

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 841 of 2026

Between:

Koduru Picheswara Rao

.....PETITIONER

AND

Union of India, Rep. by its Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi and 6 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : 27.02.2026
DATE OF JUDGMENT PRONOUNCED : 18.03.2026
DATE OF JUDGMENT UPLOADED : 18.03.2026

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

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.....RESPONDENTS

! Counsel for the Petitioner : Sri K. S. Murthy, Senior Counsel,
Assisted by Sri K. Guru Raj

Counsel for the Respondents 1 to 5: Sri Challa Dhanunjay, Asst.Solicitor General
Sri Y. N. Vivekananda, Standing Counsel

Counsel for respondent No.6 : Sri Praveen Kumar Reddy, SC for Income Tax

Counsel for respondent No.7 : Sri Anup Koushik Karavadi, SC for Income Tax

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> Head Note:

? Cases Referred:

1. 2023 SCC OnLine SC 1244
2. 1994 SCC (L&S) 31
3. 1983 SCC OnLine Bom 163
4. 2018 SCC OnLine Del 10212
5. 2024 SCC OnLine Gau 852
6. 2022 SCC OnLine SC 872
7. 2017 SCC OnLine SC 1251
8. (2005) 8 SCC 760
9. AIR 1964 SC 72
10. (1974) 4 SCC 3
11. (2007) 9 SCC 768
12. (2023) 20 SCC 747

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE BALAJI MEDAMALLI**

WRIT PETITION No. 841 of 2026

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri K. S. Murthy, learned Senior Counsel, assisted by Sri K. Guru Raj, learned counsel for the petitioner and Sri Challa Dhanunjay, learned Assistant Solicitor General of India and Sri Y. N. Vivekananda, learned standing counsel appearing for respondent Nos.1 to 5, Sri Praveen Kumar Reddy, learned standing counsel for Income Tax, appearing for respondent No.6 and Sri Anup Koushik Karavadi, learned standing counsel for Income Tax, appearing for respondent No.7.

2. The present writ petition has been filed under Article 226 of the Constitution of India, challenging the summons to the petitioner/assessee under Section 131 (1A) of the Income Tax Act, 1961 (in short 'IT Act'), dated 14.11.2025 issued by the 5th respondent-the Income Tax Officer (Investigation), Income Tax Department, Vijayawada.

3. By the said summons, the petitioner has been directed to give evidence and / or to produce either personally or through an authorized representative the books of account or other documents as specified in the said summons, which are reproduced herein below, on 18.11.2025 and in case of intentional omission to attend and give evidence or produce the books of

account or documents, to impose the penalty under Section 272 A (1) (c) of the IT Act.

“a) Nature of activity and sources for income.

b) Books of accounts for the period from 01.04.2019 to till date.

c) Statement of all the bank accounts in your name for the period from 01.04.2019 to till date.

d) Details of movable & immovable properties in your name along with sources for investments,

e) Details of the firms/companies wherein you are one of the partners/directors along with PAN & Address of the entity.”

4. The petitioner submitted response dated 17.11.2025 requesting to provide clarity on the point; (1) Reason for issuance of notice, and (2) Scope of Investigation. Under the first head, the petitioner asked for the clarification for identifying and furnishing the most relevant and pertinent information and under the second head, the petitioner wanted to know the specific assessment year or multiple years to which the summons / notice related, as also under the specific income head, transaction or matter of concern. The petitioner also requested for additionally 15 days time from the date of the said reply, followed by another reply dated 27.11.2025 requesting further 15 days time. The petitioner submitted the reply to the Income Tax Officer (Investigation), dated 27.11.2025 and as mentioned therein, submitting the copies of Income Tax Returns for the period 01.04.2019 to 31.03.2025 (15 attachments). The petitioner then received response from the Income Tax Officer (Investigation) informing that the petitioner did not submit the requisite information, books of account for the period from FY 2019-20, copy of all the bank accounts in the

petitioner's name from 01.04.2019 to that date. On 02.12.2025 the petitioner again requested the Income Tax Officer (Investigation) for clarification with respect to the details i.e., the specific reasons for issuance of the summons; the precise scope of investigation, including the assessment years and matters under examination; whether any particular format, structure or classification of information was mandated and the preferred mode of submission (physical / digital / any portal-based upload), mentioning that those details were essential to ensure that the information furnished by the petitioner was complete, relevant and useful for the purpose of the investigation.

