STATE OF PUNJAB

v.

GURDIAL SINGH & ORS.

October 25, 1979

[V. R. KRISHNA IYER & R. S. PATHAK, JJ.]

Land Acquisition Act 1894 (1 *of* 1894), *Ss* 4, 5*A*, 6 *and* 17—*Land acquisition—High Court held state action malafide—same land acquired later under emergency power dispensing with statutory enquiry—Acquisition—Validity of.*

Land acquisition proceedings—Allegation by land owner that statutory power misused to satisfy personal ends of an individual with political influence —No attempt to contradict allegation despite opportunity being afforded—malafides—If proved.

In 1962, a site was chosen for a grain market and the foundation stone for it was laid. This spot belonged to a cousin of Respondent No. 22, an ex-Minister and an influential politician. This spot was eventually abandoned in favour of the lands of Respondents Nos. 1 to 21, which were notified in 1971. The landowners resisted and successfully impeached the acquisition on the ground of *mala fides* before the High Court.

After a long interval, the State initiated acquisition proceedings in respect of the same land a second time, invoking the emergency powers under Section 17 of the Land Acquisition Act.

The Respondents Nos. 1 to 21 assailed the acquisition before the High Court on the ground that the statutory power to acquire land had been misused to satisfy the personal ends of Respondent No. 22 and that the acquisition was not for a legitimate statutory purpose. The High Court struck down the 'declaration', and invalidated the acquisition.

Dismissing the Special Leave Petition of the State,

HELD :

(*Per Krishna Iyer, J.*)

It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under S. 17 of the Land Acquisition Act. [1078H—1079B]

In the instant case a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power. [1079B]

A 2. The power to select land for acquisition proceedings is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31 (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the Executive and judicial circumspection keeps the court lock-jawed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. [1075 F-G]

B

3. Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Bad faith which invalidates the exercise of power—sometimes called colourable exercise or fraud on power and often times overlaps motives, passions, and satisfactions—is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legal C object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the court calls it a colourable exercise and is undeceived by illusion. [1075H—1076C]

D

4. Fraud on power voids the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If consi- E derations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, *mala fides* or fraud on power vitiates the acquisition or other official act. [1076 D-E]

In the instant case the moving consideration was not that this land was needed for the *mandi*, in the judgment of Government, but that the *mandi* need was hijacked to reach the private destination of depriving an enemy of his F land through back-seat driving of the statutory engine. Respondent No. 22 when he became State Minister of Panchayat and Development constituted a Selection Board and appointed himself as President thereof. The choice was made of the site belonging to Respondents 1 to 21 and lest the take-over be delayed, even the S5A enquiry was scuttled by invoking the emergency power under S17. At times, natural justice is the natural enemy of intolerant authority. The judicial process under Article 226 therefore, rightly invalidated G acquisition on the ground of *mala fide*. [1076F, 1078 C-E]

5. This court does not upset a factual finding unless it is upset by perverse assessment, absence of evidence and the like. [1077A]

6. Counsel in court are 'robed' representatives, within the parameters of the adversary system, geared to the higher cause of justice, not amoral attor- H neys paid to ventriloquize the case of the principal. Every 'lawless' cause brought recklessly before the Court, is a dubious gamble which blocks the better ones from getting speedy remedy. [1074E, 1073F]

(Per Pathak J. concurring)

1. On a conspectus of the material on the record it does seem that the impugned acquisition proceeding cannot be sustained. There is reason to believe that the statutory power to acquire land has been misued to satisfy the personal ends of the Respondent No. 22, an individual who appears to be not without considerable political influence. Despite an opportunity afforded to controvert the allegations made by the Respondents Nos. 1 to 21, no attempt has been made by him to contradict the allegations. [1079 E-F]

2. Whether or not the deliberations which were said to have led to the selection of the land belonging to Respondent Nos. 1-21, were affected by the influence or pressure of the Respondent No. 22 is a matter to which the officials or members selecting the land could alone be privy. In the absence of any denial of the allegations made by the Respondents Nos. 1 to 21 in the writ petition by a person having personal and direct knowledge in the matter, and having regard to the entire history of the case, it is difficult to resist the conclusion that the averments in the writ petition alleging *mala fides* must be accepted. [1079H—1080B]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 1207 of 1978.

