

RAJASTHAN HIGH COURT

Ravindra Tyagi

Vs.

State of Rajasthan

Civil W.P. No. 4250 of 1996 with Civ. C.P. No. 281 of 1996

S.N. Jha, C.J. and Prem Shanker Asopa, J.

20.04.2006

JUDGEMENT

Asopa, J.

1. By the instant Public Interest Litigation, the petitioner has prayed that the action of the respondent Nos. 2 and 3 in allotting the land of park to respondent Nos. 4 and 5 i.e. lease agreement dated 27-7-1996 be declared illegal and unconstitutional and the letter of allotment of land in question be quashed and set aside.

2. This Public Interest Litigation was filed on 11-9-1996 and show cause notices were issued on 16-9-1996 and further an interim order was passed on the same date for maintaining status quo by the parties. On filing the application under Article 226(3) of the Constitution of India, the same was listed on 8-1-1997 and 13-1-1997 was fixed as next date for filing reply by the RIICO-the respondent No. 2 and the status quo was extended till further orders. On 22-3-1998 this Court has passed an order that the matter is required to be heard and decided finally at the stage of admission as the stay is operating against the respondents. Thereafter the matter was listed on many subsequent dates and ultimately on 30-10-2001 it was ordered that the present writ petition be listed for final hearing along with Contempt Petition No. 281/1996 which was filed when the interim order dated 16-9-1996 was said to be not complied with. Therefore, both the matters were heard together and are being decided by a common order.

3. The petitioner claims himself to be a public spirited person and dedicated his life for the cause of social service. Certain other facts have also been mentioned that he has been the General Secretary of the State Unit of the Youth Congress and Director of the Urban Co-operative Bank.

4. Other relevant facts for the disposal of the present petitions are that allegation of the petitioner is that respondent No. 4 Sri Mani Bhai Patel is an active member of

Bhartiya Janata Party and has been the President of Kota Unit of BJP and further elected as Deputy Mayor of Kota Municipal Corporation, formed a partnership firm with respondent No. 5 and got it registered in the name and style of M/s. Patel Agarwal and Company. The respondent No. 2 - RIICO Undertook a very ambitious plan for developing an industrial area in Kota named as Indra Prastha Industrial Area, which was spread over an area of at least 20 sq. kms. In this industrial area, the plots were earmarked for industrial purpose and other purposes and further one of which was numbered as plot No. B-519(A) for developing park with the specific object of maintaining ecological and environmental balance. The main grievance raised by the petitioner is that respondent Nos. 4 and 5 applied to the respondent No. 2 for allotment of an industrial plot in their favor on 16-10-95 and the respondent No. 2 on the basis of such application, allotted them industrial plot No. E- 422-C measuring 7,318 sq. meters vide allotment letter dated 6-12-1995 (Annexure-1). After allotment of the said land, respondent Nos. 4 and 5 submitted an application to respondent No. 2 for allotment by way of exchange of plot No. B-519(A) reserved for park, which was ultimately allotted to respondent Nos. 4 and 5 on entering into lease agreement for the same dated 27-7-1996 (Annexure-6). The petitioner has highlighted the allotments of other plots to the persons connected with BJP. The petitioner has questioned the manner and circumstances in which the plot was allotted in exchange by respondent No. 2 in favor of respondent Nos. 4 and 5 allegedly under the influence and pressure of respondent No. 6, by respondent No. 7, who have been impleaded as party in person. The circumstances initially averred in the writ petition are summarized as follows :-

- (1) For the same plot, M/s. Uma Oil Company gave an application for allotment of the same land of the park, which was rejected on 25-3-1996 on the ground that for commercial purpose, auction is to be held but later on it was allotted to respondent Nos. 4 and 5 on 27-7-1996.
- (2) Respondent Nos. 4 and 5 used influence of respondent No. 6, the then Industry Minister, Government of Rajasthan for getting the said land in exchange, therefore, the action of allotting the park land is mala fide.
- (3) The Managing Director, the respondent No. 7, who has earlier rejected the conversion of the land of park for the industrial purpose, again permitted the conversion of the land under the pressure of respondent No. 6. Therefore, this action is mala fide, even if not, then suffer from vice of malice in law.
- (4) The conversion was not permissible under the Rules and Regulations of RIICO, hence, the entire exercise apart from being *mala fide* as stated herein above, is wholly illegal and without jurisdiction.
- (5) The plot was worth Rs. 3 Crores and the same was allotted to respondent

Nos. 4 and 5 on the throw away price of Rs. 9,13,900/- and none of the respondents kept the fact in view that the land of park cannot be converted and in case their illegal action is justified then public at large will be deprived from the said facility of the park.

