State Of Ap & Ors vs Goverdhanlal Pitti on 11 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 1941, 2003 (4) SCC 739, 2003 AIR SCW 1430, (2003) 5 JT 74 (SC), 2003 (5) JT 74, 2003 (3) SLT 48, 2003 (3) ACE 579, (2003) 5 ALLINDCAS 753 (SC), (2003) 2 SCR 909 (SC), 2003 (3) SCALE 107, 2003 SCFBRC 384, 2003 (2) UPLBEC 1667, 2003 (5) SRJ 565, 2003 (5) ALLINDCAS 753, (2003) 2 KHCACJ 466 (SC), (2003) 2 CGLJ 158, (2003) 2 RECCIVR 295, (2003) 2 LACC 124, (2003) 2 CAL LJ 13, (2003) 1 RENCR 445, (2003) 2 SUPREME 713, (2003) 2 UC 954, (2003) 2 LANDLR 395, (2003) 2 MAD LJ 137, (2003) 3 MAD LW 662, (2003) 2 RAJ LW 305, (2003) 2 UPLBEC 1667, (2003) 3 ANDHLD 32, (2003) 3 ICC 342, (2003) 3 SCALE 107, (2003) 4 INDLD 183, (2003) 51 ALL LR 200, (2003) 3 ALL WC 2417, (2004) 1 BLJ 113, (2003) 3 CIVLJ 688, (2003) 2 ANDH LT 328, (2003) 2 CURCC 67

CASE NO.:
Appeal (civil) 6969 of 1999

PETITIONER:
State of AP & Ors.

RESPONDENT:
Goverdhanlal Pitti

DATE OF JUDGMENT: 02/12/3 of

BENCH:
March 11, 2003.

JUDGMENT:

J U D G M E N T Dharmadhikari J.

This appeal has been preferred by the State of Andhra Pradesh and its Authorities against the Division Bench judgment dated 22.7.1999 passed by the High Court of Andhra Pradesh in Writ Appeal No. 652 of 1999. The Division Bench upheld the order dated 29.12.1998 of the learned Single Judge of the High Court.

On the basis of the facts and circumstances the High Court came to the conclusion that the acquisition of the school building with its appurtenant land by the State was an action liable to be quashed being 'malicious in law.' The school building which is in the heart of old city of Hyderabad was in possession of the State as tenant of the respondent from the year 1954. In the year 1977, respondent/landlord approached the Rent Controller, Hyderabad for eviction of the State from school building on the ground that it had become dilapidated and required reconstruction. By order dated 15.12.1979, the Rent Controller, Hyderabad dismissed the eviction petition. The Additional

Chief Judge, City Small Causes, Hyderabad by its order made on 15.3.1989 in the appeal of the tenant granted eviction of the State from the school building. During pendency of appeal, the respondent/owner approached the High Court of Andhra Pradesh in Writ Petition No. 6487 of 1988 seeking early eviction of the State on the ground that the condition of the building was dangerous for the school. The High Court on 12.8.1988 allowed the Writ Petition and directed the State Government to vacate and hand over the possession of the school building to the owner within a specified period. The period of vacating the building by the State was later on extended upto 30.4.1989 on an alleged undertaking given by the State authorities to deliver the possession before the expiry of the extended period.

It is the case of the respondent that only in order to frustrate the decree of eviction and to avoid the delivery of possession of the land and school building to the owner in compliance with the directions made by the High Court in Writ Petition No. 6487 of 1988 and in breach of undertaking given by the State to vacate, the State hurriedly issued on 26.4.1989 notifications under Section 4(1) and Section 6 of the Land Acquisition Act for acquisition of the building and premises of the school. Later in the proceedings of acquisition, an Award was passed on 08.5.1992 granting compensation in the sum of Rs.2,60,968.68/- to the respondent.

The respondent/owner assailed the acquisition proceedings by Writ Petition No. 6876 of 1989 which was allowed by the learned Single Judge and upheld in appeal by the Division Bench of High Court of Andhra Pradesh. Aggrieved by the impugned order of the High Court quashing the acquisition proceedings, the State of Andhra Pradesh is in appeal to this Court.

The learned Single Judge, on taking into consideration the time and manner of the acquisition proceedings, came to the following conclusion:-

> "In my view, the said exercise of power under Section 4(1) of the Act is to circumvent the Civil Court decree and the High Court order under Article 226 of the Constitution of India. The exercise of power under Section 4(1) of the Act is not fair and it is only to scuttle a valid decree passed by the Civil Court which amounts to 'malice in law'. The power under Section 4(1) of the Act cannot be exercised to thwart a valid decree passed by the Civil Court".

By the impugned order, the Division Bench also in Writ Appeal came to the same conclusion which in its language is :-

> "Acquisition suffers from lack of bona fides and is only an arbitrary act and an attempt to undo the consequences of the judicial decision".

