SUPREME COURT OF INDIA

Girias Investment Pvt.Ltd.

Vs.

State of Karnataka

C.A.No.1979 of 2008

(Tarun Chatterjee and H.S.Bedi,JJ.)

13.03.2008

JUDGMENT

Harjit Singh Bedi, J.

1. Leave granted.

2. This appeal arises out of the following facts.

3. The 3rd respondent, the Karnataka Industrial Area Development Board (hereinafter called the 'Board') issued a Notification dated 6th April 2004 under Section 28(1) of the Karnataka Industrial Area Development Board Act, 1966 (for short the 'Act') proposing acquisition of land bearing serial Nos. 114,115 and 116 in village Kannamangala for the purpose of constructing a trumpet interchange and access road from National Highway No. 7 to the Bangalore Airport. This land was notified for acquisition on the basis of a comprehensive feasibility report submitted by the Technical Consultant for the project, Sikon Private Ltd. The Karnataka State Industrial Investment and Development Corporation (for short "KSIIDC") in the meantime proposed a change in the location of the trumpet interchange and the access road on the ground that only 53 Acres of land needed for these two projects whereas the Notification was dated 6th April 2004 pertaining to 80 acres and 27 gunthas was far in excess of the requirement and therefore suggested reconsideration of the matter. Vide letter dated 24th August 2004 the Bangalore Airport Ltd. informed the KSIIDC that the proposed location of the trumpet interchange and the access road was final and that there was no reason to make a change in their alignment. Notwithstanding the aforesaid communication the Board issued a fresh Notification under section 28(1) of the Act on 5th December 2005 releasing the land proposed to be acquired by the earlier Notification dated 6th April, 2004, and proposing acquisition of the land bearing serial Nos.118-119. The appellants who had in the meanwhile purchased the aforesaid land vide two Registered Sale Deeds dated 23rd and 26th November 2005 appeared in the enquiry under Section 28(3) of the Act before the second respondent i.e. the Special Land Acquisition Officer and submitted their objections, inter-alia, pointing out that the land now notified for acquisition had been converted to non-agricultural use by orders of the Revenue Authorities and that they

proposed to put up a commercial complex at that place. They also pointed out that that there were other alternative Government lands available for construction of the trumpet interchange and access road which could be utilized thus sparing the lands of the appellants from acquisition. The second respondent, however, overruled the objections on various grounds particularly highlighting that the change had been necessitated as the earlier proposal had not been found to be technically sound. The Board also issued a notification dated 3rd June 2006 under section 28(4) of the Act acquiring the land belonging to the appellants. The appellants thereupon filed a writ petition challenging the acquisition primarily on the ground that a large chunk of Government land was available which could be utilized and that the acquisition of private land was therefore not justified. It was also pleaded that the second respondent had not given a personal hearing to the appellants as envisaged under section 28(3) of the Act and that the reports submitted by the said respondent to the State Government did not adequately meet the issue raised before him. It was also submitted that the acquisition was motivated by malafides as there were no sound and technical reasons for the sudden change in the alignment that was now proposed. The learned Single Judge in his judgment and order of 9th August 2007 found that the allegations of malafide had not been made out and the contention that the personal hearing envisaged under section 28(3) of the Act had not been given also deserved to be rejected. The learned Judge also opined that the change had been necessitated on account of technical reasons and having held as above, dismissed the writ petition. The matter was then taken in appeal before the Division Bench. Similar arguments were raised before the Bench which in its judgment dated 20th September 2007 held as under:

> "On a thorough consideration of the documentary material and the submission made at the Bar, we are of the view that the proposed change of locating T.I & A.R by the 1st respondent is well-founded based on sound technical reasons. It may be that because of change of location, the appellants might lose lucrative and prime property but nonetheless the individual interests have to yield to the public demands and public needs. If the lands are converted to non-agricultural purpose, the appellants do get the market value for their property. Therefore, we do not find any reason to hold that the proposed change of location of the T.I & A.R is actuated with any malafides.
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> The appellant makes only a vague statement of alternate availability of the Government lands without precisely pointing out the particulars of the Government lands which can suitably satisfy the needs. The contention that there are alternate Government lands available for construction of T.I & A.R without need of acquisition of other private lands, is not substantiated by any credible material. The proceedings of the enquiry dated 16.1.2006 of the 2nd respondent discloses that the appellants were present in the enquiry, submitted written objections with documentary materials. The acquisition is resisted on the ground that the lands are converted for non-agricultural purpose and that they have borrowed loan from Andhra Bank for putting up a shopping complex. The appellants have not requested the 2nd respondent for an opportunity of further hearing in the matter. It appears from the proceedings that the appellants had nothing more to say than what is stated in their objection statement. There is no request for further personal hearing. Therefore, it