5. The petitioner has summed-up the averments that the present case is a glaring example of favoritism shown by the other respondents to respondent Nos. 4 and 5, which suffer from vice of *mala fide* and malice in law, apart from (being) illegal and without jurisdiction.

6. The respondent No. 1, the State, respondent Nos. 2 and 3, RIICO and its Regional Manager, respondent Nos. 4 and 5 (private respondents), respondent No. 6, the then Deputy Chief Minister and Industry Minister, Government of Rajasthan, respondent No. 7, the then Managing Director of RIICO have filed separate reply/counter affidavits to the writ petition.

7. The State, respondent No. 1 in its reply has not admitted any role in the matter of allotment and further submitted that the Minister in charge was holding camps to solve their problems irrespective of political philosophy and background of the entrepreneurs.

8. The respondent Nos. 2 and 3 have also denied the averments of the writ petition in their reply and have further submitted that the plots are earmarked in the approved plans for industrial and other use, RIICO is fully empowered and competent to make change in the lay out plans from time to time depending upon the needs and requirements of the situation. They have further submitted that in the lay out plan of the same industrial area in the year 1975, plot No. B-519(A) was shown to be a industrial plot and subsequently it was earmarked as park in the plan in question. A schedule of the entire State of Rajasthan has been annexed by the RIICO along with its reply as Schedule R-2/A in support of the aforesaid averments. They have further submitted that respondent Nos. 4 and 5 were required to deposit 75% balance amount as development charges up to 5-3-1996 but they have submitted an application on 24-2-1996 for exchange of plot on the ground that their earlier allotted plot is irregular and uneven. As regards M/s. Uma Oil Company, it was submitted by the respondent RIICO that their request was for commercial use of the land of park which could only be allotted by way of auction. Therefore, their application was rightly not entertained. They have also categorically denied that Sri G. S. Sandhu, then Managing Director, himself turned down the request for exchange of the plot and had to submit himself to wishes and command of the powers more particularly that of the then Industry Minister. They have further submitted that the exchange was on relevant consideration and the same was not based on any pressure or influence of the then Industry Minister.

It is also submitted by the RIICO that for public purpose, 14000 sq. meters land near water tank was reserved for park, which was merely at a distance of 150 meters from the land in question and the said area is larger and more suitable area for the purpose of development of park. With regard to the specific circumstances averred by the petitioner which have been summarized in the preceding para, the specific reply by the respondent Nos. 2 and 3 can also be summarized as under :-

(1) With regard to not entertaining the application of M/s. Uma Oil Company for allotment of the same land of park, respondent Nos. 2 and 3 have submitted that the said company has sought the allotment for commercial purpose and as per the policy of RIICO, the same is required to be allotted by auction and not by way of application, therefore, the Sr. General Manager has not committed any kind of illegality.

(2) The respondent Nos. 2 and 3 have denied the averment of any kind of influence/pressure of respondent No. 6 for getting exchange of the land with the park land. Further the respondent No. 7, the then Managing Director has permitted the use of the land as per the past practice for industrial purpose for which allotment by way of application is permissible. The list of the converted plots from open land to industrial land or industrial land to open land has been annexed by them as Schedule R-2/A to substantiate the said submission of the past practice which was prevailing at the relevant time on case to case basis, considering the need. Therefore, the action is not mala fide.

(3) The Managing Director, respondent No. 7 has earlier not signed the note-sheet but the matter was briefly discussed with him and at the time of granting of permission, he has considered the relevant factors and was convinced with the need of the conversion. Therefore, the action of the Managing Director is neither *mala fide* nor suffer from any vice of malice in law.

(4) The allotment of land is governed by the RIICO Disposal of Land Rules, 1979, according to Rule 27 of which, the Corporation has a right to reserve any plot and withdraw the same from allotment and as per Rule 29, the Corporation also has power to make delegation of the same to the Managing Director. Therefore, it was within the competence of the Corporation to convert the use of land. In addition to above, there was a past practice to deal with such cases in the Head Office and the Officers of the Corporation in the Head Office can change the use of the land on case to case basis as per need. In such circumstances, there is no illegality in the action of the Corporation.

(5) The Corporation has denied that the value of the park land is worth Rs. 3

Crores and has further submitted that the same is imaginary. The Corporation has taken the public interest in consideration and reserved more area and more suitable land near water tank for the park. Therefore, it cannot be said that the Corporation has not taken into consideration the ecological or environmental factor.

