

# **Sarup Singh & Anr vs Union Of India & Anr on 25 November, 2010**

**Equivalent citations: AIR 2011 SUPREME COURT 514, 2011 AIR SCW 181, AIR 2011 SC (CIVIL) 90, (2011) 1 KER LJ 49, (2011) 1 MAD LJ 1014, (2011) 1 MAD LW 795, (2011) 112 REVDEC 445, 2011 (11) SCC 198, (2011) 1 ALLMR 411 (SC), (2011) 3 ALL WC 2719, (2010) 12 SCALE 424, (2010) 4 CURCC 303, 2011 (1) KCCR SN 52 (SC)**

**Author: Mukundakam Sharma**

**Bench: Anil R. Dave, Mukundakam Sharma**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3568 OF 2005

SARUP SINGH & ANR.

.... Appellants

Versus

UNION OF INDIA & ANR.

.... Respondents

WITH

CIVIL APPEAL NO. 3566 OF 2005

WITH

CIVIL APPEAL NO. 3567 OF 2005

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. As the facts and issues involved are similar and interconnected, we propose to dispose of all the appeals by this common judgment and order. However, we may record the facts of each of the cases

separately and deal with the issues at one place as they are interconnected. Civil Appeal No. 3568 of 2005

2. This appeal arises out of the acquisition of land of Sarup Singh, the appellant herein, by issuing a notification under Section 4 of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act"] on 09.10.1974. Possession of the land was taken on 03.12.1974 and the award was passed on 11.06.1975. As against the award passed by the Special Land Acquisition Collector, Bhatinda Cantonment, a reference case was filed which was decided by the Reference Court on 31.07.1979. Finally, the matter came to be decided by the High Court of Punjab & Haryana. The High Court by an order dated 08.12.1982, determined the market value of the land and the appellants herein were also granted solatium at 15 per cent and also interest at 6 per cent per annum. The aforesaid judgment and order passed by the High Court became final and binding as no appeal was brought to this Court thereafter.

3. Subsequently, however, the decree holders-appellants filed Civil Miscellaneous Applications No. 1296 of 1985 under Sections 151 and 152 of Code of Civil Procedure, 1908 [for short "C.P.C."] praying for solatium and interest at the enhanced rate as provided for by the amendment in the Act (by way of Act 68 of 1984) which was given effect from 24.09.1984. The High Court allowed the said Miscellaneous Petition by order dated 17.02.1986 by passing an order enhancing the payment of solatium from 15 per cent to 30 per cent and interest from 6 per cent to 9 per cent per annum for the first year after acquisition and 15 per cent per annum thereafter till the date of actual payment of the enhanced amount of compensation.

4. On the basis of the aforesaid order dated 17.02.1986, the appellants filed an execution application before the Additional District Judge, Bhatinda. The execution application was dismissed by the Additional District Judge, Bhatinda by an order dated 30.08.2001 holding that the appellants herein are not entitled to enhanced rate of solatium and interest as the award of the Collector and that of the reference court in their case was passed prior to 30.04.1982. The Additional District Judge further held that the order passed by the High Court under Sections 151 and 152 of C.P.C. was without jurisdiction and as such a nullity.

5. Being aggrieved by the said order, the appellants herein filed a miscellaneous petition before the High Court which was registered as Civil Revision No. 5481 of 2001 and by the impugned order dated 24.09.2002, the same was dismissed upholding the order passed by the Additional District Judge, Bhatinda as against which the present appeal was filed.

6. This appeal arises out of the same notification dated 09.10.1974, as that of Civil Appeal No. 3568 of 2005, issued by the respondents under Section 4 of the Act proposing to acquire land belonging to one Chuhar Singh. Chuhar Singh died subsequently and therefore his sons, viz., Hardev Singh, Balwant Singh and Gurbachan Singh preferred claim on the basis of which the Special Land Acquisition Collector, Bhatinda Cantonment gave his award on 11.06.1975. As the appellants sought for reference, a reference case was registered in which the Additional District Judge passed a judgment and order dated 31.07.1979. The matter was taken to the High Court which was initially registered as RFA No. 10687 of 1980 and was decided on 30.07.1981. After which a Letters patent

Appeal No. 128 of 1982 was filed which was decided on 18.12.1985 and the said was partly allowed and the respondents were directed to pay solatium at the rate of 30 per cent of the market value of the acquired land as determined by the court and also interest at the rate of 9 per cent for the first year from the date of their possession by the Land Acquisition Collector and at the rate of 15 per cent thereafter till the date of actual payment of enhanced amount of compensation.