cannot be said that the 2nd respondent did not provide necessary opportunity of personal hearing as required under Section 28(3) of the Act and the finding of the learned Single Judge in this regard is sound and proper. We find no merit in the appeal. Hence, dismissed.

4. It is in this situation that the present appeal is before us by way of special leave.

5. Mr. Dushyant Dave, the learned senior counsel for the appellants has reiterated the arguments that had been raised earlier. He has pointed out that the action of the respondents in changing the location of the interchange and the access road which had led to the acquisition of the appellants land was actuated by malafides and the explanation offered by the respondents that this had been necessitated on account of technical reasons was an after thought and not based on the record. He has pointedly stressed that in its letter of 24th August 2004, the Airport Authority had emphatically denied the need for a change and it was in explicable as to what had prompted a reversal of the decision a few days later. Mr. Dave has accordingly placed reliance on Smt. S.*R. Venkataraman vs. Union of India & Anr*[1]. *State of Punjab vs. Gurdial Singh*[2] *Collector (D.M.) vs. Raja Ram Jaiswal*[3] *S.N.Patil vs. Dr. M.M. Gosavi & Ors*[4]. *and B.E.M.L.Employees House Bldg Coop. Society Ltd. vs. State of Karnataka*[5] to argue that even in cases of land acquisition the bonafides of the acquiring authority had to be shown and that it was open to an aggrieved party to plead malice in fact or law so as to avoid an acquisition. It has also been submitted that the personal hearing envisaged under section 28(3) of the Act was akin to a hearing under section 5-A of the Land Acquisition Act, 1894 and that in the absence of any such effective hearing the acquisition was liable to fail. It has been highlighted that the appellants had requested for a personal hearing and it was thus obligatory on the Collector to give one but he had bye-passed the provisions of section 28 (3) and directly made an order under section 28(4) of the Act. It has accordingly been pleaded that in the light of the judgments reported in Shri Farid Ahmed Abdul Samad & Anr. Vs. The Municipal Corporation of City of *Ahmedabad and Anr*[6]. *Rambhai Lakhabai Bhakt vs. State of Gujarat & Ors*[7] *State of Rajasthan vs. Prakash Chand & Ors*[8]. *Union of India & Ors. vs. Mukesh Hans*[9] *Union of India & Ors. vs. Krishan Lal & Ors*[10]. *and Hindustan Petroleum Cor.Ltd. Vs. Darius Shapur Chennai & Ors*[11]. an acquisition made without giving an effective and meaningful personal hearing was liable to be quashed.

6. The arguments raised by Mr. Dave have been strongly controverted by the learned counsel for the respondents. It has been pointed out at the very outset that the allegations of malafide were on the face of it unacceptable for the simple reason that the proposal to change the alignment of the trumpet interchange and access road had been initiated after a complete technical re-survey and long before the date of the sales in favour of the appellants and that in any case, allegations of malafides had to be leveled against some identified individual(s) who had to be impleaded as a party to the litigation failing with the court was precluded from examining this plea. Reliance for this submission has been placed on *Keshab Rao vs. State of West Bengal*[12] *First Land Acquisition Collector & Ors. vs. Nirodhi Prakash Gangoli & Anr*[13]. *Ajit Kumar Nag vs . G.M. (PJ) Indian Oil Corporation Ltd., Haldi & Ors*[14]. *and Prakash Singh Badal & Anr. Vs. State of Punjab & Ors*[15]. It has also been pointed out that

the personal hearing envisaged under Section 28(3) had indeed been given and as a token of this hearing the appellants had signed the relevant proceedings.