9. The private respondents (respondent Nos. 4 and 5) have also filed separate reply and have raised preliminary objections that the writ petition is not a Public Interest writ petition and the same has been filed with ulterior motive by the Congress worker to take mileage out of it. On merit they have denied in reply, any kind of pressure tactics on their behalf. They have further submitted that action taken by RIICO is legal, justified, just and fair. They have also annexed some photographs (Annexure R-4/12) which reveal that the boundary wall and a room has been constructed. They have also submitted account of total amount deposited by them, in reply to para No. 12, which is totaling to Rs. 9,68,113/- and asserted the fact that they have applied for exchange of the land before expiry of 90 days from the date of their allotment letter dated 6-12-1995.

10. The petitioner has filed rejoinder to the reply filed by respondent Nos. 2 and 3 as well as respondent Nos. 4 and 5 and reiterated his stand and has again highlighted the allotment of the plot to the persons connected with BJP and ultimately concluded his reply that permitting/exchange of the land of park and making allotment of same to respondent Nos. 4 and 5 is *per se* illegal, void ab initio, arbitrary, capricious and the action has been taken in colorable exercise of powers in order to shower undue favor on the favorites of respondent Nos. 5, 6 and 9.

11. The then Industry Minister, who has also been impleaded as party in person as respondent No. 6 has specifically denied any close relationship with respondent No. 4 and has further denied the exercise of any pressure over the authorities of RIICO in para Nos. 3, 4, 5 and 11 as well as controverted the news item in para No. 7.

12. The then Managing Director has been impleaded as respondent No. 7 in the personal capacity and he also specifically controverted the facts of pressure and undue advantage in para Nos. 4, 5 and 6.

13. The petitioner has filed Additional affidavit to counter the Affidavits filed by respondent Nos. 6 and 7 who had specifically controverted the averments of *mala fide* in the said affidavits.

14. By affidavit dated 21-3-2006, the position of the rejoinder was clarified with regard to order dated 21-11-1995, Resolution dated 30-12-1996 and office order dated 5-2-1997 and aforesaid three documents were placed on record. Vide order dated 21-

11-1995 Annexure R-2/4, the Executive Director of RIICO issued an office order whereby officers have been directed that final lay out plans of the industrial areas should be finalized only after the same have been seen by General Manager (M) and Executive Director and the proposal is approved by the Managing Director henceforth and all proposals related to approval of final lay-out plans of the industrial areas should be dealt accordingly.

15. The next document is of 5-2-1997 (Annexure R-2/7) which has been passed after the meeting of the Board of Directors dated 30-12-1996 (Annexure R-2/5) whereby delegation of the powers with regard to approve changes in the status of land e.g. conversion from residential to commercial, conversion of open land into industrial land etc., full powers have been given to the Managing Director with effect from 21-11-1995.

16. During the course of arguments, this Court found that the pleadings of the parties are not sufficient on the issue of relevant rules/regulations/policy of the RIICO permitting the change of land use as well as whether open land reserved for park etc. could be converted into industrial plot without Government's permission and passed the following order on 21-3-2006 :-

"The dispute in this writ petition relates to allotment of land to respondent No. 4. The land initially was shown as open land reserved for park; on application of respondent No. 4, it was allotted to him in exchange of plot which had earlier been allotted to him. One of the points for consideration is whether the relevant rules/regulations/policy of the Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO) permitted the change of land use, and if so, who was competent to grant such permission and the modality and procedure of grant of such permission at the relevant time. The pleadings of the parties in our opinion, are not sufficient. For proper decision of the case we direct the RIICO as well as the State of Rajasthan to bring on record the procedure for finalization of the plan, and relevant rules/regulations/policy permitting change of land use at the relevant time. The affidavit should state whether open land reserved for park etc., could be converted into industrial plot without Government's permission.

Put up on Friday i.e. on 23-3-2006. Let copy of this order be handed over to Sri Shyam Arya, G.A. for the State and Sri A. K. Sharma, counsel for RIICO."

17. In compliance of the said order dated 21-3-2006, the Government filed affidavit on 10-4-2006 and the RIICO has filed affidavit on 12-4-2006.

18. In two affidavits filed in compliance of the direction of this Court vide order dated 21-3-2006, the respondents State and RIICO have stated that the State Government had no role in the finalization of the lay-out plans and change of use of open land into industrial plot. The RIICO further stated that there were no rules/regulations/policy permitting the change of land use at the relevant time and the change of land use in the approved lay out plans was decided on case to case basis by the authorities in the Head Office in view of orders dated 1-5-91 and 21-11-1995 and in para Nos. 5 and 8 they have again referred and relied on the Board Meeting dated 30-12-1996 and consequential office order dated 5-2-1997 whereby the Managing Director has been given full powers in the matter of allotment, to change the status of land and approve final lay-out plan w.e.f. 21-11-1995.

