

(2001) 11 KAR CK 0047

In the Karnataka High Court

Case No : Writ Appeal No's. 2931 and 3022 of 1997

Shivaram Udupa

APPELLANT

Vs

Sharada Achar and Others

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48 A

Citation : (2002) 1 KarLJ 25 : (2002) 1 KCCR 1 SN

Hon'ble Judges : N. Kumar, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Udaya Holla and Ravivarma Kumar, for the Appellant; K. Srinivasa Gowda, Additional Government Advocate, Gopal Hegde, V. Lakshminarayana and Sachindra R. Karanth, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The subject-matter of these proceedings is a bit of land measuring 28 guntas of Sy. No. 197/3B1 situate at Chitrapady Village, Udupi Taluk, Dakshina Kannada District (hereinafter referred to as the "schedule land") which was used as a playground for Dakshina Kannada Zilla Parishad Higher Primary School. The acquisition of this land has been set aside by the learned Single Judge on the ground that the acquisition proceedings is a result of colourable exercise of power with a motive of depriving the petitioner from holding the land in question. The question as to colourable exercise of power being essentially a question of fact, and as the facts are not set out properly in the impugned order, we deem it is necessary to set out the facts in detail as hereunder.--

2. The schedule land originally belonged to one Sri Mahadeva Ithal. One Narasimha Ithal filed an application in Form No. VII u/s 48-A of the Karnataka Land Reforms Act for grant of occupancy rights in respect of 16 items of land including the schedule land on 30-12-1974. The Land Reforms Tribunal, Udupi, by an order dated 3-8-1978 registered him as an occupant of all the lands including the schedule" land. The owner of the land Mahadeva Ithal field a writ

petition in W.P. No. 13363 of 1979 challenging the said order. The High Court by its order dated 3-6-1980 set aside the order of grant of occupancy rights and remanded the matter to the Tribunal for fresh disposal in accordance with law. After remand on 19-10-1981 the said tenant Narasimha Ithal stated before the Land Reforms Tribunal that in the schedule land which forms part of Sy. No. 197/3 which measures in all 82 guntas there is a small school building and a playground. Therefore, he would not seek grant of occupancy rights in respect of the schedule land. He might be granted occupancy rights in respect of other lands excluding the schedule land. The owner Mahadeva Ithal in his evidence recorded on the very same day only objected to the occupancy rights in respect of the schedule land and he did not object for grant of occupancy rights in respect of remaining land. The Land Tribunal by its order dated 19-10-1981 on consideration of the aforesaid evidence and after going through the revenue records, survey report, RTC held that all the lands which are the subject-matter of the proceedings are vested in the Government and unanimously resolved that the tenant Narasimha Ithal is the occupant of survey numbers for which he had applied for occupancy rights. However, the said order is not clear about the schedule land. In view of the aforesaid order it becomes clear all the lands claimed by Narasimha Ithal including the schedule land vested with the Government under the provisions of the Land Reforms Act. The said order came to be passed on 19-10-1981.

3. Thereafter, it appears under a registered sale deed dated 25-4-1985 the petitioner in the writ petition, Smt. Sharada purchased the schedule land from (1) Smt. Savitramma; (2) Vanajakshi w/o Sridhar (3) Girija w/o Sadashiva Rao; (4) Shantha through their power of attorney holder. The said sale deed recites that the schedule land belongs to one Ramakrishna Ithal who is no more and the schedule land fell to the share of Ramakrishna Ithal under a registered partition deed and after his death the aforesaid persons have inherited the said property under the provisions of the Hindu Succession Act of 1956. Mahadeva Ithal and Prabhakar Rao who are the sons of the said Ramakrishna Ithal have relinquished their interest in the schedule land in their favour under a registered release deed dated 23-11-1978 and therefore they have no right in the property. It is pertinent to point out at this stage that none of those vendors challenged the grant of occupancy rights in favour of Narasimha Ithal and on the contrary it is Mahadeva Ithal who challenged the said order and who gave evidence on 19-10-1981 before the Tribunal stating that he has let out the acquired land to the Government on a monthly rent of Rs. 6.00 and it has come to his share. Be that as it may, when the said acquired land was notified for acquisition as per Annexure-A on 20-2-1992 in the column meant for kathedar person in enjoyment and other interested in the schedule land the name of Ganapathi Ithal, as he was dead his L.Rs Narasimha Ithal and his family members names are shown and in the end the name of the petitioner-Smt Sharada Achar is shown as a person in enjoyment and other persons names shown are such as Narayan Ithal since dead by his L.Rs and Sadashiva Ithal since dead by his L.Rs.

