrepresentation while obtaining the judgment and order dated 12.02.2002. Senior Counsel also says that there is no record available with the Society as regards the alleged Shree Ram Colony 'B'. This submission on behalf of the Society substantiates the act of fraud and misrepresentation.

29. Now the issue is 'Whether the fraud and misrepresentation, as said to have been committed by the petitioners therein in CWP No.3064/1996, has been taken care of at any stage upto the Hon'ble Apex court in the earlier round of litigation? Senior Counsel appearing for the private petitioners and the Vikas Samiti submitted that the complaint was submitted by one Mr. Mohammad Alam who was impleaded as a party respondent in the Special Leave to Petition before the Hon'ble Apex Court which shows that the alleged fraud and misrepresentation has been taken care of by the Hon'ble Apex Court while dismissing the SLP filed by the RHB. Senior Counsel appearing for the RHB and so also the counsel appearing for Mr. Mohammad Alam submitted that the alleged fraud and misrepresentation which has since been proved in the inquiry conducted by the Inquiry

Committee constituted by the Cooperative Society Department but same has not been taken care of and considered at any stage as none of the orders passed by any Court find reference of such alleged and proved fraud and misrepresentation and conclusion of the Inquiry Committee.

30. On perusal of the orders passed on 12.02.2002, the order passed by Hon'ble the Division Bench on 05.01.2010 and the order dated 09.10.2018 passed by the Hon'ble Apex Court and further the order dated 21.01.2019 in the review petition, no any factual or observatory findings are there as regards alleged and proved fraud and misrepresentation and therefore, it can be said that the alleged fraud and misrepresentation held on the part of the petitioners in CWP No.3064/1996 were not considered and no any observations and findings have been given by any Court.

31. The petitioners in SBCW P. Nos. 336/2019, 13563/2019 and 16978/2019 are claiming the rights over the land in question on the basis and consequences of alleged agreement to sale dated 31.07.1981 and 31.07.1986, said to have been executed by the khatedars in favour of Jawaharpuri Bhawan Nirman Sahakari Samiti Ltd. Whether any party who is said to have purchased the immovable property by way of an agreement to sale can claim title over the said property merely on the basis of agreement to sale

without there being any registered sale deed or any decree of specific performance of such agreement to sale?

32. The Hon'ble Apex Court in the case of **Ramesh Chand (D) Thr. Lrs. v. Suresh Chand and Another, reported in 2025 SC OnLine SC 1879** while framing an issue "Whether the impugned documents, i.e. Agreement to Sell, General Power of Attorney, Receipt of Consideration and the registered Will, allegedly entered into, would confer a valid title over the suit property?, the answered question is as under:-

"Agreement of Sale

12. *The Transfer of immovable property inter vivos is governed by the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act"). Section 5 of the said TP Act defines "transfer of property" as follows:*

"5. 'Transfer of property' defined. —*In the following sections 'transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself or to himself and one or more other living persons and 'to transfer property' is to perform such act."*

13. *The TP Act envisages five different modes for transferring a property but for the purpose of the present appeal we are only concerned with one of the modes i.e., by way of "Sale" and the same is dealt under section 54 of the TP Act which defines "sale" and a "contract for sale" as follows:*

"54. 'Sale' defined. — *'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

Sale how made. —*Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a*

reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale. —A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

14. *Perusal of above said provisions lays down a specific mode of execution of sale deed with respect to immovable property for concluding the sale of a property. In sale for an immovable property the value of which exceeds Rs. 100/-, the three requirements of law are that the transfer of property of sale must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered. Unless the sale deed is in writing, attested and registered, the transaction cannot be construed as sale, or in other words, the property will not be transferred.*

15. *There is a difference between a sale deed and an agreement for sale, or a contract for sale. A contract for sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. While a sale is a transfer of ownership; a contract for sale is merely a document creating a right to obtain another document, namely a registered sale deed to complete the transaction of sale of an immovable property. Section 54 in its definition of sale does not include an agreement of sale and neither confers any proprietary rights in favour of the transferee nor by itself create any interest or charge in the property. If after entering into a contract for sale of property, the seller without any reasonable excuse avoids executing a sale deed, the buyer can proceed to file a suit for specific performance of the contract.*

16. *The scope of an agreement for sale has been highlighted by this court in the case of Suraj Lamp*

and Industries Private Limited (2) through Director v. State of Haryana, wherein this Court observed that:

"16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in *Narandas Karsondas v. S.A. Kamtam*, [(1977) 3 SCC 247] observed:

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See *Ram Baran Prasad v. Ram Mohit Hazra*, [AIR 1967 SC 744]). The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

33. In India, the word 'transfer' is defined with reference to the word 'convey'. ... The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

37. ... that only on execution of conveyance, ownership passes from one party to another...."

17. In *Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra*, [(2004) 8 SCC 614] this Court held:

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."

17. *In the instant matter, undisputedly plaintiff claims that there is only an agreement to sell, and there is no sale deed executed in his favour by the father. As per the settled position of law, this document does not confer a valid title on the plaintiff as it is not a deed of conveyance as per Section 54 of the TP Act. At best, it only enables the plaintiff to seek for specific performance for the execution of a sale deed and does not create an interest or charge on the suit property."*

33. In view of the observations of the Hon'ble Apex Court, as quoted above, the plot holders cannot claim title over the land in question which already stands acquired.

34. In view of the discussions as regards both the issues, as formulated by this Court, the Court is of the opinion that:-

(a) the judgment dated 12.02.2002 passed in S.B. Civil Writ Petition No. 3064/1996 is vitiated being obtained by

fraud and misrepresentation and therefore the same is declared as undone and held to be not enforceable. The acquisition proceedings for the land in question are declared as stand concluded in favour of the Rajasthan Housing Board who may proceed further in accordance with law and the khatedars would be at liberty to receive the compensation amount as has already been deposited by the Rajasthan Housing Board with the Civil Court; and

(b) In view of the observations of the Hon'ble Apex Court in the case of **Ramesh Chand (D) Thr. Lrs. (supra)**, the agreement to sale dated 31.07.1981 is declared as void ab initio and non-executable as no any decree for specific performance has been passed by the competent court for the same.

35. Accordingly, the Writ Petition No.15576/2019 filed by the Rajasthan Housing Board is allowed as above. The Writ Petition Nos. 336/2019 & 13563/2019- both filed by petitioners namely; Jyoti Sejwani and Suresh Chand Pal and the Writ Petition No. 16978/2019 filed by petitioner- Shree Ram Colony 'B' Vikas Samiti are dismissed being devoid of merits.

36. In view of the order passed in the main petition, the stay application and pending application/s, if any, also stand disposed of.

37. The Registry to place a copy of this order in the connected case files.

(GANESH RAM MEENA),J

Sharma NK/Joint Registrar