From the Judgment and Order dated 28-7-1977 of the Punjab and Haryana High Court in Civil Writ No. 1457 of 1977.

Hardev Singh for the Petitioner.

S. K. *Sabharwal* and *Subhash Sharma* for the Respondents.

The following Orders were delivered :

KRISHNA IYER, J.—Every meritless petition for special leave commits a double sin and here we are scandalized that the sinner is the State itself. When thousands of humble litigants are waiting in the queue hungry for justice and the docket-logged court is desperately wading through the rising flood, every 'lawless' cause brought recklessly before it is a dubious gamble which blocks the better ones from getting speedy remedy. Here is an instance.

If—this is a big 'if'—I assume some of the uncontradicted statements in the counter-affidavit and writ petition to be true, read in the light of the High Court's decision against the Government twice over that its action was *mala fide* and void, this disturbing petition, by the State of Punjab for leave to appeal, which I now dismiss, lays bare the basics of Power pathology and judicial philosophy in the unhappy setting of personal vendetta fuelling the politics of compulsory land acquisition. Prof. Miller's assertion that the Supreme Court "acting as the 'national conscience' of the.. people" does mandate standards towards which public and private behaviour must gravitate' is as true in our jurisdiction as in his country.

(1) Miller—The Supreme Court—Myth and Reality.

A The factual matrix, enough to unfold why the High Court twice condemned the State's action in a case of land acquisition as *mala fide* and why we endorse so that view, must be stated. The order under appeal is brief but there is more than meets the credulous eye beneath the verbal surface available in the affidavits. The vice of misuse of power centred round one Sri Satnam Singh Bajwa, 22nd Respondent, B a former minister, a quondom M.L.A., and a continuous politician. The 'writ-petitioners' (respondents 1 to 21 before us) seek to crucify him as the malefic presence prodding the impugned acquisition. Since he did not enter appearance, despite service of notice, we felt that a fresh opportunity or reminder should be afforded to him to deny, C if he so desired, the sinister imputations made against him. The benefit of presumption of good faith belongs to every man, until rebutted. Fresh notice was directed and effected to the extent feasible but he did not respond and we leave it at that. We proceeded to hear the case after a few adjournments.

D We must highlight the fact that Sri Har Dev Singh appearing for the State, struck a refreshing note of forensic propriety in dissociating himself from supporting State action if there be any, which, in the court's view was seared with bad faith and argued that, for his part, the officers appear to have exercised power on the advice of the State's legal remembrancer without ill-will or affection. Counsel in court are E 'robed' representatives, within the parameters of the adversary system, geared to the higher cause of justice, not amoral attorneys paid to ventriloquize the case of the principal. We cannot dismiss truth in paper-logged impatience but must try, with counsel's services, to discover the justice of the cause. So we proceed to the facts.

F Punjab, the pride of the green revolution, is a great agricultural State and, naturally, grain markets are a developmental imperative. The whole litigation is about a piece of land sought to be taken by the State to build a new *mandi*. Way back in 1962, a site apparently best suited was selected in Qadian and the then Chief Minister, Partap G Singh Kairon laid the foundation stone, and a few poles erected there bear witness to this old ceremony. Notification under Sec. 4 and declaration under Sec. 6 were reportedly issued ten years ago (1969). But the very next year the proceedings were denotified and in 1971 the land of respondents 1 to 21 were notified. In Punjab, a province of peasant prosperity and private ownership, land is held dear even to H the point of murder, and tragic factions fester round agriculture. Naturally, the land owners resisted and successfully impeached the acquisition on the ground of *mala fides* before the High Court. This

order of the court, surprisingly enough, proceeded on the *admitted mala fides* of the State and should have liberated this innocent piece of land from litigative laceration. But, after a long interval, the State chased the same land and rushed through acquisition proceedings a second time invoking emergency powers under Sec. 17 of the Land Acquisition Act. This too was assailed before the High Court on the ground of perversion of State power to satisfy the malefic appetite of a particular person, not the legitimate statutory purpose. Struck down again by the High Court, the State was chagrined and, perhaps, encouraged by the fact that the High Court dropped contempt proceedings, the jurisdiction under Art. 136 has been invoked by the Government of Punjab.