5. The Income Tax Officer (Investigation), in response, sent reply dated 16.12.2025, and clarified that the summons were issued by the Investigating Officer in exercise of powers conferred under Section 131 (1A) of the IT Act for the purpose of inquiry / investigation into the matters relating to possible tax evasion and that the said provision conferred to statutory authority, upon the investigation wing, to call for information and enforce attendance during the course of investigation.

6. The Income Tax Officer (Investigation) further clarified that the details of reasons, source of information, line of inquiry and scope of ongoing investigation were confidential in nature and were not required to be disclosed to the assessee or any other person while the investigation was in progress. Even under the Right to Information Act, vide Section 8 (1) (h) the Investigation Directorate of Income Tax was exempted to disclose any information relating to ongoing investigation and the disclosure of any such

information at that stage would defeat the very purpose of investigation and might prejudice the proceedings. It was further clarified that the scope, methodology and source of investigation fell exclusively within the domain of the investigation Directorate and were governed by internal procedures and confidentiality norms. The assessee was legally bound to comply with the summons by furnishing the information / documents and by attending as directed. By the said reply dated 16.12.2025, the petitioner / assessee was again requested to comply with the summons under Section 131 (1A) of the IT Act and submit the requisite information either in physical form or through electronic mode. It was reiterated that non-compliance should attract penal consequences under the relevant provisions of the IT Act.

7. The 4th respondent-Deputy Commissioner of Income Tax has filed the counter affidavit and has denied the allegations against him that he threatened the petitioner's statutory auditor to settle the disputes. He has submitted that the 4th respondent has no role to play in issuance of summons. He has also submitted that the 4th respondent is a jurisdictional assessing officer and is nowhere linked to the investigation Directorate. The investigation being taken up by the 5th respondent is independent and confidential and the 4th respondent is not in a position either to have any knowledge of the petition or the line of investigation being carried out. He has absolutely no role to play.

8. The 6th respondent, impleaded by name i.e., 3rd respondent by designation, the Principal Chief Commissioner of Income Tax), has filed counter affidavit. He has not disputed the relationship that the 1st defendant in the suit

O.S.No.608 of 2025 is the brother of his daughter's father-in-law, but has submitted that he is not aware of any civil litigation. He is also not aware about the notices issued to the petitioner and has denied the other allegations made against him by the petitioner. He has specified that he has no role to play in the proceedings initiated against the petitioner and that the 6th respondent has unnecessarily dragged him into the matter just to scuttle the process initiated by the official respondents under the Income Tax Act.

9. The 5th respondent- Income Tax Officer (Investigation), also impleaded by name, as 7th respondent, has filed his counter affidavits. *Inter alia* it has been submitted that the pleadings of the writ petition do not disclose any personal act, excess of jurisdiction, abuse of authority or conduct beyond the scope of statutory powers that would justify the impleadment of his name. The allegations against the 7th respondent cannot be sustained in the absence of any foundational facts. He proceeded as per the standard operating procedure, TEP was assigned to him by the competent authority and the summon was issued to conduct the enquiries after obtaining the permission to issue summons. He also deposed that the petitioner submitted copy of acknowledgment of Income Tax Returns for FY 2019-20 to 2024-25 via e-mail dated 27.11.2025 and the same were duly recorded. He submitted that request of the investigating officer for submission of the documents is part of enquiry as it pertains to the verification of declared income against the assets, within the scope of Section 131 (1A) of IT Act and so, the allegation of misuse of statutory powers, the arbitrariness in issuance of the summons is baseless. The 7th

respondent submitted that he was not aware of regarding any property dispute between the petitioner and the defendants in the suit and any such dispute has no relevance or connection for the issuance of summons which were issued as per the procedure under the Income Tax Act.

10. The petitioner filed replies to the counters of the respondents 4, 5, 6 & 7, reiterating the contents of the writ petition.

11. The challenge to the summons / notice under Section 131 (1A) of the Income Tax Act dated 14.11.2025 is mainly on the ground of *mala fide*.