7. It would be seen that the primary issue raised by Mr. Dave pertains to the malafides in the acquisition of the appellants land. These allegations are sought to be proved by inference on the premise (Mr. Dave's second argument) that the change had been made suddenly and without necessity which showed the malafides of the respondents. We, therefore, deem it appropriate to take up the first two arguments together. It is Mr. Dave's contention that on the 24th August 2004 the Airport Authority had itself ruled out any change and as such, a complete volte face a week later showed the malafides on the part of the respondents. We are unable to accept this argument as the facts depict quite a different picture. From the statement of objections filed on behalf of the respondent No.1, the State of Karnataka before the Karnataka High Court, we notice that the lands covered by the Notification dated 6th April 2004 were proposed to be acquired based on the tentative requirements indicated by the Airport Authority in its letter dated 2nd December 2002. After issuance of the aforesaid Notification a letter was addressed to the Airport Authority to reappraise the matter keeping in view the technical needs and requirements on which a team of the Chief Executive Officer and Head Technical of the Airport Authority, a representative of the KSIIDC and other local revenue officials visited the site on 1st September 2004 and noticed that there were some adverse ground conditions and difficulties such as the existence of a large pond which necessitated the change. It also appears that there was a great deal of correspondence between all concerned and the final decision was taken to change the location of the trumpet interchange and access road after due deliberation, as has been revealed from the letters dated 22nd April 2005, 14th July 2005 and 19th July 2005. Our pointed attention has been brought to the letter of 19th July 2005 and we reproduce the relevant contents hereinbelow:

> "Trumpet Interchange (TI) & Access Road:
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> The earlier proposal envisaged acquisition of 80 acres 27 guntas of land for TI and Access Road from the National Highway upto the airport boundary based on the detailed study conducted by Bangalore International Airport Ltd. (BIAL) in consultation with the National Highway Authority of India (NHAI). However, at the time of physical survey of the land, certain adverse ground conditions and difficulties such as existence of large pond in the alignment of the access road were encountered. This necessitated change in the alignment of the access road and in turn, the location of the TI. In the meanwhile, the issue of construction TI through NHAI was discussed in the meeting at the Prime Minister's Office on 29.11.2004 and also in the meeting convened at NHAI on 8.12.2004. Based on the decisions taken in these meetings, NHAI appointed International Consultants and Technocrats Pvt. Ltd. (ICT) to carry out the General Alignment Drawing (GAD) as well as DP for the TI. Accordingly, GAD and a draft DPR have been prepared by CT and submitted to NHAI. Based on these NHAI has confirmed the details of coordinates of proposed right of way (PROW) for land acquisition purpose and set out data for accommodating two future railway tracks. A copy of the letter dated 06.7.2005 received from NHAI in this regard, is enclosed for ready reference (Enclosure-I).

> Based on these details, BIAL with the assistance of M/s. Secon Surveys has finalized the revised extent of land / Sy. No. to be acquired and has confirmed vide their letter dated 14.7.2005. A copy of this letter is also enclosed (Enclosure-II). The details of villages, Sy. No. and extent in respect of modified requirement of lands to be acquired for TI and Access Road as confirmed by BIAL are enclosed for your needful action (Enclosure-III).

8. Mr. Dave's peripheral argument that the change had been made on account of the objections raised by the prospective land losers of the first acquisition is also unacceptable as this objection had been made only with respect to the land proposed for the special runway, a fact which had also figured in the letter dated 19th July 2005. It is the admitted position that the land had been purchased by the appellants vide sale deeds dated 23rd November 2005 and 26th November 2005 i.e. long after the final decision had been taken to acquire the land in the light of the revised proposal. It is also significant that in the objections filed before the Land Acquisition Collector, no malafide against any person has been alleged. We also find that malafides have been alleged in paragraph 4.9 of the pleadings filed before the Karnataka High Court. Paragraph 4.9 is reproduced hereunder.