19. On 7-11-1996, the petitioner filed a contempt petition against Shri N. S. Sisodia, the then Secretary, Department of Industry, Govt. of Rajasthan, Shri G. S. Sandhu, the then Managing Director, RIICO, Sri Somnath Mishra, the then Regional Manager, RIICO, Sri Mani Bhai Patel and Sri Subhash Agarwal, the private allottees on the ground that status quo order has been disturbed by them by carrying on construction and to get permanent registration of industry. Along with the contempt petition, some news items have been annexed. In this contempt petition notices have not been issued to other side and it was tagged with this writ petition. The respondent Nos. 4 and 5, who are contemner-respondent Nos. 4 and 5 in the contempt petition, have stated that when they came to know about the stay order, construction was stopped.

20. The submission of the counsel for the petitioner in the writ petition is that allotment of the park land in exchange to the earlier industrial plot is not only illegal, without jurisdiction, void and *ab initio* but the same suffers from *mala fide* and if not *mala fide*, then it suffers from malice in law.

21. The submission of the counsel for the RIICO is that the State Government has no role in the matter of change of the use of open land (park). It is within the competence of RIICO, as detailed out in the reply and Affidavit dated 12-4-2006 wherein past practice to change the use of land on case to case basis as per need has been referred and substantiated. As regards *mala fide*, the respondent RIICO as well as the private respondents have denied the allegations and further submitted that the allegations have been leveled with ulterior motive to malign the political image of respondent No. 6 and further the Managing Director has not acted under any pressure. The irregularity, if any, committed at the time of change of allotment has been regularized on account of the subsequent delegation of the powers by Board of Director vide office order dated 5-2-1997 whereby powers have been delegated with effect from 21-11-1995. Therefore, the order neither suffers from *mala fide* nor malice in law.

22. The counsel for the respondent Nos. 4 and 5 has raised preliminary objections that the writ petition is not a Public Interest writ petition and the same has been filed with ulterior motive by the congress worker to take mileage out of it. They have not exercised any kind of pressure over the then Industry Minister-respondent No. 6 to take favor from him in the matter of exchange of the land. Further the allotment of the land has been made by the RIICO, the respondent No. 2 as per their policy.

23. We have referred hereinabove the initial facts averred in the writ petition, reply of the Corporation, Affidavits of respondent Nos. 6 and 7, subsequent facts pleaded in the rejoinder, two affidavits filed by the RIICO, one affidavit of the Government given as per the direction of this Court and on the basis of which, the following points emerge for consideration:-

- (1) Whether the present Public Interest Litigation is maintainable?
- (2) Whether in the absence of any rules/regulations/policy, the past practice of conversion of the land by RIICO will hold the field?
- (3) Whether in the facts and circumstances narrated hereinabove, there is any *mala fide* action on the part of respondent Nos. 2 and 3 in converting the open land of park to a industrial plot?
- (4) Whether the delegation of powers on 5-2-1997 with effect from 21-11-1995, after filing of the present writ petition on 11-9-1996, will validate the lease agreement dated 27-7-1996 and is a *bona fide* exercise of power or the same suffers from malice in law?

24. We have heard learned counsel for the parties and have gone through the record of the writ petition, contempt petition as well as the file called for by us for permitting the change of the use of land.

25. Before proceeding further, we would like to refer the following documents and noting of the file.

26. The document relating to the approval of final lay out plans dated 21-11- 1995 (Annexure R-2/4) is as follows:-

RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT
CORPORATION LIMITED, UDYOG BHAWAN, TILAK MARG, JAIPUR.

No. GM(M)/GC/95/228

November 21, 1995

OFFICE ORDER

The approval of the final layout plans of the industrial areas should be done only after the same have been seen by General Manager (M) and Executive Director and the proposal is approved by the Managing Director. Henceforth, all proposals related to approval of final layout plans of the industrial areas should be dealt accordingly.

(Samir Khan),

Executive Director.

C.C. to : 1. Sr. PS to MD

2. GM (M)/Advisor (Infra)

3. Dy. Town Planner

4. All Unit Heads....."

Office order dated 5-2-1997 is as follows:-

RAJASTHAN STATE INDUSTRIAL DEVELOPMENT AND INVESTMENT CORPORATION LIMITED, UDYOG BHAWAN, TILAK MARG, JAIPUR.