12. Sri K. S. Murthy, learned senior counsel, advanced the arguments before us that one O.S.No.608 of 2025 arising out of the dispute relating to the property situated at Vijayawada is pending in the Court of the Principal Civil Judge (Junior Division), Vijayawada and in the said suit in I.A.No.286 of 2025 filed under Order 39 Rules 1 & 2 CPC, the learned trial Court has granted *ad interim* temporary injunction on 22.04.2025 restraining the defendants in the suit, their men etc., from interfering with the peaceful possession and use of the schedule premises i.e., the petition schedule property, except by due process of law, while directing the plaintiffs therein to comply with the provisions of Order 39 Rule 3A of CPC.

13. His further argument is that the defendants in O.S.No.608 of 2025, namely, Atluri Venkata Satya Vara Prasad and Atluri Dyhan are close relatives of the present 3rd respondent-the Principal Chief Commissioner of Income Tax, Andhra Pradesh Telangana, Hyderabad, a Senior Officer in the Income Tax Department. The relationship with the 1st defendant in the suit Satya Vara

Prasad, stated is that, the 1st defendant's brother's son is married to the daughter of the 3rd respondent. The 3rd respondent is also impleaded in the writ petition by name as 6th respondent.

14. The petitioner's further case as also the argument of learned counsel for the petitioner is that the 4th respondent, the Deputy Commissioner of Income Tax (Circle-I), acting in concert with the private parties, contacted the petitioner's statutory auditor on multiple occasions to prevail upon the petitioner to settle the civil dispute, and if the dispute was not settled, the petitioner would be subjected to serious consequences through the Income Tax Department. The petitioner's auditor informed the petitioner the same. The allegation is that the respondents misusing their official capacity are trying to gain undue advantage over the petitioner by issuance of summons/notice under Section 131 (1A) of the IT Act in view of O.S.No.608 of 2025 to settle the matter.

15. Sri K. S. Murthy, learned Senior Counsel for the petitioner during arguments also raised the point of lack of jurisdiction in the authority in issuing the impugned summons. In this regard, he submitted that the Income Tax Officer (Investigation) is not competent authority to issue the summons under Section 131 (1A) of IT Act, as he is not the authorized officer.

16. On the aforesaid grounds, learned counsel for the petitioner submitted that the summons deserved to be quashed and no proceedings pursuant thereto could be carried forward any further. He submitted that the

issuance of the summons is vitiated for colorable exercise of power by the statutory authorities.

17. Sri K. S. Murthy, learned senior counsel placed reliance in the following judgments:

- 1) ***Pankaj Bansal v. Union of India***¹
- 2) ***Naseem Bano (Smt) v. State of U.P***²
- 3) ***Ishverlal J.Naik v. Sri S. C. Arya***³
- 4) ***Skyview Consultants Pvt. Ltd. v. Income Tax Officer Ward 23(4), New Delhi***⁴
- 5) ***Pawan Kumar Garg v. Union of India***⁵

18. Sri Challa Dhanunjay, learned Assistant Solicitor General submitted that the respondents have filed counter affidavit and in paragraph – 4 of the counter affidavit of the 5th respondent, it has clearly been mentioned that an anonymous Tax Evasion Petition (TEP) against the petitioner and his family members was received in the office of the Principal Director of Income Tax (Investigation), Hyderabad on 12.11.2025 and as per the Standard Operating Procedure (SOP) in F.No.RNo.291/21/2013-Dir (Inv.IV)/1193 dated 23.09.2016, a Unique Identification Number (UIN) was allotted by the Principal Director of Income Tax (Investigation) for management of Tax Evasion Petitions under the Income Tax Business Applications (ITBA) issued by the Central Board of Direct