I have had the benefit of reading my learned brother's concise judgment. The reasons given there have my broad agreement.

Four issues may be formulated to focus specific attention.

1. What is *mala fides* in the province of exercise of power?

2. Is the acquisition proceeding in the instant case bad for bad faith?

3. Where, in the setting of Sec. 17 of the Act, do we draw the legal line between legitimate emergency power and illegitimate 'emergency excess'?

4. On the facts, here, do we bastardize or legitimize the State action under challenge?

First, what are the facts? A grain market was the public purpose for which Government wanted land to be acquired. Perfectly valid. Which land was to be taken? This power to select is left to the responsible discretion of Government under the Act, subject to Articles 14, 19 and 31, (then). The Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the property of the Executive and judicial circumspection keeps the court lock-jawed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset.

The question, then, is what is *mala fides* in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power—sometimes called colourable exercise or fraud on power and oftentimes overlaps

A motives, passions and satisfactions—is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded B by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the C mark even in Law when he stated: "I repeat...that all power is a trust—that we are accountable for its exercise—that, from the people, and for the people, all springs, and all must exist".

Fraud on power voids the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral D turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, *mala fides* or fraud on power, vitiates the acquisi- E tion or other official act.

By these canons it is easy to hold that where one of the requisites of s. 4 or s. 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 F selection of the land is an extraneous one, the law is derailed and the exercise is bad. No 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 G one of taking away the lands of the respondents 1 to [illegible] the hostility of Respondent 22, under the mark of acquisition for the *mandi*.

This is a question of fact and the High Court, twice over, within a period of seven years, held so, although the second time no specific H finding of *mala fides* was made. I do not quite see how else the acquisition can fail and infer, not *res judicata* nor contempt of court but repetition of *mala fide* acquisition as the real ground behind the

High Court's holding. This court does not upset a factual finding unless it is upset by perverse assessment, absence of evidence and the like. None such exists and I concur. But what have respondents 1 to 21 made out? When power runs haywire under statutory cover, more needs to be said to make good the exposure. This takes me to a projection, in detail, on the screen of time, of the alleged politicking behind the taking of property challenged in this case.

We assume the facts, stated in the counter-affidavits, to the extent not expressly denied, especially because the 22nd respondent, Shri Bajwa, has not cared to contradict the turpitude imputed to him, which is unfortunate. We draw tentative conclusions based on the averments without the advantage of the affected party's response.

Long ago in 1962, a site was chosen for a new grain market and the then Chief Minister, Shri Kairon, laid the foundation stone, and some surviving poles bear testimony to this ancient ritual. This spot belonged to a cousin of Shri Bajwa and was eventually abandoned in favour of the lands of respondents 1 to 21. This venture of 1971 was shot down by judicial fire triggered by the admitted ground of *mala fides*. Years rolled by, but malice dies hard, if egged on by political scramble. So much so, the same lands were again acquired in 1977, dispensing with so much as a statutory enquiry, undeterred by the earlier decision of the High Court. The respondents again assailed the acquisition as fuelled wholly by vendetta. The High Court struck down the 'declaration' over again, and here we are with an application for leave to appeal against the adverse order.

We cannot appreciate the unusual step of quashing the acquisition twice over by the High Court on the rare score of fraud on power unless we are instructed in the bitter longevity of election hostility and the gentle genuflexion of administrative echelons when political bosses express their wishes.

The version of the contesting respondents is that two political factions go into action in all elections in Quadian, led by Respondent 22, Satnam Singh Bajwa on the one hand, and his rival Gurbachan Singh Bajwa, supported by the other respondents, on the other. Party labels, where poll politics are personal, are less than borrowed apparel. Satnam ran Congress and won a seat in the Punjab Assembly in 1962 in the teeth of hot contest by Gurbachan and the respondents. This election had its impact on the *mandi* acquisition. The site where the foundation stone had been laid belonged to Satnam's cousin and this was the best of the four alternatives selected by the Site Selection Board, the least suitable, in their opinion, being of the respondents