The Division Bench in coming to the conclusion that the proceedings for acquisition initiated by the State were not fair and bona fide also took into consideration the fact that minimum norms fixed by State itself for setting up a school with facilities like play grounds, lecture hall and open space were not fulfilled in the case of school building in dispute. It also observed that school building was hundred years old and was declared unfit for human habitation as back as in the year 1990. The

State Government took no action for past several years to acquire the building. The proceedings for acquisition were commenced only when it suffered an order of eviction under the Rent Control Act and obtained extended period from the High Court to vacate the premises of the School.

We have heard the learned counsel Shri T.V. Ratnam appearing for the State. He submits that acquisition of the school building was necessary to cater to the educational needs of the children living nearby the old city of Hyderabad. It is argued that merely because the State failed in its attempt to successfully oppose the eviction proceedings under the Rent Control and Eviction Act, its independent 'right of eminent domain' was not lost to acquire under due process of law the building for urgent public purpose. Reliance is placed on the decisions of this Court in State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors. [1952 SCR 889]; Prabodh Sagar vs. Punjab State Electricity Board & Ors. [2000 (5) SCC 630] and First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr. [2002 (4) SCC 160].

We have heard reply of learned senior counsel Shri V.R. Reddy appearing for the owner (respondent) of the school building. Strenuous effort is made to support the judgment of the Andhra Pradesh High Court. It is contended that the most important fact cannot be lost sight of that the school building was not only dilapidated but was found to be in dangerous condition which prompted the High Court, in earlier writ petition to direct the State, to hand over the vacant possession of the building to the owner without waiting for culmination of the proceedings of eviction pending in appeal before City Small Causes Court. It is pointed out that at the stage when the State Government had undertaken to the High Court to deliver possession of the school building, the proceedings for acquisition under Land Acquisition Act were initiated. The High Court, therefore, was right in coming to the conclusion that the action of the State lacked bona fides and was clearly an attempt to frustrate the decisions of the court. The learned counsel also produced before us the norms fixed by the Urban Development Authorities for setting up of a school. It is submitted that as per the norms fixed for setting up of a school, the school building in question does not at all conform to those norms. The State Government, therefore, cannot be permitted to acquire school building with its premises which does not satisfy the norms fixed by the State itself for setting up of a school.

The last submission made is that since the school building was in dangerous condition and the school having been already shifted at an alternative site, this Court in exercise of its power under Article 136 of the Constitution of India should refuse to interfere in the order of the High Court. In the alternative, it is prayed that the State Government be directed to reconsider its decision for retaining the school building as the school stands shifted to a new location.

The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'. [See Words and Phrases legally defined in Third Edition, London Butterworths 1989].

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

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

It is true that the school building is hundred years old. It is in dilapidated condition and at the time, the High Court, in earlier Writ Petition directed the State to deliver the possession of the building, it was found to be in dangerous condition. Nonetheless, it cannot be denied that the State was running a school in the building since the year 1954. The school is in the heart of the city of Hyderabad. The High Court held acquisition proceedings to be malicious only because the State lost in eviction proceedings and had given an undertaking to vacate the school building.

Relationship inter se of the State as tenant with the respondent as the owner-cum-landlord of the building is regulated by Rent Control Legislation. The rights and liabilities of State as tenant are distinct from its 'right of eminent domain' of all properties. The school was catering to the educational needs of the children residing in the heart of the city. It cannot be seriously disputed that the continuance of the school at the same location would serve public purpose of fulfilling educational needs of children in the old city.

The High Court of Andhra Pradesh held the action of acquisition of the property by the State as malicious in law only because before passing of the adverse orders by the court against it, no action for acquisition of the building which was in its occupation since 1954, was initiated. In our opinion, even if that be the situation that the State as tenant of the school building took no step to acquire the land before order of eviction and direction of the High Court, it cannot be held that when it decided to acquire the building, there existed no genuine public purpose. If only the possession of the property could be retained as a tenant, it was unnecessary to acquire the property. The order of eviction as well as the direction to vacate issued by the High Court only provide just, reasonable and proximate cause for resorting to acquisition under the Land Acquisition Act. Resort, therefore, to acquisition at a stage when there was no other alternative but to do so to serve a genuine public which was being fulfilled from 1954 signify more a reasonable and just exercise of statutory power. Such exercise of power cannot be condemned as one made in colourable or mala fide exercise of it.

Reliance on the decision of this Court in the case of State of UP & Ors vs. Hindustan Aluminium Corpn. Ltd & Ors. [1979 (3) SCR 709] does not help the case of the respondent/owner. We do not find that the State in initiating acquisition proceedings, at a time when there were adverse orders against it by the courts to vacate the premises, acted for a reason and purpose knowingly foreign to

the provisions of the Land Acquisition Act. The real issue before the High court of Andhra Pradesh and before this Court is whether the land acquisition proceedings can be held to be actuated by any purpose other than public purpose. From the circumstances placed before us, we do not find that public purpose does not exist for the State to acquire the school premises. The position of the State as a landlord is different from its position as a sovereign State with 'right of eminent domain' over all landed properties. It is obvious that as a tenant the State had several inhibitions in law in effecting substantial repairs to the building or reconstructing it. The landlord in that regard had superior rights in rent legislation. But once the State acquires the school building, it had many options. It can demolish the whole building and reconstruct it. It may effect substantial repairs and alterations to it for making it suitable for continuing the school at the same premises and thus meet the educational needs of the children living in the heart of the city in Hyderabad.