No. IPI/P-6/25/96/2541

Dated Feb. 05, 1997

OFFICE ORDER

The Board of Directors vide item No. 8 of the meeting held on 30th December, 1996 have accorded ex-post facto approval for:

(a) the decision taken vide office order No. GM (M)/GC/228, dated 21-11-1995 (copy enclosed) and authorizing the Managing Director of the Corporation for approving the final layout plan of the Industrial Areas and changes in its planning;

(b) Authorizing the Managing Director of the Corporation to approve changes in the status of land e.g. conversion of open land into industrial land etc. which effect from 21-11-1995;

(c) Amendment in the delegation of powers by delegating the powers at serial No. 5 of the Schedule 'B' of delegation of powers, to Chairman of the Corporation, to the Managing Director of the Corporation with effect from 21-11-1995 as under :

DELEGATION OF POWERS TO THE MANAGING DIRECTOR

S. No. Nature of Power

Extent of Power

- | | | |
|----|---|-------------|
| 1. | To approve changes in status of the land e.g. conversion commercial, conversion of open land into | Full Powers |
|----|---|-------------|

industrial and etc.

2. Approval of final layout plan and all related matters. Full Powers
(Prahlad Sharma)
Advisor (Infra)"

27. The processing of the file for dealing with the application dated 24-2- 1996 of respondent Nos. 4 and 5 was started on the same day. Subsequently, there is also a reference of the application dated 26-2-1996 given to the respondent No. 6, but the process has already commenced on the first application dated 24-2-1996 given to Sr. Regional Manager, RIICO, Kota. The other following note-sheets on the issue raised in the writ petition are as under:

Dated 23-3-1996:

"30. It was discussed with M.D. along with D.T.O. The proposed land is adjoining to the shopping center it will be objectionable to the people because open land at such places is necessary. Hence it is to be returned to the unit officer for another alternate site if any."

Sd/-
23/3

Dated 5-6-1996 :

"44. The issue has been discussed with the party and Sr. RM Kota on Telephone, May kindly peruse the map at C/25. The party has presently been allotted E- 422, which is an irregular plot of 8000 sq. mt. The party is not willing to take up this plot.

45. It had been suggested that the Service Area or Park (as indicated) may be allotted in exchange upon which the DTP had expressed certain reservations.

46. Upon discussion with Sr. RM, Kota, it has been informed that the present location of the park is not suitable, as in front, the Mandi has been developed, where hundreds of trucks and tractor trolleys are parked. The plot reserved for the park is presently being used as a parking space.

47. The party is willing to take up this plot in exchange. The park can, instead be developed in the plot reserved for water tank.

48. We may, therefore, accept the request of the party for allotting the space reserved for park, in exchange of E-422, and convert the location of water tank into water tank-cum-park. This would also give us valuable extra land of 8000 sq. meters, @ 150 PSM, of Rs. 12.00 lacs.

49. Further prevailing rates be charged for a fresh allotment.

50. Submitted for orders please.

51. MD/

Dated 17-6-1996 :

"60. As per decision taken at 44-51/N, one New Plot bearing No. B-519(A) has been carved out on land earmarked for park, on North West of P.No. A-519, as indicated in map placed at 32/C. As per decision, this plot may be allotted in exchange of P.No. E-422(C).

Sd/-

17-6-1996

(1) Whether the present Public Interest Litigation is maintainable:

28. The preliminary objection of the counsel for the respondent Nos. 4 and 5 is that the petitioner who is a Congress worker has made deliberate attempt to malign the image of respondent Nos. 6 and 7, out of which respondent No. 6 is a senior member and High Office holder of the then rival/ruling party (BJP) and no element of public interest involved, therefore, this PIL is liable to be dismissed. We have considered the same in the light of the larger public interest issue involved in the present case "whether the open land reserved for park can be allotted to a party in exchange of the earlier allotted plot". Therefore, the aforesaid objection of non-maintainability of the PIL is liable to be rejected. As regards the allegation of *mala fide* leveled against respondent Nos. 6 and 7, we will deal the same at the appropriate place.

(2) Whether in the absence of any rules/regulations/policy, the past practice of conversion of the land by RIICO will hold the field :

29. The RIICO is a Government Company bound by the Companies Act, 1956, Memorandum of Association and Articles of Association of RIICO. Pursuant to the aforesaid provisions, the RIICO has framed RIICO Disposal of Land Rules, 1979. The Rules of 1979 and the order dated 21-11-1995 are silent on the issue of conversion of open land into industrial plot. The Board of Directors has not delegated any specific power to the Managing Director or any other authority in the matter of conversion of open land into industrial plot or for any other purpose in the year 1996 when the allotment was made and the writ petition was filed. Two office orders dated 1-5-1991 and 21-11-1995 were in force and the orders also deal with the layout plans but not with the conversion. Therefore, the past practice of conversion of plot from open land to industrial plot on case to case basis as per need, which is not contrary to Rules of 1979, regulations and resolutions of the Board will hold the field.