7. The appellants herein filed an execution application for realization of the balance amount in pursuance to the order of the High Court in LPA No. 128 of 1982 dated 18.12.1985 which was rejected by the Additional District Judge, Bhatinda by his order dated 30.08.2001 and the aforesaid execution applications of the appellants were dismissed by holding that they were not entitled to enhanced rate of solatium and interest as the award of the Collector and that of the reference court were prior to 30.04.1982. Additional District Judge, Bhatinda further held that the aforesaid order passed by the High Court is nullity in the eyes of law as the benefit of the order of the High Court dated 18.12.1985 cannot be given to the appellants in view of various decisions rendered by the Supreme Court.

8. Being aggrieved by the aforesaid judgment and order passed by the Additional District Judge, Bhatinda the appellants filed Civil Revision which was registered as Civil Revision No. 6171 of 2001. The aforesaid matter was also heard along with the Civil Revision No. 5481 of 2001 filed by Sarup Singh and Gurdip Singh which was disposed of by the impugned judgment and order which is under challenge in Civil Appeal Nos. 3568 and 3566 of 2005.

9. In this case, the lands of the appellants were acquired by Bhatinda Cantonment in the year 1976 and Special Land Acquisition Collector of Bhatinda Cantonment gave his award on 18.06.1979. On an application being filed by the appellants for reference the same was referred to Additional District Judge, Bhatinda and it was decided on 31.7.1980. Being aggrieved by the said decision of the Additional District Judge, Bhatinda appellants filed FRA No. 412 of 1981 before the High Court which was decided on 27.07.1983. Still aggrieved, appellants filed Special Leave Petition No. 6701-23 of 1984 in this Court culminating in Civil Appeal Nos. 4132-65 of 1986. This Court on 1.9.1986 decided the aforesaid appeals alongwith the Civil Appeal Nos. 5142-65 of 1986 and enhanced the compensation holding that the ends of justice require that compensation shall be awarded to the appellants at the rate of Rs. 17/- per sq. yard upto the depth of 500 meter of the acquired and at the rate of Rs. 10/- per sq. yard beyond the depth of 500 meters. This Court also held that consequential payments would also be made on the basis of the aforesaid rate of compensation. Appellants then filed their first execution application before the Additional District Judge for getting said enhanced amount which was accordingly ordered vide order dated 9.3.1998 but with regard to benefits of amended Sections, viz., 23(2) and 28 of the Act, it rejected the prayer of the appellants holding that since the award of the Collector was given on 18.6.1979 and award of the Court was given on 31.7.1980, appellants are not entitled to the said benefits. Respondents then filed revision before the High Court but the same was dismissed. Respondents then filed appeals before this Court and vide order dated 12.7.99, the matter was directed to be filed before the High Court.

10.All the above-mentioned three appeals were listed for hearing and we heard the learned counsel appearing for the parties who have ably taken us through all the relevant documents on record and also placed before us the various decisions which may have a bearing on the issues raised in the present appeals.

11.On the basis of the arguments advanced before us the following issues arise for our consideration:

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a) Whether the benefit of enhancement in the rate of solatium and interest as introduced by the Amendment Act of 68 of 1984 could be given to such of the claimants whose cases for payment of compensation were finalized prior to coming into force of the aforesaid Amendment Act of 98 of 1984?

AND

b) Whether the judgment and order given by the High Court enhancing the quantum of compensation by giving benefit of enhanced solatium from 15 per cent to 30 per cent and interest from 6 per cent to 9 per cent per annum in view of the Amendment Act of 68 of 1984 could be negated by the Court of Additional District Judge, Bhatinda while acting as an Executing Court and whether the Executing Court of Additional District Judge, Bhatinda could go behind the judgment and decree passed by the High Court?

12.In order to answer the aforesaid two issues which arise for our consideration, we need to point out that the Land Acquisition Act, 1894 came to be amended by virtue of the Amendment Act 68 of 1984. The said amendment became effective from 24.09.1984. By the aforesaid Amendment Act of 68 of 1984, amendments were brought in to the provisions of Section 23, in that provisions of Sub-Section 23 1(A) and Sub-Section 23 (2) were inserted and added, which read as follows: -

"Section 23 - Matters to be considered in determining compensation [...] [...] [(1A) In addition to the market value of the land above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land as above provided, the court shall in every case award a sum of [thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition.]"