A 1 to 21. But should an M.L.A. oblige his cousin and crush his rival, according to poll *dharma*? We cannot answer but here Satnam's 'influence' postponed acquisition proceedings, notwithstanding the ceremonial stone. In 1967, again, elections came and Satnam won on the Congress ticket. But when the Akali Party formed the Government Satnam decided to serve the people as Minister and for B that purpose transferred his politics from Congress to Akali. This ensured the safety of the cousin's land from the *mandi* peril. The Akali Government fell in 1969 but he fought as Akali, won the seat and became 'Forest Minister'. The respondents, all the time, resisted him in vain. When 'President's Rule' came, statutory notifications were C issued for acquisition of the first site. The *mandi* project remained frozen till then and showed signs of life during the short-lived President's Rule, only to be given up in 1970 when Satnam became State Minister of Panchayat and Development. He struck when the iron was hot by constituting a Selection Board and appointing himself President thereof. The choice was made of the site which was D allegedly the least suitable. Thus the axe fell on the respondents 1 to 21 and lest the take-over be delayed, even the S. 5A enquiry was scuttled by invoking the emergency powers under Sec. 17. At times, natural justice is the natural enemy of intolerant authority. Therefore, the judicial process, under Art. 226, invalidated the acquisition on the ground of *mala fides*. Back as an M.L.A. in 1972 Satnam E nurtured the faction politics, and there is reference in the writ petition to a murder and other official interference which do not directly concern the case. He was detained and paroled, and the contestants swear that by political influence and use of relationship he revived the same acquisition once quashed by the High Court. We skip many allegations of vice, of pressure, of defection as drawing red-herring F across the trail. But the crux of the matter is that uncontradicted aspersions on Satnam having pressured the political Government to seize the contestants' land goes a long way to affirm the High Court's view, in the background of the long chronicle we have set out. The indefensible resort to Sec. 17 is evidence of the length to which the executive would go to come to terms with men wielding political power. G No reason exists for us to grant leave in the case where factually the High Court has found improper attempt to take a citizen's land. We need not record any positive finding. It is sufficient to state that no ground to grant leave has been made out.

H

The fourth point about the use of emergency power is well taken. Without referring to supportive case-law it is fundamental that com-

pulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Arts. 14 (and 19), burke an enquiry under Sec. 17 of the Act. Here a slumbering process, pending for years and suddenly exciting itself into immediate forcible taking, makes a travesty of emergency power.

No constituency in our poor country can afford Kilkenny cat politics and personality cult.

I dismiss the State's petition.

PATHAK, J. I agree that the petition should be dismissed.

The original acquisition proceeding in respect of the land belonging to Respondents Nos. 1 to 21 was quashed by the High Court under Article 226 of the Constitution on the finding that the action was vitiated by *mala fides*. A fresh attempt at acquiring the land was assailed by the said respondents and has been struck down by the High Court. The petitioners now pray for special leave to appeal.

On a conspectus of the material on the record it does seem that the impugned acquisition proceeding cannot be sustained. There is reason to believe that the statutory power to acquire land has been misused to satisfy the personal ends of the respondent No. 22, an individual who appears to be not without considerable political influence. Despite an opportunity afforded to controvert the allegations made by the respondents Nos. 1 to 21, no attempt has been made by him to contradict the allegations. A counter affidavit has been filed in this Court on behalf of the petitioners, the State of Punjab and the Extra Assistant Colonization Officer, but the material portion of the counter affidavit has been verified by its deponent "to the best of my knowledge and belief as derived from official record". The land belonging to the respondents Nos. 1 to 21 was selected by a body described as the Site Selection Board. There was also a New Mandi Control Board. The deponent of the counter affidavit was not a member of either Board. He was not a participant in the deliberations which are said to have led to the selection of the land belonging to the said respondents. Whether or not the deliberations were effected by the influence or pressure of the respondent No. 22 is a matter to which the officials or members selecting the land could alone be

A privy. In the absence of any denial of the allegations made by the respondents Nos. 1 to 21 in the writ petition by a person having personal and direct knowledge in the matter, and having regard to the entire history of the case, it is difficult to resist the conclusion that the averments in the writ petition alleging *mala fides* must be accepted.

B The petition is dismissed.

N.V.K. *Petition dismissed.*