¹ 2023 SCC OnLine SC 1244

² 1994 SCC (L&S) 31

³ 1983 SCC OnLine Bom 163

⁴ 2018 SCC OnLine Del 10212

⁵ 2024 SCC OnLine Gau 852

Taxes, a Unique Identification Number was allotted to the TEP by uploading the same into the pending online work list on ITBA (Income Tax Business Application) module of Income Tax Department. Subsequently, the said TEP was assigned online to the concerned jurisdictional Investigation Unit Head, i.e., the Joint Director of Income Tax (Investigation), Unit-IV, Vijayawada who in turn had assigned the same to the Income Tax Officer (Investigation), Unit-IV, Vijayawada online through ITBA module of the Department for conducting necessary enquiries and for submission of report. He submitted that soon after online allotment of the TEP in the pending work list of Income Tax Officer (Investigation), Unit-IV, Vijayawada, the Investigating Officer (IO) after taking necessary due diligence, obtained permission to issue summons under Section 131 (1A) of IT Act from the unit head on 14.11.2025 and accordingly issued summons under Section 131 (1A), to all the concerned persons. He submitted that the summons issued had clearly specified the requirement for production of books of account, bank statements, and details of properties / investments from 01.04.2019 onwards, proportionate to the scope of inquiry as verification of escapement of income from AY 2020-21 to AY 2025-26 as per the provisions of the Income Tax Act. He submitted that the disclosure of detailed reasons at the summons stage was not mandated by law or by the procedure laid down by the SOP.

19. Sri Challa Dhanunjay, learned Assistant Solicitor General, submitted that so far as the objection with respect to the jurisdiction of the Income Tax Officer (Investigation) is concerned, that he is not authorized officer to issue

summons under Section 131 (1A) of IT Act, any such objection was never taken in the petitioner's reply dated 17.11.2025, 27.11.2025 and 02.12.2025. He further submitted that any such objection has also not been taken in the writ petition. The challenge as per the contents in the writ petition is not on the ground of alleged want of jurisdiction in the authority to issue the summons but it has been orally argued that he is not authorized under Section 131 (1A) of IT Act, for the first time during arguments, though the procedure was followed in issuing the summons.

20. Sri Challa Dhanunjay, learned Assistant Solicitor General, further submitted that the place of *mala fide* and colourable exercise of power if unsustainable and is not established. The same is being raised without any factual foundation and for the first time in the writ petition without making any such averment in the petitioner's reply submitted before the Income Tax Authorities. The same is afterthought and only for the purposes of the present writ petition.

21. Sri Y. N. Vivekananda and Sri Praveen Kumar Reddy, learned standing counsels for the Income Tax have adopted the submissions advanced by the learned Additional Solicitor General.

22. Learned counsel for the respondents placed reliance in the following judgments:

- 1) ***Principal Director of Income Tax (Investigation) v. Laljibhai Kanjibhai Mandalia***⁶.

⁶ 2022 SCC OnLine SC 872

2) ***N. K. Jewellers v. Commissioner of Income Tax, New Delhi***⁷.

23. We have considered the aforesaid submissions and perused the material on record and gone through the relevant provisions of the Income Tax Act and the judgments cited from both the sides.

24. So far as the submission of *mala fide* is concerned, we are of the view from the material on record, and there is no dispute on the factual aspect that in O.S.No.608 of 2025, none of the present respondents are party in the suit, neither by designation nor by name. Even the present petitioner is not a party, which is said to have been filed by the son-in-law of the petitioner. Further, any such averment of *mala fide* or with respect to the suit, was not even taken in the responses filed by the petitioner to the notice/summons. The said plea is being raised for the first time in the writ petition. Though the learned counsel for the petitioner laid much emphasis on the statement of the petitioner's Chartered Accountant, annexed to the writ petition (Annexure No.P8), but the said alleged statement/affidavit itself is dated 27.11.2025 i.e., much after the date of notice under Section 131 (1A). The affidavit of the Chartered Accountant (P8) is a notarized affidavit and is not addressed to any one. It is not evident from the pleadings of the writ petition, in what proceedings the same was filed or before which authority. Learned Assistant Solicitor General submitted that the person named in the said affidavit is not the Income Tax Officer (Investigation), and that the contents thereof are only after thought and had been created only for the purposes of the present writ