In the said notification the name of the petitioner, namely Smt. Sharada Achar is not shown as the owner at all. The said land was notified for acquisition as it was required for a public purpose in respect of Dakshina Kannada Zilla Parishad Higher Primary School.

4. After the aforesaid notification, the petitioner has filed his objections opposing the notification as per Annexure-G on 5-4-1992. He contended in the objections that the schedule land is more suitable for commercial purposes as it is situated facing the national highway. According to him, the school does not require any further land for the playground as there is sufficient dry land on the back side of the school building and suitable for playground. The department could have selected a cheaper land in the back side of the school. It is the further contention that the husband of the petitioner who was a well-wisher of the school has contributed funds for the construction of the school building. It is specifically averred that she feels that the village politics came to the fore front for proposing the acquisition of her land kept reserved for her family requirement. The prejudicial proposal is against law, equity and justice. Therefore, she sought for dropping of the acquisition proceedings.

5. The petitioner also relies on an additional objection filed by way of rejoinder as per Annexure-H which does not bear the date. In the said objection, for the first time there is a reference to the resolution of the School Betterment Committee dated 6-4-1987 and her contribution of Rs. 31,000.00 for new school building construction and an understanding reached between her and the Betterment Committee for handing over the schedule land to her in consideration of the petitioner contributing Rs. 31,000.00 for new school building construction. It is further stated in the said additional objection that in pursuance of the said resolution possession of the acquired land has been handed over to the petitioner and it is only subsequently resolutions are passed rescinding the aforesaid resolution. She also relies on a letter dated 6-7-1992 written by the President of the School Betterment Committee requesting the Government suggesting exclusion of schedule land from acquisition. Even in this statement of objections there is no whisper about the role of the adjoining owner of the land by name Narasimha Ithal being instrumental in initiating the acquisition proceedings. As the aforesaid objections were rejected in the enquiry under the Act, a final notification came to be issued on 11th of March, 1993 acquiring the acquired land for the purpose of the school. The said acquisition proceedings are challenged by filing Writ Petition No. 14149 of 1993. In the writ petition it is stated that the petitioner has acquired the acquired land under registered sale deed dated 25-4-1985 but nowhere the persons from whom the said land was acquired is mentioned. It is specifically averred in the writ petition that a small building was situated in the acquired land and in the said small building one classroom of the third respondent was located. Since the petitioner wants possession of the land where one classroom was situated the petitioner agreed to construct new building for the purpose of the third respondent in Sy. No. 136/10 where the main building of the third respondent-school is located. It is her case

that it is a Government primary school and less than 250 students are studying in the school and the extent of Sy. No. 136/10 is 88 cents and on the request made by the Town Municipal Council, Chitrapady, and the Betterment Committee of the third respondent-school, the petitioner incurred an expenditure of more than Rs. 60,000.00 in the construction of the school building. The petitioner relies on the resolution dated 6-4-1987 passed by the third respondent-School Betterment Committee. The petitioner has also produced a sketch prepared by the village accountant showing the location of the land acquired and the surrounding lands. It is for the first time in the petition it is stated that there is some dispute between the petitioner and the owner of the land bearing Sy. No. 197/3B2 one Sri Narasimha Ithal. The said Narasimha Ithal wanted the petitioner to dispose of the land to him or in the alternative at least to give him approach road of 12 feet through the land in question. The petitioner wanted the said land for the purpose of nursing home to his son, the petitioner refused to sell the land and also to give him a road margin. The said Narasimha Ithal is a very powerful and influential person and he is very close to the seat of power and he is also a close associate of the then headmaster of the third respondent-school. Therefore, she contends the proposed acquisition lacks bona fides and has been initiated on account of extraneous and irrelevant consideration. It is mala fide both on facts and on law. She also relies on an invitation card on the occasion of the inauguration of the new building where the petitioner's name finds a place. Therefore, the petitioner contends the respondents by their conduct are estopped from initiating acquisition proceedings for acquisition of the acquired land.