> "4.9It is important to note that lands covered under Annexure-J and the lands now sought to be acquired are adjacent to each other. However, apparently to help the owners of the said lands sought to be denotified as per Annexure-K and with ulterior motives, there appears to be a change of plan, for no ostensible reason at all, whereby instead of locating the trumpet on the said Survey No.115, 116, 117, 121 (P) and 90 belonging to some influential persons and Sy. No.73 vast stretch of Government Gomal land, a plan is hatched up to denotify all the said survey numbers including the Government land in Sy. No. 73 and acquire Schedule A and B lands belonging to the 1st petitioner company. This apparently has been done by certain interested quarters in the respondents' offices with ulterior motives with a view to help and to the advantage of the owners of the said lands and others, to the detriment of the interest of the petitioners. A proposal, therefore, appears to have been mooted for a Trumpet interchange. The proposal interchange has been sought to be followed up by proposal as could be seen in Annexure-K, the revised details for acquisition of lands, a true copy of which is produced herewith as Annexure-K."

9. These allegations have been replied to in paragraphs 11 to 14 of the objections filed on behalf of the State Government, respondent No.1. These too are reproduced:

> "11. It is submitted that, the extent and location of land required for TI was finalized after due consultation with BIOAL, NHAI and also the Railway Authorities after holding series of meetings with the concerned authorities in this behalf. The process of acquisition of lands required is completed. It is submitted that, there is only a national interest involved in this project by all concerned and the Project is certainly not aimed at helping any specific parties or to affect someone as alleged by the petitioners in the Writ Petition at Paras 4.6, 4.9, 4.11, 4.12, 4.13 and 4.14 and other parts of the Writ Petition. It is submitted that the allegations of malafide,

arbitrariness, highhandedness etc.,on the part of this respondent in notifying Schedule. A and B properties for acquisition in the above case are hereby emphatically denied as baseless and without any foundation. It is further submitted that the said averments are made by the petitioners to mislead this Hon'ble Court. The documents marked as Annexure J and H in the Writ Petition do not disclose the full facts of the case. In this context, it is relevant to make a mention about the correspondence between BIAL and KSIIDC dated 24.8.2004, 30.3.2005, 22.4.2005, 14.7.2005 and 19.7.2005 and marked at Annexures R 1 to R.5 respectively with enclosures therein. These five documents bring out the development, subsequent to the Notification of 7.4.2004, relied upon by the petitioners. As explained in subsequent paragraphs of this petition, these five documents explain the reason for relocation of the TI.

10. With regard to the averments made in para 4.9 of the Writ Petition, it is not correct to say that the lands covered under Annexure-J to the Notification dated 7.4.2004 and the lands now being acquired are adjacent to each other. The lands being acquired now are at a distance of about 350 meters away from the lands notified earlier. The lands covered in the Preliminary Notification mentioned in Annexure-J were proposed to be acquired based on the tentative requirements indicated by BIAL in its letter dated 2nd December 2002 and a copy of the same is herewith produced and marked as Annexure R6. After issuance of Preliminary Notification, a letter was addressed to BIAL requesting to review thoroughly the scheme and reconfirm the access road alignment, TI position and the corresponding actual/exact extent of land required therefore to initiate final action towards acquisition of the required additional lands. Subsequently a team comprising of the Chief Executive Officer and the Head Technical of Bangalore International Airport Limited, a representative of KSIIDC and the local revenue officials visited the site on 1st September 2004 and during the said visi, it was noticed that there were certain adverse ground conditions and difficulties such as existence of a large pond in the alignment of the access road, regarding existence of pond and the map are produced herewith and marked as Annexures R1 & R8 respectively. Thus, this aspect has necessitated marginal change in alignment of the access road and in turn the location of the TI.

11. It is submitted that the petitioner refers to the 1st Survey Report of Secon dated 27.11.2002 (Annexure H) to the Writ Petition but makes no reference to the 2nd Revised Report of Secon dated 30.3.2005 (Annexure R-2 to this Statement of Objections). In the Preliminary Notification dated 7.4.2004, a total extent of 242 acres 27.5. guntas of land covering 7 villages viz. Begur, Hikkanahlli, Mylanahalli, and Gangamuthanahalli were published. In letter dated 23.8.2004 of KSIIDC the BIAL was requested to reconfirm the alignment of access road/Trumpet Interchange. As already stated at para 12, at the request of KSIIDC a joint inspection by a team comprising of the Chief Executive Officer and the Head Technical of BIAL, representative of KSIIDC and the local revenue officials was done. During the visit it was observed that there were certain adverse ground condition and difficulties such as existence of a large pond in the alignment of the access road (Annexure R-3). Accordingly, the Secon furnished the revised Survey Report on 30.3.2005

(Annexure R-2). BIAL in its letter dated 14.7.2005 confirmed the final coordinates, Survey Nos. extent of land etc. It was on the basis of this final plan for the TI that the KIADB issued impugned Notification dated 5.12.2005. Strangely, the writ petitioner has chosen not to bring these facts to the notice of the Hon'ble Court. These facts clearly indicate that the petitioner is stating the facts to mislead this Hon'ble Court.