(3) Whether in the facts and circumstances narrated hereinabove, there is any *mala fide* action on the part of respondent Nos. 2 and 3 in converting the open

land of park to a industrial plot:

30. The submission of the counsel for the petitioner on the issue of *mala fide* is that the Managing Director on an earlier occasion on 23-3-1996 has not accepted the proposal of the office for conversion of the land but subsequently under pressure of respondent No. 6, he has converted the land from open land (park) to industrial plot. From the record it appears that first application was given by the respondent Nos. 4 and 5 for conversion of the plot on 24-2-1996 on which proceedings for conversion were initiated and when the same were going on, there is a reference in the record of another application given on the day of 'OPEN HOUSE' at Kota on 26-2-1996 to the Hon'ble Deputy Chief Minister. Further, the proceedings on the earlier application culminated after discussion with the Managing Director asking the unit office for another alternate site on 23-3-1996. The proceeding dated 23-3-1996 has already been reproduced hereinabove. From the record it does not appear that there is any further reference of said application dated 26-2-1996 or any kind of pressure from the Deputy Chief Minister-cum-Industry Minister for exchange of the plot. Moreover, the respondent No. 6 has categorically denied the exertion of any pressure as a Industry Minister for exchange of the park. The respondent No. 7 has also deposed that on an earlier occasion, he has not signed the note-sheet on 23-3-1996. He simply stated that the matter was briefly discussed with him and subsequently considering the relevant facts, he agreed to the proposal of exchange and there was no malice. Apart from above, in the additional affidavit, the RIICO has submitted that there were no rules/regulations/policy in force at the relevant time, for conversion but on case to case basis the RIICO de-categorized the plot from open land to industrial plot or any other purpose. The said past practice is not contrary to any provisions of the Rules of 1979, regulation and resolution of the Board. But, when the matter was placed before the Board on 30-12-1996, the Board has resolved to delegate the powers to the Managing Director with effect from 21-11-1995, in compliance to which an office order was issued on 5-2-1997 authorizing the Managing Director with effect from 21-11-1995, with regard to change of status of land. Although, we are of the view that the past practice has not been applied by the RIICO in discriminatory and arbitrary manner, therefore, the present case is covered by the past practice but even if it is assumed that there should have been any specific rule or order, then also the retrospective delegation will ratify the earlier action from 21-11-1995 and from the date of delegation, the same will cover the field prospectively also.

31. Here we would like to refer that the Supreme Court has added the word of 'caution' in many judgments that the Court should be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. We would like to refer some case law on this point. In *S. Partap Singh v. State of Punjab*, ¹ and Constitution Bench judgment in *E. P. Royappa v. State of Tamil Nadu* ² which have been followed in a recent judgment of the Supreme Court in *Indian Railway Construction Co. Ltd. v. Ajay Kumar*, ³ which is a case of dispensing with the inquiry and passing of dismissal order and in the petition the allegations of *mala fide* were leveled, the aforesaid law on the issue of mala fides has been summed up. The para No. 23 of the aforesaid judgment is as follows:-

"23. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting *mala fide* in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (See *S. Partap Singh v. State of Punjab* ⁴ It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in *E.P. Royappa v. State of T. N.* ⁵ Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration."

(Emphasis supplied)*

32. We have gone through the allegations of mala fides in the petition, counter-affidavits filed by respondent Nos. 6 and 7, original record of the RIICO relating to

conversion of the land and further in view of the aforesaid law laid down by the Supreme Court, came to conclusion that the petitioner has failed to prove the allegations of *mala fide* and further it cannot be deduced as a reasonable and inescapable inference from the record that the respondent No. 6 has exerted any kind of pressure on respondent No. 7 and the respondent No. 7 has surrendered to the wishes and command of respondent No. 6. Therefore, this contention of the petitioner is liable to be rejected.

33. Here in the instant case, there may be a suspicion in the mind of the petitioner who is a Youth Congress worker on account of the fact that the respondent No. 4 was the President of the Kota Unit of BJP and respondent No. 6 was a holder of high office and in-charge of the portfolio concerned belonging to the same ruling party but that itself is not sufficient to draw any kind of inference from the facts and circumstances of the case as well as record perused by us. Apart from above, suspicion cannot take place of proof. Simple fact of giving the application to the aforesaid Minister on 26-2-1996 will not lead to inference that he has exerted some pressure over the respondent No. 2 for passing the impugned order.