⁷ 2017 SCC OnLine SC 1251

petition so as to challenge the summons/notice and in an effort to make out a plea of *mala fide*. Learned Assistant Solicitor General submitted that Mr. Prem Kumar as mentioned in the said affidavit is not a party in the writ petition nor in the suit. Further, there is no mention of such affidavit or the alleged incident in the petitioner's reply filed before the income tax authorities. With respect to the petitioner's letter raising the grievance as per the affidavit of petitioner's Chartered Accountant against the Deputy Commissioner of Income Tax to the Chairperson of Central Board of Direct Taxes, New Delhi, the material filed with the writ petition shows that the said letter was sent through registered post on 01.12.2025 but in the reply submitted by the petitioner on 02.12.2025 before the Income Tax Officer (Investigation) there is no mention of even the letter sent to the Chairperson of Central Board of Direct Taxes. Further, the summons / notice is dated 14.11.2025 and the TEP is dated 12.11.2025 whereas the *ad interim* temporary injunction was granted in the suit on 22.04.2025. So the notice has been issued after many months of the suit and the interim order, which has neither any proximity nor any connection to the suit proceedings. We are of the view that there is force in the submission of the learned Assistant Solicitor General and the argument/plea of the learned counsel for the petitioner of *mala fide* has no legs to stand, based on the material annexed with the writ petition.

25. As per the counter affidavit of the respondents the action has been taken as per the procedure on receipt of anonymous Tax Evasion Petition (TEP) against the petitioner. It was received on 12.11.2025. At this stage, we may

mention that in the counter, the 5th respondent mentioned about TEP and the SOP. But did not annex the copy thereof. The petitioner filed I.A.No.3 of 2026 to direct the respondent authorities to produce the documents i.e., anonymous Tax Evasion Petition (TEP) and the Standard Operating Procedure (SOP). The learned Assistant Solicitor General submitted that the matter may be heard and during the course of arguments, if so required by the Court those documents shall be placed before the Court, as he has got the record. During course of arguments, the anonymous TEP was placed before us which is dated 12.11.2025 (with its English translation) for perusal. We satisfied ourselves that there is a complaint against the petitioner, anonymous TEP, based upon which the proceedings under Income Tax Act have been initiated, and though the copy of the TEP has not been annexed with the counter affidavit, the contents of the counter affidavit regarding the TEP are supported from the record, so placed. The aforesaid fact was also recorded in the Order dated 27.02.2026 on which date the judgment was reserved in the present writ petition.

26. In ***Union of India v. Ashok Kumar***⁸ the Hon'ble Apex Court observed and held that 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. The indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof. The Hon'ble Apex Court further observed that it is not the law that *mala fides* in the sense of

⁸ (2005) 8 SCC 760

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. The Hon'ble Apex Court referred to the judgment in the case of **S. Pratap Singh v. State of Punjab**⁹ to reiterate 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. Again referring to its judgment in **E.P. Royappa v. State of T.N.**¹⁰ the Hon'ble Apex Court observed that the courts would be slow to draw dubious inferences from incomplete facts placed before them 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.

27. Paragraphs 21 and 22 of **Ashok Kumar** (supra) are reproduced as under:

“21. 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

⁹ AIR 1964 SC 72

¹⁰ (1974) 4 SCC 3

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. (*S. Pratap Singh v. State of Punjab* [(1964) 4 SCR 733 : AIR 1964 SC 72] .) **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.* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] **courts would be slow to draw dubious inferences from incomplete facts placed before them 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.** (See *Indian Rly. Construction Co. Ltd. v. Ajay Kumar* [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .)

22. As observed by this Court in *Gulam Mustafa v. State of Maharashtra* [(1976) 1 SCC 800] mala fides is the last refuge of a losing litigant.”

28. In ***HMT Ltd. and another v. Mudappa***¹¹ the question was whether the action of the State authorities in initiating acquisition proceedings under a valid law could be said to be illegal, unlawful or in *mala fide* exercise of power? There the High Court had held that the course adopted by the authorities was contrary to law. The Hon’ble Apex Court noted that it was reflected in the approach of the High Court that “it was a case of exploitation of statutory provisions in the name of public purpose to defeat just rights of an individual who had obtained decree in his favour”. The Hon’ble Apex Court observed that such an approach was neither legal nor permissible.

29. Paragraphs 18 and 19 of ***Mudappa*** (supra) read as under:

¹¹ (2007) 9 SCC 768

“18. The question, however, is whether the action of the State authorities in initiating acquisition proceedings under a valid law could be said to be illegal, unlawful or in *mala fide* exercise of power? So far as the High Court is concerned, it held that the course adopted by the authorities was contrary to law. It is reflected in the approach of the Court wherein the learned Single Judge observed that it was a case of exploitation of statutory provisions in the name of public purpose to defeat just rights of an individual who had obtained decree in his favour.