12. With regard to the averments made in para 4.12 of the writ petition, it is submitted that Sy. No.133 belongs to Sanjeevappa, son of K.Chowdappa Anjanamma, wife of later Munlyappa Venkatashamappa who are ordinary citizens and not influential persons. Lands of Survey Nos. 115, 116 and 117 of Kannamangala Village which are standing in the name of one Gullamma, wife of late R. Annaiah is also an ordinary citizen and not influential person as alleged by the petitioners. Thus the contention of the petitioners that there is conspiracy either to help a few persons owning certain pieces of land or to deprive the petitioners of their valuable lands with ulterior motives etc. is untenable in law and also on facts. It will accordingly be seen that issuance of Notification dated 2.6.2006 by this respondent is in accordance with law and came to be passed after observing and following all the necessary formalities as contemplated in the provisions of the Karnataka Industrial Areas Development Board Act, 1966. It is submitted that as regards the permission/clarification by the Tahsildr, Devanahali Taluk from the Assistant Commissioner, Doddaballapur Sub-Division to auction portion of land in Sy. No.73 of Kannamangala Village, the matter is under consideration between Revenue Department and KIADB. No final decision has yet been taken to auction land in Sy. No. 73 is not required as per modified alignment, the proposal for auction was motted but no final decision is yet taken. In fact Sy. No.73 measures nearly 94 and odd acres. It is further submitted that the notice under Section 28 (2) of the KIADB Act, 1966 (hereinafter called the 'Act') was issued in the name of Sri N.R. Prakash. This is so because his name was shown as owner of the saidlands in the relevant land records i.e. RTC obtained as on the date of publication of Preliminary Notification under Section 28(1) of the Act."

10. The reply comprehensively dispels any indication of malafides on the part of the respondents and categorically bears out the circumstances and justification for the revised proposal, and that no individual or party was responsible for the alleged malafide change.

11. It is obvious from a reading of the pleadings quoted above that only vague allegations of malafides have been leveled and that too without any basis. There can be two ways by which a case of malafides can be made out; one that the action which is impugned has been taken with the specific object of damaging the interest of the party and, secondly, such action is aimed at helping some party which results in damage to the party alleging malafides. It would be seen that there is no allegation whatsoever in the pleadings that the case falls within the first category but an inference of malafide has been sought to be drawn in the course of a vague pleading that the change had been made to help certain important persons who would have lost their land under the original acquisition. These allegations have been replied to in the paragraph quoted above and reveal that the land which hadbeen denotified belonged to those who had absolutely no position or power. In this view of the matter, the judgments

cited by Mr. Dave have absolutely no bearing of the facts of the case. S.R.Venkataraman's case (supra) was a case where a Central Government officer challenged her premature retirement in the High Court, making allegations of malafides against one of her superior officers. She then approached this Court where the respondent Union of India conceded that there was no material which could justify an order of premature retirement, resulting in an order by this Court in her favour. In Gurdial Singh's case (supra) it was found that the acquisition of the land belonging to the petitioner was on account of the malafides on the part of the Chief Minister of the State as the land owner was a political rival. In paragraph 10 it was observed as under:

> "By these canons it is easy to hold that where one of the requisites of sections 4 or 6, viz., that the particular land is needed for the public purpose in view, is shown to be not the goal pursued but the private satisfaction of wreaking vengeance, if the moving consideration in the selection of the land is an extraneous one, the law is derailed and the exercise is bad. Not that this land is needed for the mandi, in the judgment of government, but that the mandi need is hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine! To reach this conclusion, there is a big 'if' to be proved if the real object is the illegitimate one of taking away the lands of respondents 1 to 21 to vent the hostility of respondent 22, under the mask of acquisition for the mandi."