13. Similarly, an amendment was brought in to the provisions of Section 34 by way of Amendment Act of 68 of 1984, which deals with the quantum of compensation of interest to be paid to the claimants. In the said section interest became payable on amendment at 9 per cent per annum for the period of first one year from the date on which possession was taken, and thereafter, at the rate of 15 per cent per annum on expiry of the period of one year on the amount of compensation. The aforesaid amendment was made effective by the amending Act of 68 of 1984 from 24.09.1984.

14. We may also refer to the provisions in Sub-Sections 30 (1) & 30 (2) of the Act of 68 of 1984 regarding application of the provisions of the aforesaid amendment to proceedings pending on or after 30.04.1982 which read as follows: -

"30. Transitional Provisions -

(1) The Provisions of sub-section (1A) of Section 23 of the principal Act, as inserted by clause (a) of Section

15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to:

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People], in which no award has been made by the Collector before that date.

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.

(2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause

(b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.."

15. The aforesaid amended provisions and their application came to be considered in various decisions of this Court. Reference in this connection can be made to the decision of Union of India & Anr. v. Raghubir Singh (Dead) by Lrs. Etc. reported in (1989) 2 SCC 754. This Court in the aforesaid case was called upon to determine as to which awards, references and/or appeals would be entitled to avail of the enhanced rates of interest by virtue of the Amendment of 1984. In adjudicating the matter, this Court clearly held that the award made by the Collector under Section 11 of the Act made between 30-4-1982 and 24-9- 1984, i.e., the dates of introduction of the Land Acquisition

Amendment Bill, 1982 in the House of the People and that of commencement of operation of the Land Acquisition (Amendment) Act, 1984 respectively, will be entitled to the enhanced rates under the Amendment. This Court also held that an award made by the Principal Civil Court of Original Jurisdiction under Section 23 of the parent Act on a reference made to it by the Collector under Section 19 of the Act between the aforesaid dates would also be entitled to the same, even though it be upon reference from an award made before 30-4-1982, in which this Court held as follows: -

"31. In construing Section 30(2), it is just as well to be clear that the award made by the Collector referred to here is the award made by the Collector under Section 11 of the parent Act, and the award made by the Court is the award made by the Principal Civil Court of Original Jurisdiction under Section 23 of the parent Act on a reference made to it by the Collector under Section 19 of the parent Act. There can be no doubt that the benefit of the enhanced solatium is intended by Section 30(2) in respect of an award made by the Collector between 30-4-1982 and 24-9-1984. Likewise the benefit of the enhanced solatium is extended by Section 30(2) to the case of an award made by the Court between 30-4-1982 and 24-9-1984, even though it be upon reference from an award made before 30-4-1982.

On the question of appeals to the High Court or Supreme Court, however, this Court adopted a different stand. It held:-

32. The question is: What is the meaning of the words "or to any order passed by the High Court or Supreme Court on appeal against any such award?" Are they limited, as contended by the appellants, to appeals against an award of the Collector or the Court made between 30-4-1982 and 24-9-1984, or do they include also, as contended by the respondents, appeals disposed of between 30-4-1982 and September 24, 1984 even though arising out of awards of the Collector or the Court made before 30-4-1982. We are of opinion that the interpretation placed by the appellants should be preferred over that suggested by the respondents. The submission on behalf of the respondents is that the words 'any such award' mean the award made by the Collector or Court, and carry no greater limiting sense; and that in this context, upon the language of Section 30(2), the order in appeal is an appellate order made between 30-4-

1982 and 24-9-1984 -- in which case the related award of the Collector or of the Court may have been made before 30-4-1982. To our mind, the words 'any such award' cannot bear the broad meaning suggested by learned counsel for the respondents. [...] The words 'any such award' are intended to have deeper significance, and in the context in which those words appear in Section 30(2) it is clear that they are intended to refer to awards made by the Collector or Court between 30-4-1982 and 24-9-1984. In other words Section 30(2) of the Amendment Act extends the benefit of the enhanced solatium to cases where the award by the Collector or by the Court is made between 30-4-1982 and 24-9-1984 or to appeals against such awards decided by the High Court and the Supreme Court whether the decisions of the High Court or the Supreme Court are rendered before 24-9-1984 or after that date. All that is material is that the award by the Collector or by the Court

should have been made between 30-4-1982 and 24-9-1984 [...] [T]o our mind it must necessarily intend that the appeal to the High Court or the Supreme Court, in which the benefit of the enhanced solatium is to be given, must be confined to an appeal against an award of the Collector or of the Court rendered between 30-4-1982 and 24-9-1984.