6. It is pertinent to point out at this juncture the petitioner only made the State of Karnataka, Land Acquisition Officer and the Government Higher Primary School represented by the Betterment Committee, Sri Taranath Holla as parties to the writ petition. After filing of the writ petition and after obtaining an interim order one Shivarama Udupa, Vice-President of the Betterment Committee, filed an application to implead himself as one of the respondents. In the application it is contended as the present President of the Betterment Committee of the "School is acting against the interest of the school, his presence as a party is necessary to enable to secure effective and complete adjudication upon all the questions involved in the writ petition. Thereafter the headmaster of the school filed LA. 4 to implead himself as one of the respondents. In support of the said application, it is stated that the petitioner has made the school as third respondent. It is stated that the school is represented by the Chairman of the Betterment Committee. Day-to-day management of the school is managed by the applicant, namely the headmaster. On 10-8-1996 the petitioner attempted to interfere with the management of the school and therefore the Divisional Educational Officer by order dated 10-8-1996 directed the applicant/headmaster to take up proceedings before this Hon'ble Court therefore had requested the Court to implead him as party/respondent to protect the interest of the school and to safeguard day-to-day running of the school. Both these applications were allowed. Vice-President was made the fourth respondent and the headmaster

was made the fifth respondent to the writ petition.

7. It is relevant to notice that the third respondent represented by the Betterment Committee Chairman Sri Taranath Holla did not choose to file any objections to the writ petition, thereby amply demonstrating that he was hand in glove with the petitioner which forced the respondents 4 and 5 to get themselves impleaded in this writ petition and contest the writ petition.

8. On behalf of the respondents 1 and 2 statement of objections were filed contending that as per RTC Sri Ganapathy Ithal, Narayan Ithal, Sadashiva and Mahadeva Ithal are kathedars under Katha No. 6 of Chitrapady Village. The petitioner is not the owner as per RTC maintained and defined under Land Revenue Act, 1964 and therefore they disputed the contention of the petitioner that she is the owner. It is contended that the school is a Zilla Parishad Higher Primary School and not a primary school as contended. There are classes up to seventh standard and the total strength is 350 and not 250, The main building of the school is located in Sy. No. 136/9 measuring 6 cents which was alienated to the school. The contention that the main building is in Sy. No. 136/10 is not correct. Survey number 136/10 measuring 88 cents belong to Sri Mahalingeshwar Devaru and one Savitramma under joint interest. The contention that the petitioner has spent more than Rs. 60,000.00 to the school is not correct. It is false and baseless. The husband of the petitioner is a building contractor by profession and he had taken up the contract by receiving funds provided for the purpose. The resolution dated 6-4-1987 according to the headmaster had not been passed as no proceedings book of that year is maintained in the school. The headmaster who is the secretary of the Committee as per his report has clearly stated that there is no such resolution. The School Betterment Committee is in the nature of advisory committee and cannot pass such resolution affecting the school administration. The petitioner with collusion of third respondent appears to have created this artificial resolution without the knowledge of the headmaster who is the Secretary of the Committee.

9. It is further contended that the owner of Sy. No. 197/3B2 is not a powerful man. He is a purohit by profession. He is not a close associate of the school headmaster. The schedule land was excluded from the Land Tribunal judgment dated 19-10-1981 since the plot does not attract the provisions of Section 48-A of the Land Reforms Act. The land sought to be acquired was being used for school playground from a long time. It is also stated Sri Tharanatha Holla, Chairman of the School Betterment Committee has been made as third respondent. He is a close associate of writ petitioner Sharada Achar who played main role indirectly for purchase of this land by Madhava Ithal as could be seen from the report of the headmaster. Actually the acquiring department is the Deputy Director of Public Instruction, Mangalore, through Zilla Parishad, Mangalore, and not the third respondent. He is no way connected to the acquisition of land for the school. The acquiring department who will pay the compensation should have been made as third respondent. The school has only 6

cents of plot of its own and the plot Sy. No, 197/3B is in front of the school which is being used as playground for the last so many years. In view of the increase of students the land sought to be acquired is absolutely necessary for school and there is no other land suitable except this. The contention that proceedings were initiated at the instance of the owner of Sy. No. 197/3B2 was denied. The invitation card produced does not disclose that Sharada Achar had spent substantial amount to the school and there is nothing except her name printed as a host. Sy. No. 136/8 is a garden land containing coconut trees and a separate land acquisition proceedings is under process in addition to the land under acquisition. As the second objection is barred by time, the same is liable to be rejected. On 30-9-1992 an endorsement stating that the recommendation was made to Government was communicated to her which she had suppressed in this writ petition. The School Betterment Committee Chairman has no power to make statement that the land is not required for the school. It is an advisory committee for mobilizing funds and approval of expenditure in sports and games. The headmaster is the Secretary of the Committee. Making these types of statements is beyond the jurisdiction of the Committee and such statements are void under law. The authority is the Deputy Director of Public Instructions, Mangalore, who is the controlling and head of the department. The Deputy Director of Public Instruction will release funds for payment of compensation and not the School Betterment Committee Chairman. It is the Deputy Director of Public Instruction, Mangalore, who filed requisition with the acquiring authority who deposited funds for payment of compensation.