12. In Raja Ram Jaiswal's case (supra) several questions including one of malafides were raised before the Supreme Court. The facts of the case are however tell-tale. It appears that the Hindu Sahitya Sammelan Parishad had obtained a large piece of land from the Municipal Board in 1953 for constructing a Hindi Sangrahalaya but the land remained unutilized for a long time. The land belonging to the respondent Raja Ram Jaiswal, who was apparently a well connected individual, was in the immediate vicinity on which he proposed to construct an air-conditioned cinema hall. The Parishad opposed the proposal on the ground that, that it would be destructive of its cultural and academic environment. This objection was overruled by the District Magistrate who granted the requisite certificate for the construction of the cinema. The Parishad thereafter made an application to the Government for acquiring the respondent's land as it was needed for the purpose for the extension of the Hindi Sangrahalaya although it later deviated from its stand and suggested that the additional portion was needed for a Natyashala and Rangmanch. The Collector who was to initiate the proceedings was apparently reluctant to do so on the plea that the Parishad had sought the acquisition not because it required the land but because it wished to stall the construction of a cinema next door. Notwithstanding the aforesaid facts, a Notification under Section 4(1) of the Land Acquisition Act was issued. This Notification was challenged and the matter ultimately came to the Supreme Court and this is what the Court had to say:

> "It is well-settled that where power is conferred to achieve a certain purpose, the power can be exercised only for achieving that purpose. Section 4(1) confers power on the Government and the Collector to acquire land needed for a public purpose. The power to acquire land is to be exercised for carrying out public purpose. If the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its

vicinity, can it be said that such a purpose would be a public purpose? May be the authority of the Sammelan may honestly believe that the existence of a cinema theatre may have the pernicious tendency to vitiate the educational and cultural environment of the institution and therefore, it would like to wish away a cinema theatre in its vicinity. That hardly constitutes public purpose. We have already said about its proclaimed need of land for putting up Sangrahalaya. It is an easy escape route whenever Sammelan wants to take over some piece of land. Therefore, it can be fairly concluded that the Sammelan was actuated by extraneous and irrelevant considerations in seeking acquisition of the land and the statutory authority having known this fact yet proceeded to exercise statutory power and initiated the process of acquisition. Does this constitute legal mala fides?

Where power is conferred to achieve a purpose it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated. If the power to acquire land is to be exercised, it must be exercised bona fide for the statutory purpose and for none other. If it is exercised for an extraneous, irrelevant or non-germane consideration, the acquiring authority can be charged with legal mala fides."

13. For arriving to its conclusion, the Court relied, amongst others, on the judgments of this Court in Gurdial Singh's case aforesaid and on S.N.Patil's case (supra) where again specific allegations were made and proved against the Chief Minister. In BEML Employees House Building Co-operative Society Ltd.'s case (supra) the acquisition was quashed on the ground that the land belonging to some persons who were similarly situated as the appellant, had been released and that the State Government had been unable to show any rational discrimination between the case of the appellant and that of the other landowners and that this act amounted to "hostile discrimination".

14. It is no doubt open to the court to go into the question of malafides raised by a litigant but in order to succeed, much more than a mere allegation is required. Mr. Dave's inference of malafide based on the ground that the change in the location of the trumpet interchange and the access road had been suddenly made without proper application of mind to help certain unidentified individuals resulting in the acquisition of the land belonging to the appellants is, thus, without any factual basis.

15. Mr. Hulla, the learned counsel appearing for some of the respondents has also placed reliance on *Keshab Rao vs. State of West Bengal*[16] First *Land Acquisition Collector & Ors. vs. Nirdohi Prakash Ganguli & Anr*[17]*. Ajit Kumar Nag vs. G.M.(PJ) I.O.C.Ltd., Haldi & Ors*[18]*. and Prakash Singh Badal & Anr. Vs. State of Punjab and & Ors*[19]. to submit that a mere allegation of malafide is not enough and cogent evidence thereof must be given. We respectfully endorse the opinion expressed in these judgments and reiterate that no material

or details of malafides have come on record in the present case. We nevertheless quote paragraphs 56 and 57 from Ajit Kumar Nag's case (supra) to support our discussion:

> 56. In our view, neither the learned Single Judge nor the Division Bench has committed any error of law and/or of jurisdiction which deserves interference in exercise of discretionary jurisdiction under Article 136 of the Constitution. As is clear, the situation has been created by the appellant. It was very grave and serious and called for immediate stern action by the General Manager. Exercise of extraordinary power in exceptional circumstances under Standing Order 20(vi) in the circumstances, cannot be said to be arbitrary, unreasonable or mala fide. It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (Vide *E.P. Royappa v. State of T.N*[20]. There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa v. State of Maharashtra*[21] p.802, para 2) "It (mala fide) is the last refuge of a losing litigant."
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> 57. We hold clause (vi) of Standing Order 20 of the Certified Standing Orders of the respondent Corporation valid, constitutional and intra vires Article 14 of the Constitution. We also hold the action taken by the General Manager of the respondent Corporation dismissing the appellant-petitioner from service as legal and lawful. We thus see no substance either in the appeal or in the writ petition and both are, therefore, dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs. In the light of the above, no further discussion on this aspect is called for.

16. The learned counsel for the respondents has also taken pains to point out that in the absence of specified individuals, who are to be made parties in a litigation alleging malafides, an enquiry into such an allegation was impermissible. The learned counsel has placed reliance on State of Bihar and another vs. *P.P.Sharma, IAS & Anr*[21]*. and All India State Bank Officers' Federation & Ors. vs. Union of India & Ors*[22]. In P.P.Sharma's case (supra) it was observed that :

> "It is a settled law that the person against whom malafides or bias was imputated should be impleaded eo nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principle of natural justice as it amounts to condemning a person without an opportunity."

17. A similar opinion was expressed in All India State Bank Officers Federation & Ors. (supra) in the following words:

"In view of the aforesaid explanation of the respondent-Bank, which we see no reason to disbelieve, it is clear that the petitioners have made baseless and reckless allegations of mala fide. Respondents 4 and 5 obviously had no direct or indirect role to play either in the formulation of the policy or in the memorandum being placed as a table item to be taken up for consideration in the meeting held on 7.3.1999. The modification was approved by the Chairman and all the Directors who were present in the meeting of the Board. For an allegation of mala fide to succeed it must be conclusively shown that respondents 4 and 5 wielded influence over all the members of the Board, who were present in the said meeting. No such allegation has been made. The decision to modify the promotion policy was taken by a competent authority, namely, the Central Board in a duly constituted meeting held on 7.3.1989 and we are unable to accept that this change in the policy was brought about solely with a view to help Respondents 4 and 5. There is yet another reason why this contention of the petitioners must fail. It is now well settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour Respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without merit."

18. As observed above, the appellants have not identified any person who had been instrumental in harming their cause. We would, therefore, even be precluded from going into the question of malafides although we have nevertheless examined the matter in extenso.

19. Mr. Dave has argued with emphasis, that the personal hearing envisaged to an interested person under section 28(3) of the Act had in fact not been given to the appellants and that the proceedings held by the Collector pursuant to the notice dated 12th December 2005 were a mereeye wash. He has pointed out that as per the written objections filed by the petitioner on 16th January 2006, a specific request had been made for a personal hearing, but notwithstanding the request the Collector gave his decision on the objections on 2nd February 2006 and the final Notification was issued on 2nd June 2006. To supplement his argument that in the absence of a personal hearing under section 5(A) of the Land Acquisition Act, or section 28(3) of the Act stand vitiated, Mr. Dave has placed reliance on *Shri Farid Ahmad Abdul Samad & Anr. Vs. The Municipal Corporation of City of Ahmedabad & Anr*[23]*. Rambhai Lakhabai Bhakt vs. State of Gujarat & Anr*[24]*. Om Prakash & Anr. Vs. State of U.P. & Ors*[25]*. Union of India & Ors. vs. Mukesh Hans*[26] *Union of India & Ors. vs. Krishan Lal & Ors*[27]*. Hindustan Petroleum Cor. Ltd. vs. Darius Shapur Chennai & Ors*[28]*. and P.Naranayyapa & Anr. Vs. State of Karnataka*[29] Concededly, Section 28 (3) of the Act gives a right of personal hearing to the owner of the land or any other interested person and the judgments cited by the learned counsel therefore eminently support the appellant's case. The question as to whether an effective personal hearing was given or not, however is a question of fact and we notice from a perusal of the record that such hearing was indeed