[...] 34. Learned counsel for the respondents has strenuously relied on the general principle that the appeal is a rehearing of the original matter, but we are not satisfied that he is on good ground in invoking that principle. [...] If the proceeding has terminated with the award of the Collector or of the Court made between the aforesaid two dates, the benefit of Section 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or the Supreme Court, it is at that stage when the benefit of Section 30(2) will be applied. But in every case, the award of the Collector or of the Court must have been made between 30-4-1982 and 24-9-1984."

16. This decision of the Court, passed by a Bench of 5 Judges, squarely applies to the appeals in this case, and makes it amply clear that the award of the Land Acquisition Officer/Collector or of the Reference Court must have been made between the aforesaid stipulated period, i.e., between 30.4.1982 and 24.9.1984.

17. The applicability of the Amendment Act to a proceeding of the aforesaid nature was made clear by the Act of 18 of 1984 by enacting the provision of Section 30(2). In all the appeals before us, the award of the Collector and that of the reference court in their case was passed prior to 30.04.1982. Therefore, the said amendment brought in by the Act of 18 of 1984 to the concerned provisions could not have been made applicable to the proceeding of the present cases. Hence, the judgment and order passed by the High Court giving the benefit provided by under the Amendment Act of 68 of 1984, viz., Section 23(1A) and 23(2) and the amended provision of Section 34 of the Act, cannot be made applicable in the cases of the appellants herein.

18. In so far as the second issue is concerned, it is true that the executing court cannot go behind the decree and grant interest not granted in the decree as submitted by the counsel appearing for the appellants in the light of the decision rendered by this Court in *State of Punjab & Others v. Krishan Dayal Sharma* reported in AIR 1990 SC 2177.

19. But, if a decree is found to be nullity, the same could be challenged and interfered with at any subsequent stage, say, at the execution stage or even in a collateral proceeding. This is in view of the fact that if a particular Court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction and the same is non-est and void ab initio.

20. The aforesaid position is well-settled and not open for any dispute as the defect of jurisdiction strikes at the very root and authority of the Court to pass decree which cannot be cured by consent or waiver of the parties. This Court in several decisions has specifically laid down that validity of any such decree or order could be challenged at any stage. In *Union of India v. Sube Ram & Others* reported in (1997) 9 SCC 69 this court held thus:

"5. [...] here is the case of entertaining the application itself; in other words, the question of jurisdiction of the court. Since the appellate court has no power to amend the decree and grant the enhanced compensation by way of solatium and interest under Section 23(2) and proviso to Section 28 of the Act, as amended by Act 68 of 1984, it is a question of jurisdiction of the court. Since courts have no jurisdiction, it is the settled legal position that it is a nullity and it can be raised at any stage."

21. In yet another case of *Amrit Bhikaji Kale & Others v. Kashinath Janardhan Trade & Another* reported in (1983) 3 SCC 437 this Court has held that when a Tribunal of limited jurisdiction erroneously assumes jurisdiction by ignoring a statutory provision and its consequences in law on the status of parties or by a decision are wholly unwarranted with regard to the jurisdictional fact, its decision is a nullity and its validity can be raised in collateral proceeding.

22. In *Balvant N. Viswamitra & Others v. Yadav Sadashiv Mule (Dead) Through Lrs. & Others* reported in (2004) 8 SCC 706 this Court stated thus:

"9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings."

23. In *Chiranjilal Shrilal Goenka (deceased) Through Lrs. v. Jasjit Singh & Others* reported in (1993) 2 SCC 507 this Court stated thus:

"18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non iudice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party. ...."

24. In the present cases the judgment and order passed by the High Court before the amendment Act of 68 of 1984 became final and binding as no appeal was brought to this Court thereafter. However, consequent to the Amendment in the Land Acquisition Act, the appellants had filed civil



miscellaneous applications for the grant of 30 per cent solatium and 9 per cent interest for first year and 15 per cent interest thereafter. This Court has also held in a catena of decisions that a decree once passed and which has become final and binding cannot be sought to be amended by filing petition under Sections 151 and 152, C.P.C. In the case of Union of India v. Swaran Singh & Others reported in (1996) 5 SCC 501 this Court held thus:-