We are not at all impressed by the argument advanced on behalf of the respondent/owner that as the school building in question does not conform to norms fixed, the State cannot be allowed to act against its own norms fixed for setting up of a school. It is futile to apply an order of the government dated 31.7.98 made w.e.f. 01.8.1998 in testing the reasonableness of the acquisition or its desirability as also the utility of the same to a public purpose. Public interest undoubtedly in such building was being served from 1954 onwards at the same location.

This Court cannot overlook the fact that the new norms whatsoever fixed for setting up of a school building may not be necessarily applicable to the existing buildings. Norms, if any, fixed by the Urban Development Authorities can be insisted upon for proposed new school buildings in the newly developed areas. It is not necessary to go further into that subject.

In the State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors. [1952 SCR 889], this Court has recognised the right of State of 'eminent domain' that is 'the right of compulsory acquisition of any private property'. This power of eminent domain of the State is sovereign power over powers and rights of private persons to properties. The High Court of Andhra Pradesh has referred and distinguished Division Bench decision of its own court. We find that challenge in similar circumstances by private owners to the action of acquisition taken by the State and the contention based on malice in law was negatived by this Court in case of State of UP & Anr. vs. Keshav Prasad Singh [1995 (5) SCC 587]. The relevant part of it reads thus :-

> "4. Having considered the respective contentions, we are of the considered view that the conclusion of the High Court was clearly illegal. It is seen that the land acquired was for a public purpose. Admittedly, the same land was acquired in the year 1963 for building a PWD office and after construction a compound wall was also constructed to protect the building. As found by the civil court, on adducing evidence in a suit that the Department had encroached upon the respondent's land which was directed to be demolished and delivery of possession to be given. It is seen that when that land was needed for a public purpose, i.e. as part of public office, the State is entitled to exercise its power of eminent domain and would be justified to acquire the land according to law. Section 4(1) was, therefore, correctly invoked to acquire the land in dispute. It is true that the State had not admitted that its officers had encroached

upon the respondent'' land and had carried the matter in appeal. The finding of the civil court was that the property belongs to the respondent. The factum of the action under the Act implies admission of the title of the respondent to the extent of land found by the civil court to be an encroachment. Though the State chose to file the appeal which was pending, better judgment appears to have prevailed on the state to resort to the power of eminent domain instead of taking a decision on merits from a Court of Law. In view of the fact that the PWD office building was already constructed and a compound wall was needed to make the building safe and secure and construction was already made, which is a public purpose, the exercise of power of eminent domain is perfectly warranted under law. It can neither be said to be colourable exercise of power nor an arbitrary exercise of power.

See also the decision in the case of First Land Acquisition Collector & Ors. v. Nirodhi Prakash Gangoli & Anr. [2002 (4) SCC 160]. The relevant part of argument at page 166 para 6 reads thus :-

"6. It is indeed difficult for us to uphold the conclusion of the Division Bench that acquisition is mala fide on the mere fact that physical possession had not been delivered pursuant to the earlier directions of a learned Single Judge of the Calcutta High Court dated 25.8.1994. When the Court is called upon to examine the question as to whether the acquisition is mala fide or not, what is necessary to be inquired into and found out is, whether the purpose for which the acquisition is going to be made, is a real purpose or a camouflage. By no stretch of imagination, exercise of power for acquisition can be held to be mala fide, so long as the purpose of acquisition continues and as has already been stated, there existed emergency to acquire the premises in question. The premises which were under occupation of the students of National Medical College, Calcutta, were obviously badly needed for the College and the appropriate authority having failed in their attempt earlier twice, the orders having been quashed by the High Court, had taken the third attempt of issuing notification under Section 4(1) and 17(4) of the Act, such acquisition cannot be held to be mala fide and, therefore, the conclusion of the Division Bench in the impugned judgment that the acquisition is mala fide, must be set aside and we accordingly set aside the same".

The last submission made on behalf of the respondent/owner also does not commend to us. Merely because as a temporary arrangement the school building has been shifted to an alternative place apparently to avoid the unpleasantness of facing any contempt proceedings, this Court cannot uphold the order of the High Court and leave the matter to the State Government to reconsider the question whether the school building is still required for its purposes.

Admittedly, the school building was hundred years old, dilapidated and in dangerous condition. Shifting school building to the alternative site had, therefore, become necessary to avoid any possible catastrophe by collapse of the building. On this ground, however, it cannot be held that the public purpose for acquiring the building no longer exists. The last prayer made on behalf of the

respondent/owner also, therefore, cannot be accepted.

As a result of the aforesaid discussion, the appeal succeeds and is hereby allowed. The impugned orders of the High Court of Andhra Pradesh are set aside.

In the circumstances aforesaid, we would leave the parties to bear their own costs in this appeal.