given and that the appellant had exercised his rights thereunder and it was only after the procedure under section 28(3) had been followed, that the final Notification had been issued. We find that the learned Single Judge and the Division Bench of the High Court have given categorical findings against the appellant on this score and we have no reason to differ therefrom. We have nevertheless examined the record to re-assure ourselves as to the correctness of the High Court's decision. After the objections/documents had been filed, the file was taken up by the Collector on 16th January, 2006 on which date Shri N.R. Prakash representing the land owners was not present. The Collector, after examining the facts of the case, adjourned the case to 24th January 2006 for 'orders' in accordance with Section 28(3) of the Act and the final orders on the proceedings under section 28(3) of the Act were, in fact, made on the 2nd February 2006. Mr. Dave has emphasized that as the matter had been adjourned on 16th January 2006 for 'orders' there was absolutely no justification in finalizing the proceedings on 2nd February 2006 without giving a hearing to the appellants. We observe, however, that merely because the word 'orders' has been recorded in the proceedings of 16th January 2006, it does not imply that the matter remained inchoate or that it envisaged a further hearing. The record shows that comprehensive objections along with documents had been filed by the appellants on 16th January 2006 wherein after stating the history as to how they had become owners of the land they had given their objections to its acquisition and in paragraphs 19 and 21 stated as under:

"In the event of your requiring any clarification, we also request you to offer us a personal hearing in the above matter for us to place the above facts for your kind consideration.

> We do hope that justice would be done and valuable investment in the land would be protected and we are permitted to carry on the construction of the Shopping Complex as planned towards which the necessary finance have been made available to us by Andhra Bank.
>
> We have to request you to provide us with a personal hearing in the matter, as also permit us to file any other documents or additional statements as may be required".

20. The aforesaid paragraphs clearly reveal that the request for a personal hearing was conditional in that if a clarification or additional documents were required, time for that purpose be given. It is also significant that the objections filed by the appellants form (almost exclusively) the basis for the present writ petition inasmuch the fact that there was no need for the change of the alignment of the trumpet interchange and the access road or that alternative land was available for that purpose, had been spelt out therein. The Collector in dealing with the objections had observed that several objections/documents had been filed by the appellants but were liable to rejection as the acquisition was necessary for the Bangalore Airport. We are also not mindful of the fact that though the rights of an individual whose property is sought to be acquired must be scrupulously respected, an acquisition for the benefit of the public at large is not to be lightly quashed and extraordinary reasons must exist for doing so. This is the ratio of the judgment of this Court in *Ramniklal N.Bhutta & Anr. Vs. State of Maharashtra & Ors*[30]. wherein it has been held as under:

> "Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting

stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-`-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the person interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

21. We thus find no merit in the appeal. dismissed. There will be no order as to costs.

Judgment Referred.

[1]*(1979) 2 SCC 0491*
[2]*(1980) 2 SCC 0471*
[3]*(1985) 3 SCC 0001*
[4]*(1987) 1 SCC 0227*
[5]*(2005) 9 SCC 0248*
[6]*(1976) 3 SCC 0719*
[7]*(1995) 3 SCC 0752*
[8]*(1998) 6 SCC 0001*
[9]*(2004) 8 SCC 0014*
[10]*(2004) 8 SCC 0453*
[11]*(2005) 7 SCC 0627*
[12]*(1973) 3 SCC 0216*
[13]*(2002) 4 SCC 0160*
[14]*(2005) 7 SCC 0764*
[15]*(2007) 1 SCC 0001*
[16]*(1973) 3 SCC 0216*
[17]*(2002) 4 SCC 0160*
[18]*(2005) 7 SCC 0764*
[19]*(2007)1 SCC 0001*
[20]*(1974) 4 SCC 0003*
[21]*(1992) 1 Suppl. SCC 0222*
[22]*(1997) 9 SCC 0151*
[23]*(1976) 3 SCC 0719*

[24]*(1995) 3 SCC 0752*
[25]*(1998) 6 SCC 0001*
[26]*(2004) 8 SCC 0014*
[27]*(2004) 8 SCC 0453*
[28]*(2005) 7 SCC 0627*
[29]*(2006) 7 SCC 0578*
[30]*(1997) 1 SCC 0134*