19. In our considered view, however, this approach is neither legal nor permissible. **Passing of a decree by a competent court is one thing and exercise of statutory power by the authority is altogether a different thing. It is possible in a given case to come to a conclusion on the basis of evidence produced and materials placed on record to conclude that the action has been taken *mala fide* or for a collateral purpose or in colourable exercise of power. But, in our opinion, issuance of preliminary notification after a decree by a court of law would not ipso facto make it vulnerable and exercise of power *mala fide*.** To us, therefore, the authorities were right in raising a preliminary objection that the petition was premature as by issuance of notification under sub-section (1) of Section 28 of the Act, an intention was declared by the State to acquire the land for public purpose i.e. for developing industry.”

30. In ***Mudappa*** (supra), the Hon’ble Apex Court observed and held that the High Court was not right in coming to the conclusion that since a decree was passed by a competent court, no notification under the Act could have been issued by the State. The power exercised by the State was statutory in nature and irrespective of a decree in favour of the owners, such notification could be issued. The Hon’ble Apex Court referring to its previous judgments explained the concept of *legal mala fide* and observed that ‘*legal malice*’ or

'*malice in law*' means something done without lawful excuse. In the context on facts of the said case where notification was issued by the State under the Land Acquisition Act, after the decree in favour of the landowners, the Hon'ble Apex Court observed that where *malice* was attributed to the State, it could not be a case of *malice* in fact, or personal ill-will or spite on the part of the State. It could only be *malice* in law, i.e. legal *mala fide*. The State, if it wishes to acquire land, could exercise its power *bona fide* for statutory purpose and for none other. It was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held *mala fide*.

31. Paragraphs 22 and 24 of ***Mudappa*** (supra) read as under:

“22. The High Court was also not right in coming to the conclusion that since a decree was passed by a competent court, no notification under the Act could have been issued by the State. The power exercised by the State was statutory in nature and irrespective of a decree in favour of the owners, such notification could be issued. A situation similar to one before us had arisen in *State of A.P. v. Goverdhanlal Pitti* [(2003) 4 SCC 739] . In *Goverdhanlal* [(2003) 4 SCC 739] , a school building belonging to *G* was in the possession of the State as a tenant. An order of eviction was passed and the State was directed to hand over possession of property to *G* within a particular period. The State then took out proceedings under the Land Acquisition Act, 1894 for acquiring the property for public purpose, namely, for a school. *G* challenged the proceedings as *mala fide*. The High Court upheld the contention observing that there was “*malice in law*” inasmuch as the proceedings were initiated to scuttle a valid decree passed by a competent court. The State approached this Court.

24. The Court also explained the concept of legal mala fide. By referring to *Words and Phrases Legally Defined*, 3rd Edn., London Butterworths, 1989 the Court stated: (*Goverdhanlal case* [(2003) 4 SCC 739] , SCC p. 744, para 12)

“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 wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others.’ ”

It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill-will or spite on the part of the State. It could only be malice in law i.e. legal mala fide. The State, if it wishes to acquire land, could exercise its power *bona fide* for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held *mala fide*.”

32. Recently, in ***State of Rajasthan v. Sharwan Kumar Kumawat***¹² on the point of *legal malice* the Hon’ble Apex Court held that the basis of a judgment can be removed and that a decision of the Court cannot be treated like a statute, particularly, when power is available to act and it is accordingly exercised in public interest, and in view thereof, there was no *legal malice* in the amendments made in the statute.