"8. The question then is whether the High Court has power to entertain independent applications under Sections 151 and 152 and enhance solatium and interest as amended under Act 68 of 1984. This controversy is no longer *res integra*. In *State of Punjab v. Jagir Singh* and also in a catena of decisions following thereafter in *Union of India v. Pratap Kaur*; *State of Maharashtra v. Maharau Srawan Hatkar*; *State of Punjab v. Babu Singh*; *Union of India v. Raghbir Singh and K.S. Paripoornan v. State of Kerala*, this Court has held that the Reference Court or the High Court has no power or jurisdiction to entertain any applications under Sections 151 and 152 to correct any decree which has become final or to independently pass an award enhancing the solatium and interest as amended by Act 68 of 1984. Consequently, the award by the High Court granting enhanced solatium at 30% under Section 23(2) and interest at the rate of 9% for one year from the date of taking possession and thereafter at the rate of 15% till date of deposit under Section 28 as amended under Act 68 of 1984 is clearly without jurisdiction and, therefore, a nullity. The order being a nullity, it can be challenged at any stage. Rightly the question was raised in execution. The executing court allowed the petition and dismissed the execution petition. The High Court, therefore, was clearly in error in allowing the revision and setting aside the order of the executing court."

25. In the case of *Union of India v. Rangila Ram (dead) by Lrs.* Reported in (1995) 5 SCC 585 held as follows: -

"4. The point is no longer *res integra*. This Court has considered the scope of the power of the High Court under Sections 151 and 152, CPC and also under Section 13-A of the Act. This Court has held that once the civil court made an award as per law then in force which became final and that there is no error of law as on that date. Subsequent amendment does not give power to the court to amend the decree under Sections 151 and 152, CPC. This was held in *State of Maharashtra v. Maharau Srawan Hatkar* and *Union of India v. Pratap Kaur*. In *Maharau Srawan Hatkar* case this Court held that the civil court lacked inherent jurisdiction and was devoid of the power to entertain an application to award additional benefits under the Amendment Act 68 of 1984. The facts therein were that the award had become final and the Amendment Act 68 of 1984 had come into force on 24- 9-1984. The respondents made an application under Sections 151 and 152, CPC to award enhanced solatium and additional benefits etc. and the civil court allowed and granted the same. In that context, considering the civil court's power under Sections 151 and 152, CPC, this Court laid the above law."

26. In the case of *Dwaraka Das v. State of M.P. & Another* reported in (1999) 3 SCC 500 this Court described the scope of Section 152, C.P.C. thus:

"6. Section 152 CPC provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders of errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the court or the tribunal becomes functus officio and thus being not entitled to vary the terms of the judgments, decrees and orders earlier passed. The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 for which the proper remedy for the aggrieved party is to file appeal or review application. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the province of Sections 151 and 152 of the CPC even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order. ...."

27. There are number of decisions of this Court wherein it has also been held that a wrong judgment given by the High Court cannot be taken as precedence for perpetrating such wrong. In the case of *State of Haryana & Others v. Ram Kumar Mann* reported in (1997) 3 SCC 321 held as follows: -

"3. The question, therefore, is whether the view taken by the High Court is correct in law. It is seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on 18-5-1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which had already become effective by acceptance on 18-5-1982... The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Article 14 for reinstatement? The answer is obviously "No".. A wrong decision by the Government

does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits."

28. In the case of *State of Bihar & Others v. Kameshwar Prasad Singh & Another* reported in (2000) 9 SCC 94 this Court held thus: -

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner...

Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p. 465, para 9) "Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in *Secy., Jaipur Development Authority v. Daulat Mal Jain* reported in 1996 (7) SCALE 135 this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp. 51-52, para 28) "Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

31. In *State of Haryana v. Ram Kumar Mann* this Court observed: (SCC p. 322, para 3) "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As

stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

29. In the light of the aforesaid settled position of law, when we examine the facts of the present cases it is patently obvious that the reference case and the matter of payment of compensation to the appellants became final and binding after the award was passed and the judgment was pronounced by the reference court and further by the High Court and thereafter, no appeal having been filed in this Court. Such a judgment and decree which has become final and binding could not have been reopened by the High Court on the basis of revision applications filed under Section 151 and 152 of C.P.C.

30. In view of the two issues that we have discussed and elaborated herein, we are of the considered opinion that the executing court as also the High Court were justified in holding that the orders passed by the High Court granting enhanced solatium and interest as amended by Act 68 of 1984 is without jurisdiction and a nullity.

31. We, therefore, find no merit in these appeals. The orders passed by the executing court and the High Court are found to be legal, valid and justified. We, accordingly, dismiss all these appeals, but, we leave the parties to bear their own costs.

.....J [Dr. Mukundakam Sharma] .....J [Anil R. Dave]  
] New Delhi November 25, 2010.