10. The 4th respondent also filed separate statement of objections contending that the lands in Sy. No. 136/8B being garden lands and the cost of acquisition having been borne ultimately by the Zilla Parishad the lands were requested to be dropped from acquisition as the cost of acquisition of developed garden lands would be too high for the school to bear. The statements made by Sri Taranath Holla who has a vested interest in the lands and who was the president of the Betterment Committee may have been made at the behest of and at the request of the petitioner. The lands sought to be acquired form one contiguous portion along with the lands acquired in Sy. No. 197/2 and the same is required by the school to be used as a playground.

11. The 5th respondent also filed objection contesting the claim of the petitioner. He has stated that the letter of the President of the Betterment Committee addressing to the Hon"ble Chief Minister is misleading. Sy. No. 197/83B is the most suitable land and the same is used as a playground even before the acquisition proceedings were initiated by the petitioner.

12. On consideration of the aforesaid pleadings of the parties and the documents relied upon by them and after hearing the arguments the learned Single Judge came to the conclusion that there is something fishy in the proceedings and the notification issued u/s 6 of the Act, and has recorded a finding that the said acquisition proceeding is at the behest of some persons and therefore it is the

result of colourable exercise of power. Further, the learned Single Judge recorded a finding that as notification issued proposing to acquire the land bearing Sy. Nos. 136/8B1 and 136/10 has been withdrawn, the acquired land is also not required for the school. For the aforesaid reasons, he came to the conclusion that the acquisition proceedings is a result of colourable exercise of power with a motive of depriving the petitioner from holding the land in question and therefore allowing the writ petition the impugned notifications were quashed insofar as the acquired land is concerned. Aggrieved by the said order of the learned Single Judge, the 4th and 5th respondents have preferred these two appeals challenging the order of the learned Single Judge.

13. The learned Advocates appearing for the appellants in these two appeals contended as under:

(a) The finding of the learned Single Judge that it is a colourable exercise of power is without any basis.

(b) Merely because the acquisition was withdrawn in respect of land bearing Sy. No. 136/8B1 it cannot be said that the schedule land is also not required for the purpose of the school.

(c) As the public purpose is not in dispute and as the school owns only 6 cents of land and there are nearly 350 students and admittedly the schedule land and adjoining land namely Sy. No. 197/2 has been used as a playground by the school for more than 50 years, quashing of the acquisition on the ground that the said land is not required for the school purpose is ex facie illegal and liable to be set aside.

(d) They also contended in the first place no resolution has been passed by the School Betterment Committee as contended by the petitioner and even if there is one it is a fabricated one and the said Committee has no jurisdiction to barter away the property of the Government school and in that view of the matter the learned Single Judge committed serious error in relying on the . said resolution.

(e) The school, in question is run by Zilla Parishad and the land was notified for acquisition at the instance of the Deputy Director of Public Instruction who in fact has provided necessary funds for the acquisition of the land and they being not made a party to the writ petition the writ petition itself is not maintainable.

14. Sri Gopal Hegde, learned Counsel for the respondents contended, firstly, that the appellants have no locus standi to challenge the order of the learned Single Judge as the Vice-President of the Betterment Committee cannot represent the school. Similarly, the headmaster of the school cannot represent the school and prefer the writ appeal. Secondly, it was contended that the Government did prefer the appeal against the order of the learned Single Judge in Writ Appeal No. 1368 of 1998 which came to be dismissed by an order dated 22nd June, 1998 thus affirming the order of the learned Single Judge and therefore in these writ appeals the order of the learned Single Judge cannot be set aside. He

further contended the Purohit in the village by virtue of his status is very powerful person and he is very close to the scat of power and therefore the case made out by the petitioner that the acquisition proceedings initiated at his instance clearly amounts to colourable exercise of power is clearly established and the said finding cannot be interfered with by this Court. Lastly, it was contended that the notification issued for acquiring the adjoining land, namely, Sy. No. 136/8B was withdrawn from acquisition which land was more suitable for playground than the schedule land, therefore the acquisition of the acquired land cannot be sustained. Sri Taranath, President of the Betterment Committee has written a letter to the Chief Minister requesting to exclude the acquired land from the acquisition proceedings as the same is not required by the school. The contention of the petitioner that the acquired land is not suitable for the school clearly stands established. When the petitioner and her husband was made to spend more than Rs. 60,000,00 for the purpose of constructing the school building and in view of the fact that Betterment Committee agreed to hand over the acquired land to the petitioner, the respondents are estopped from acquiring the acquired land.