- (3) Whether the delegation of powers on 5-2-1997 with effect from 21-11-1995, after filing of the present writ petition on 11-9-1996, will validate the lease agreement dated 27-7-1996 and is a *bona fide* exercise of power or the same suffers from malice in law :

34. As discussed hereinabove, the RIICO is a Government Company and has no right to frame the statutory rules and regulations and its business is conducted by the Board of Directors by passing the resolutions in accordance with the Companies Act, 1956 as well as Memorandum of Association and Articles of Association. Under clause 96 of the Memorandum of Association and Articles of Association of RIICO, the Directors are authorized to entrust and confer upon the Chairman, the Managing Director, Executive Director, Resident Director or Additional Director for the time being such of their powers exercisable under these Articles as they may think fit. The similar power is available under the RIICO Disposal of Land Rules, 1979 and further under Rule 27 of which, reservation or revocation of the plot is also within the competence of RIICO.

35. Clause 96 of the Memorandum of Association and Articles of Association of RIICO and Clauses 27 and 29 of the RIICO Disposal of Land Rules, 1979 read as under:-

Clause 96 of the Memorandum of Association and Articles of Association of RIICO:

"96. The Directors may from time to time entrust and confer upon the

Chairman, the Managing Director, Executive Director, Resident Director or Additional Director for the time being such of their powers exercisable under these Articles as they may think fit.

Clauses 27 and 29 of the RIICO Disposal of Land Rules, 1979 :

"27. Reservation or Revocation of Plot : If in the opinion of the Corporation, any plot or area is required to be reserved or withdrawn from allotment the Corporation may at any time reserve such plot or area or revoke any proposal to dispose of such a plot or area. The Corporation reserves the right not to allot a plot of party's choice or not make allotment at all without assigning any reasons. The land area to be allotted for a particular type of industry shall be decided by the Corporation, which shall be final.

29. Delegation of Powers to the Officers : The Corporation may delegate any of its powers under these rules to the Managing Director, Head of the Industrial Promotion and Infrastructure Division or any other officer for the efficient work of the Corporation."

36. Here in the instant case, it has been admitted by the RIICO that neither on the date of conversion nor on the date of lease no rules, regulations or policy for conversion of open land in industrial plot were in force and as per practice the land was converted on case to case basis considering the need at the Head Office level, in view of office order dated 21-11-1995 relating to finalization of layout plans. But the question raised by the petitioner is "whether the said delegation of power after filing of the writ petition will validate the lease agreement dated 27-7-1996 and the same is a *bona fide* exercise of power or the same suffer from malice in law".

37. The proposition of law as advanced by the petitioner that the order initially invalid cannot be validated by the subsequent act, which is applicable in case the order is passed under the statutory provisions without having further provisions of approval, is not acceptable in the present case of company. In case of a company delegation of power and ratification is to be made as per the Company Law and Articles of Association.

38. Here in the instant case, the delegation of power vide office order dated 5-2-1997 w.e.f. 21-11-95 is also in accordance with the Company Law and Articles of Association, which permits delegation/ratification of the past unauthorized act till the date of resolution by the Board of Directors of the Company and subsequent thereto, specific delegation will apply.

39-40. The Supreme Court in *Marathwada University v. Seshrao Balwant Rao Chavan*,⁶ has made a distinction between the statutory authority and a Company, in respect of the principle of subsequent approval, which will validate the initial order and while making distinction, the Court has held that there is a difference between the statutory authority and a Company because the law of ratification is not applicable in case of a statutory authority but the same is applicable in case of a Company. Therefore, if some initial invalid act is validated on account of subsequent resolution of Board of Directors, which always relates back to initial invalid act, the same stands ratified, Para Nos. 27, 28 and 29 of the aforesaid judgment are as follows (Paras 26, 27 and 28 of AIR):-

"27. These principles of ratification apparently do not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity. It is *ab initio* void and cannot be ratified.

28. The counsel for the appellant, however, invited our attention to the case of *Parmeshwari Prasad Gupta v. Union of India*,⁷ It was a case of termination of services of the Secretary of a Company. The Board of Directors decided to terminate the services of the Secretary. The Chairman of the Board of Directors in fact terminated his services. Subsequently, in the meeting of the Board of Directors the action taken by the Chairman was confirmed. In the suit instituted by the Secretary challenging the termination of his services, the Court upheld on the principle that the action of the Chairman even though it was invalid initially, could not be validated by ratification in a regularly convened meeting of the Board of Directors. Mathew, J. while considering this aspect of the matter, observed: (SCC pp. 546-47, para 14; SCR pp. 307-08) (at p. 2391 of AIR).

Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorized to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held

that the services of the appellant were validly terminated on December 17, 1953, the appellant was not entitled to the declaration prayed for by him and the trial Court as well as the High Court was right in dismissing the claim.