15. The only point that arise for our consideration in this writ appeal is--

"Whether the finding of the learned single Judge that the acquisition proceedings are vitiated on the ground that it is a case of colourable exercise of power by the authorities concerned, is justified",

16. Before we consider the rival contentions of the parties it is necessary to have a bird's view of the location of the schedule property, school and where the buildings of the school are situate and the lands surrounding the school. The sketch produced by the petitioner himself discloses that land bearing Sy. Nos. 197/2 and 197/3B (schedule land) which are the lands sought to be acquired for the school are situate adjoining each other. To the west of these lands is situate the highway. The existing school building is in two parts. Big building is situate to the east of Sy. No. 197/2 and the said building is constructed in land bearing Sy. No. 136/10. The said school building opens into Sy. No. 197/2. The other small portion of the building is situate on the northern side of Sy. No, 197/2 and that school building also opens to Sy. No. 197/2. The acquired land is situated to the south of Sy. No. 197/2. The land bearing Sy. No. 197/2 measures roughly about 29 cents whereas the schedule land measures 28 cents. The land belonging to the temple measures in all about 88 cents and is situate on the hind portion of the big building of the school. Similarly, the land bearing Sy. No. 136/8 which is a garden land is situate behind the school building constructed in Sy. No. 136/9 which is a land which was earlier notified and subsequently denotified. The said land is not adjoining the land bearing Sy. No. 197/2. In between Sy. Nos. 136/8 and 197/2 the buildings of the school are situate. As the Sy. Nos. 197/2 and 197/3 are adjoining each other and both of them put together form a rectangle and that the said land lies in front of the school buildings and there are no trees, wells, etc., the said land is being used for the last 50 years as a playground, that

is the most suitable land for such playground.

17. Now let us have a look at the law on the point. A Constitution Bench of the Supreme Court in the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, , dealing with the power of the Government to acquire a land for the public purpose has stated as under.--

"(36) Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. The power committed to the Government by the Act is a limited power in the sense that it can be exercised only where there is a public purpose, leaving aside for a moment the purpose of a company. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. Subject to this exception the declaration of the Government will be final".

18. Therefore, it is clear the only exception made to the challenge of such a declaration by the Government is on the ground of colourable exercise of power. Therefore, it is necessary to understand what is the meaning of colourable exercise of power. The Supreme Court in the case of State of Punjab and Another Vs. Gurdial Singh and Others, , has held down as under:

"9. 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 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 fulfillment of a legitimate object the actuation or catalysation by malice is not legicide. 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. In a broad, blurred sense, Benjamin Disraeli was not off the 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 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 acquisition or other official act".

19. The Supreme Court in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, , dealing with the question of burden of proof of mala fides has held as under.--

"92: Secondly, we must not also overlook 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".

20. Therefore, it is now well-settled that a declaration u/s 6 of the Land Acquisition Act is a conclusive evidence that the land proposed to be acquired is needed for the public purpose and the Court cannot go into the question as to whether the need is genuine or not unless the Court is satisfied that the action taken is fraudulent or colourable exercise of power or mala fide.

Mere assertion of colourable exercise of power as to the public purpose without tangible evidence is not good. The proof of mala fides is heavily upon the landowner and not the Government. The burden of establishing colourable exercise of power is very heavy on the per-son/landowner who alleges it. The allegations of colourable exercise of power are often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility. Vague allegations without furnishing material particulars and not supported by any material on record would not be sufficient to rebut the strong presumption in favour of a valid declaration as to the public purpose. It should be demonstrated in support of such a plea that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all. 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. The custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested. It should be demonstrated that the action impugned is to affect some object which is beyond the purpose and intent to the power. If considerations foreign to the scope of power or extraneous to the statute enter the verdict or impels the action then it would vitiate the acquisition.

21. In other words what is to be demonstrated is firstly, that the land which is sought to be acquired do not achieve the object for which it is acquired. Secondly, it should be shown by such exercise of power the owner of the land is sought to be deprived of his valuable right to property under the colourable exercise of power which is vested in the Government under statute. Thirdly, such a power is exercised by the Government at the behest of some human agency who is inimical towards the landowner who yields enormous power with the Government and lastly, the ultimate object of such exercise of power is not in

furtherance of a public cause but in furtherance of a private cause, to wreck vengeance against the owner of the land. If all these things are pleaded with full particulars and if it is traversed by opposite party denying the same, acceptable material has to be placed on record to substantiate the said plea and the human agency to whom the mala fides are alleged should not only be made party to such proceeding but he should have an opportunity to put forth his version and then on an appreciation of these materials if the Court comes to the conclusion that the ultimate object sought to be achieved by acquisition is not public purpose but private purpose then the Court would be fully justified in quashing such acquisition proceedings on the ground of colourable exercise of power. Otherwise in view of the statutory presumption in favour of a declaration as to public purpose which is conclusive, acquisition cannot be quashed.

22. Bearing in mind these settled legal principles let us have a look at the pleadings in the case, facts admitted and proved, in order to find out whether a case of colourable exercise of power as alleged by the petitioner is made out in the instant case.

23. Now coming to the undisputed facts, in the schedule land there was a small construction where originally the school was situated about 50 years back and the said land was used as a playground for the school for the last 50 years. In fact when Narasimha Holla made an application for grant of occupancy rights in respect of land bearing Sy. No. 197/3 including the schedule land which measures 28 guntas out of the total extent of 88 guntas the schedule land was the subject-matter of proceedings before the Land Tribunal. Originally the schedule land was an agricultural land and by virtue of long user of the schedule land as a playground for the school it was not used for agricultural purposes. Nevertheless it did not cease to be an agricultural land. Narasimha Holla was granted occupancy rights on an earlier occasion. After remand taking note of the fact that in the schedule land there was a small school building and the remaining portion was used as a school playground by the students, in the interest of village, school and school children he gave up his right in respect of the schedule land. The owner of the land also objected for grant of occupancy rights in favour of the said Narasimha Holla only to the extent of the schedule land which is used for school and for playground. However, the Land Reforms Tribunal while granting occupancy rights in favour of Narasimha Holla recorded this compromise entered into between the parties, chose to grant occupancy rights in favour of Narasimha Holla as prayed for. That means all the lands for which Narasimha Holla had claimed occupancy rights including the schedule land being tenanted lands vested with the Government as on 1-3-1974. In view of the concession made by Narasimha Holla he did not claim any right over the acquired land. The order of the Land Tribunal did not specify that the acquired land did not vest with the Government nor the claim of the applicant to the acquired land is rejected. Therefore, what follows is the acquired land vested with the Government even though the applicant did not use the schedule land for agricultural purposes and claimed occupancy rights.

24. It is thereafter the schedule land appears to have been purchased by the petitioner from persons who were not parties to the proceedings before the Land Reforms Tribunal but who appear to the members of the family of the landlord. Their claim is under a partition deed of the year 1964. The sale deed makes it clear that on the date of purchase the schedule land was being in the occupation of the school authorities and a Government school was being run in the building in the acquired land. Therefore, it is clear that the petitioner with her eyes wide open has purchased the schedule land knowing fully well that the Government school was being run in a small building in the schedule land and the rest of the land was used as a playground for the last 50 years.

25. Therefore, it is clear that the petitioner's husband who is a contractor by profession purchased the schedule property with the fond hope of getting back the schedule land from the school. Here the role of the President of the Betterment Committee of the school, Sri Tharanatha Holla assumes importance. He writes a letter to the Government stating that the acquired land is not suitable for the school to be used as a playground. Further it is the case of the petitioner that the Betterment Committee headed by him passes a resolution on 6-4-1987 to the effect that the petitioner has constructed a school building by spending about Rs. 31,000.00 on the condition that the schedule land should be handed over back to her and accordingly they are handing over the acquired land to the petitioner. Some letters are also produced by the petitioner to show that the Assistant Education Officer has consented for such handing over of the property. Further, the petitioner relies on an invitation card for inauguration of the new school building which shows petitioner was also shown as a host of the said function. These things clearly demonstrate the capability of the petitioner and her husband to manoeuvre the things and their attempt to get back possession of the schedule land from the school authorities.

26. It is in this background we have to appreciate the case of the petitioner whether the acquisition proceedings was initiated with the mala fide intention at the instance of Narasimha Ithal and that it is a case of colourable exercise of power by the acquiring authorities and that there is no public purpose involved in the acquisition. As referred to earlier in the objections filed to the 4(1) notification there is no whisper about the role of Narasimha Ithal the adjoining owner of the land at the earliest point of time. In his second objection which is purported to have been filed, there is no mention about any role of Narasimha Ithal in initiating acquisition proceedings. All that was stated in the first objections filed was that the village politics came to the forefront for proposing the acquisition of her land. It is for the first time in the writ petition it is alleged that there has been some dispute between the petitioner and the owner of the land bearing Sy, No. 197/3B2 one Narasimha Ithal and the said Narasimha Aithal wanted the petitioner to dispose of the land in question to him or in the alternate at least to give him an approach road of 12 to his land from the schedule land. Since the petitioner did not agree the said Narasimha Aithal who is more powerful and influential person who is very close to the seat of power and also a