29. These principles of ratification governing transactions of a company where the general body is the repository of all powers cannot be extended to the present case. We were also referred to the decision of the Court of Appeal in *Barnard v. National Dock Labour Board*,⁸ and in particular the observation of Denning, L.J. (All ER 1118 and 1119) :

While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. In *Local Government Board v. Arlidge*⁹ the power to delegate was given by necessary implication, but there is nothing in this scheme authorizing the board to delegate this function and it cannot be implied. It was suggested that it would be impracticable for the board to sit as a board to decide all these cases but I see nothing impracticable in that. They have only to fix their quorum at two members and arrange for two members, one from each side, employers and workers, to be responsible for one week at a time.

Next, it was suggested that, even if the board could not delegate their functions, at any rate they could ratify the actions of the port manager, but, if the board have no power to delegate their functions to the port manager, they can have no power to ratify what he has already done. The effect of ratification is to make it equal to a prior command, but as a prior command, in the shape of delegation, would be useless, so also is ratification."

(Emphasis supplied)*

Here in the instant case, the Board of Directors as per Articles of Association was authorized to delegate any of its power under clause 96 to the Managing Director and others, which was subsequently delegated to the Managing Director on 5-2-1997 w.e.f. 21-11-1995.

41. As regards malice in law, the settled proposition of law as held by the Supreme Court in *Smt. S. R. Venkataraman v. Union of India*,¹⁰ and *State of A. P. v. Goverdhan Lal Pitti*,¹¹ is that in case an act done wrongfully and willfully without reasonable or probable cause is not necessarily an act done from ill feeling and spite. The Court has further drawn a distinction in a land acquisition matter, where school building rented to the Government was acquired after the decree of eviction and the acquisition proceedings finalized by the State were held to be valid. Para No. 11 of the judgement

of *State of A. P. v. Goverdhan Lal Pitti* is as follows :-

"12. 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 willfully without reasonable or probable cause and not necessarily an act done from ill feeling spite. It is deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Ed. London Butterworths, 1989).

42. Here in the instant case, power was delegated by the Board of Directors from 21-11-1995 to the Managing Director on account of the fact that the cases of finalization of layout plan and conversion are dealt with by the head office from that date. The Board has not regularized the single transaction under challenge in the writ petition and has given general authorization to the Managing Director, therefore, the exercise of the power by the Board cannot be suffered from the vice of any malice in law and the same is bona fide.

43. The last submission of the petitioner that since the land in question was allotted to the respondent Nos. 4 and 5 in exchange is a open land, therefore, the RIICO is not justified in converting the same for industrial purpose, ignoring public interest. The submission of the RIICO is that for public purpose, 14000 sq. meters land near water tank was reserved for park, which was merely at a distance of 150 meters from the land in question and the said area is larger and more suitable area for the purpose of development of park. The last submission of the counsel for the petitioner is without substance and the same is also rejected.

44. In view of the above, the submissions of the counsel for the petitioner are rejected and the submissions of the counsel for the respondents are accepted.

45. The petitioner has also filed contempt petition on 7-11-1996 against Shri N. S. Sisodia, the then Secretary, Department of Industry, Govt. of Rajasthan, Shri G. S. Sandhu, the then Managing Director, RIICO, Shri Somnath Mishra, the then Regional Manager, RIICO, Shri Mani Bhai Patel and Shri Subhash Agarwal - the private allottees, on the ground that status quo order has been disturbed by them by carrying on construction and to get permanent registration of industry. Along with the contempt petition, some news items have been quoted. In this contempt petition notices have not been issued to other side and it was tagged with this writ petition. The respondent Nos. 4 and 5, who are contemnners-respondent Nos. 4 and 5 in the contempt petition, have stated that since they came to know about the stay order, construction was

stopped. As the notices were not issued in that contempt petition, it clearly reveals that the petitioner was satisfied with the above position and was not interested in prosecuting the same further. Presently also, the status quo order is being maintained, therefore, no order is required to be passed on the contempt petition.

46. In view of the above, the writ petition fails and the same is hereby dismissed.

47. The contempt petition also stands disposed of accordingly.

Order accordingly.

Cases Referred.

1. AIR 1964 SC 72
2. (1974) 4 SCC 3: (AIR 1974 SC555)
3. (2003) 4 SCC 579: (AIR 2003 SC 1843)
4. (AIR 1964 SC 72)
5. (AIR 1974 SC 555)
6. (1989) 3 SCC 132: (AIR 1989 SC 1582)
7. (1973) 2 SCC 543: (AIR 1973 SC 2389)
8. ((1953) 1 All England Reporter 1113)
9. (1915 AC 120)
10. (1979) 2 SCC 49: (AIR 1979 SC 49)
11. (2003) 4 SCC 739: (AIR 2003 SC 1941)