close associate of the then headmaster of the school got initiated the acquisition proceedings and therefore there are no bona fides for the acquisition proceedings. In the first place the aforesaid allegations made in the writ petition do not disclose any mala fide intentions attributable to the respondents. Secondly, the said Narasimha Holla was not made a party to the writ petition. Thirdly, the respondents who filed detailed statement of objections have categorically stated that the said Narasimha Aithal is not a powerful man, he is a purohit by profession and he is not a close associate of the school headmaster and have denied that the land was sought to be acquired at his instance. When these allegations are specifically denied by the respondents, absolutely no material is placed on record by the petitioners to substantiate the allegations of mala fides made by them against Narasimha Ithal. As stated by the respondents the said Narasimha Aithal is a purohit by profession. The said fact is also suppressed. By no stretch of imagination it can be said that a purohit in a village could be considered as a very influential person, close to the seat of the power and who could get the lands of his adversaries acquired by the authorities concerned to wreck vengeance against his opponents. The learned Single Judge ignoring these undisputed facts has accepted the said case pleaded by the petitioner only on the ground that in the statement of respondents there is no specific denial by the State Government that he is not a powerful and influential man and he is very close to the seat of power. The said Narasimha Holla is not an Member of Legislative Assembly or a Member of Parliament or a Minister in the Government. He is not a bureaucrat, I.A.S. and K.A.S. Officer. He is not even a politician. In fact the petitioner suppressed the fact that the said Narasimha Holla is a purohit and chooses to call him a landlord. When the fact that he is a purohit is not in dispute merely because in the statement filed by the Government they have not denied the allegation that he is not a powerful and an influential man and he is very close to the seat of power it cannot be presumed that the said Narasimha Ithal is a powerful and an influential man and that he is very close to the seat of power in the absence of any material placed on record by the petitioner. Under these circumstances, we are of the considered opinion that this finding of the learned Single Judge that the said Narasimha Holla is a powerful and influential man and very close to the seat of power and it is at his instance the land was acquired could not be justified.

27. The second reason given by the learned single Judge is that the Government had notified land bearing Sy. No. 136/8B also for the purpose of the school. However, the said land was withdrawn from acquisition as it is not required for public purpose. As the Government stated in their objections that because the said land was a garden land and they have to pay higher compensation the same was withdrawn and separate acquisition proceedings is under process which was factually found to be incorrect in view of the fact that the Government has already withdrawn the said acquisition proceedings much earlier to the filing of the statement of objections. In view of this inconsistent stand taken by the Government the learned Single Judge was of the opinion that there is something

fishy in this proceedings and therefore the ultimate notice issued u/s 6(1) of the Act is at the behest of some persons as such it amounts to colourable exercise of power. It is pertinent to point out that the schedule land and another bit of land bearing No. 197/2 was notified for, acquisition under the notification dated 20-2-1972. The aforesaid land Sy. No. 136/8 was not notified for acquisition in the said notification. 136/8 was in justified for acquisition subsequent to the aforesaid notificatipn, under a notification dated 19-4-1993 and the same was withdrawn from acquisition by a notification dated 28-4-1994. It is not in dispute that the material oh record discloses that in the aforesaid land there is a coconut garden and it is a garden land. The said land is situated behind the school building. The other bit of land which is notified for acquisition, namely Sy. No. 197/2 is not adjoining to the said land. Naturally the compensation payable to a garden land would be far higher when compared to a dry land. That apart the material on record discloses that about six guntas of land in the said survey number was surrendered free of cost for the purpose of construction of school building where the school building has already been constructed. Under these circumstances if the Government withdrew the said land from the acquisition proceedings it would in no way affect the acquisition of land under the earlier notification. On that ground it cannot be said the Government school does not require any land for playground or for any other purposes. Which land is suitable for the public purpose, namely for the school and for its school ground is concerned the decision to select is that of the Government which is final, Courts have no jurisdiction to interfere with the said discretion exercised by the Government. In this regard the Supreme Court in the case of Gurdial Singh, supra, has held as under:--

"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-jaw-ed save where power has been polluted by oblique ends or is otherwise void on well-established grounds. The constitutional balance cannot be upset".

Therefore, the finding of the learned Single Judge merely because the Government withdrew the acquisition of the aforesaid land it cannot be said the need of the school for acquiring the land in question would cease.

28. Yet another reason given by the Single Judge was that the Betterment Committee had passed a resolution to shift the school to the new building and to vacate and handover the building belonging to the petitioner where the school was originally being run as petitioner has spent a sum of Rs. 60,000.00 for the purpose of construction of the building in Sy. No. 136/10 which resolution has been acted upon by the Assistant Education Officer and consequently the possession of the land acquired has been handed over to the petitioner and therefore he is of the opinion that the land sought to be acquired is not required

for the school purpose. It is pertinent to point out at this juncture a Betterment Committee is constituted for a Government school for the purpose of advising the authorities in the developmental activities of the school. The said Betterment Committee is an advisory committee. It is a Committee for mobilizing funds and approval of expenditure for sports and games. The headmaster of the school is the Secretary of the Committee. The said Committee has no power or control over the properties of the school. They cannot alienate, surrender or give away the properties of the school to any person whatsoever. They have no jurisdiction to pass any resolution which would affect the properties of the school. The Chairman of the said Committee who would be an outsider and a respectable person in the society has no power whatsoever to surrender the property belonging to the school to any person. He cannot act against the interest of the school. In the instant case the material on record discloses the Chairman of the Betterment Committee has acted against the interest of the school at every stage. He has taken a predominant role in purchase of the schedule land by the petitioner. Thereafter he has taken an active role in entrusting the construction work of the new building of the school to the petitioner's husband. When the land was notified for acquisition he has written a letter to the governmental authorities requesting them to drop the acquisition proceedings on the ground that the said land is not useful for the school. It also transpires that the purported resolution of the Betterment Committee is his creation. The headmaster who is the Secretary of the Betterment Committee has specifically stated no such resolution was passed in any of the meetings of the Betterment Committee. The petitioner mischievously arrays the Betterment Committee as a party to the writ petition making the said Chairman as the person representing the Committee. Curiously the said Chairman did not file any objections to the writ petition. It is at that juncture the Vice-Chairman of the Betterment Committee and the headmaster who is the Secretary of the Committee have filed independent applications to come on record as respondent in the writ proceedings to defend the acquisition, as the Chairman of the Betterment Committee was acting against the interest of the institution. When the writ petition is allowed this Chairman of the Betterment Committee has not moved his little finger to challenge the order which is against the interest of the school, it is under those circumstances it is the Vice-President of the Betterment Committee and the headmaster who is the Secretary of the Committee have preferred these two appeals. There is absolutely no material placed before the Court to show that the petitioner has spent Rs. 60,000.00 towards construction of the building as alleged in the writ petition. Under these circumstances no credence could be given either to the statement of the Chairman of the Betterment Committee or to the purported resolution on which the petitioner relies on in support of her claim. The learned Judge did not appreciate these aspects in a proper perspective and was not right in our opinion in relying on the said resolution of the Betterment Committee.

29. Insofar as the locus standi of the appellants in these two appeals to

challenge the order of the learned Single Judge is concerned, they were not made parties to the writ petition by the petitioner. On their application for impleadment an order came to be passed impleading them as parties. The said order was not challenged by the petitioner and therefore it has become final. The appellants being parties to the writ petition are entitled to challenge the impugned order. Therefore, we do not find any substance in the submission of the learned Counsel for the respondents that they have no locus standi to prefer this appeal.

30. Insofar as the other contention of the learned Counsel for the respondent that when this Court has dismissed Writ Appeal No. 1368 of 1998 preferred by the State Government these writ appeals also liable to be dismissed is concerned, we do not find any substance in the said submission also. Against the impugned order of the learned Single Judge these two appeals were filed on 26-5-1997. The Government preferred Writ Appeal No. 1368 of 1998 on 31-3-1998 and there was a delay of 204 days in preferring the appeal. This Court declined to condone the aforesaid delay of 204 days on the ground no proper explanation is forthcoming for condonation of delay. Consequent to the dismissal of the application for condonation of delay the appeal came to be dismissed as barred by time. Therefore, that order of this Court is not an order on merits. When this Court entertained these appeals, admitted them and granted interim stay merely because the State Appeal which was filed after the prescribed period came to be dismissed as barred by time cannot be held against the appellants in these appeals. Therefore, the dismissal of the writ appeal filed by the State Government it is barred by time, without going into the merits do not in any way come in the way of this Court hearing these appeals on its merits.

31. Under the aforesaid circumstances, we are of the view that the order passed by the learned Single Judge quashing the acquisition proceedings cannot be sustained and accordingly we set aside the impugned order.

32. Accordingly, both the writ appeals are allowed. The order of the learned Single Judge passed in W.P. No. 14149 of 1993, dated 24-2-1997 is hereby set aside, and the writ petition stands dismissed.

33. Parties to bear their own costs.