33. Paragraph No.21 of ***Sharwan Kumar Kumawat*** (supra) reads as under:

¹² (2023) 20 SCC 747

“ 21. Though it is contended by the learned advocates appearing for the respondents that the impugned Rules have been brought forth only to nullify the effect of the judgments, as discussed, we do not think so. The appellants have duly complied with the orders passed. Even otherwise, **law is quite settled that basis of a judgment can be removed and a decision of the court cannot be treated like a statute, particularly when power is available to act and it is accordingly exercised in public interest. In such view of the matter, we do not find any legal malice in the amendments.** We wish to quote *Kalabharati Advertising v. Hemant Vimalnath Narichania* [*Kalabharati Advertising v. Hemant Vimalnath Narichania*, (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808] : (SCC pp. 448-49, para 25)

“*Legal malice*

25. The State is under obligation to act fairly without ill will or malice— in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for ‘purposes foreign to those for which it is in law intended’. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide *ADM, Jabalpur v. Shivakant Shukla* [*ADM, Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521] ; *S.R. Venkataraman v. Union of India* [*S.R. Venkataraman v. Union of India*, (1979) 2 SCC 491 : 1979 SCC (L&S) 216] ; *State of A.P. v. Goverdhanlal Pitti* [*State of A.P. v. Goverdhanlal Pitti*, (2003) 4 SCC 739] ; *BPL Ltd. v. S.P. Gururaja* [*BPL Ltd. v. S.P. Gururaja*, (2003) 8 SCC 567] and *W.B. SEB v. Dilip Kumar Ray* [*W.B. SEB v. Dilip Kumar Ray*, (2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860] .)”

The scheme of Section 28 is thus similar to the scheme of acquisition of land under the Land Acquisition Act, 1894 under which such preliminary notification is issued, opportunity of being heard is afforded to the persons interested in the land and only thereafter final notification can be issued. At the stage of raising objections against acquisition, it is open to the respondents herein to raise all contentions. In spite of such objections, if final notification is issued by the State, it is open to them to take appropriate proceedings or to invoke jurisdiction of the High Court under Article 226 of the Constitution. Unfortunately, however, the High Court entertained the petition and quashed the preliminary notification overruling well-founded objection as to maintainability of petition raised by the State and the appellants herein.”

34. In view of the aforesaid judgments and the principles settled on the point of *legal malice, mala fide* we are of the view that the authority i.e., Income Tax Officer (Investigation) issued summons/notices in the exercise of power under Section 131 (1A) of the Income Tax Act. Such exercise is statutory. The facts as pleaded, for the reasons (supra), that the present respondents impleaded by name as also by designation are not party in the suit nor the petitioner is party in the suit, the interim injunction was passed in March 2025, the Tax Evasion Petition was filed on 12.11.2025, on which the statutory authorities preceded under the SOP and issued the notice on 14.11.2025, merely because the respondent No.3 – The Principal Chief Commissioner of Income Tax, Hyderabad is remotely related to the defendants 1 and 2 in the suit and merely because such relationship has been admitted, it does not follow that there was *malice in fact*, with respondents to initiate proceedings under Section 13 (1A) of Income Tax Act against the petitioner. The '*malice in fact*' in our view, could not be established. The basis to plead the

malice especially was the affidavit of the Chartered Accountant (P8) which itself has been introduced after the issuance of the notice/summons under Section 131 (1A) of the Income Tax Act and further that, the said fact of the pendency of the suit and *malice in fact*, thereon was not taken in the reply filed by the petitioner before the authorities pursuant to the summons/notice. The said plea of *malice* is an afterthought being raised for the first time in the writ petition and is unestablished. So, *malice in fact* is not proved.

35. The authorities have acted on receipt of Tax Evasion Petition and as per the counter of respondent No.5 the procedure was followed i.e., allotting the Unique Identification Number and referring the matter to the competent authorities and the Income Tax Officer (Investigation) issued the summons after seeking approval of the competent authority. The authorities, when are acting under the Income Tax Act and based on the material in the form of Tax Evasion Petition received, there is no question of *malice in law* as well or of any colourable exercise of power by the Income Tax authorities.

36. Further, we are of the view that if such a plea is accepted, which is not worth acceptance, then no proceeding can be drawn under the Income Tax Act against the petitioner, as the suit is the first stage and the matter may go on for years from the suit stage to further stages before the next higher Courts. In the meantime the period of limitation prescribed for invoking the proceedings under Income Tax Act may also come to an end. No assessee if liable under the Income Tax Act can be permitted to escape the statutory provisions being invoked on such unfounded plea of *malice / mala fide*.

37. **Pankaj Bansal** (supra) is on the point of colourable exercise of power or *mala fides* or malice, laying down that when the power is conferred to achieve a purpose that power must be exercised reasonably and in good faith to effectuate the purpose and when the power is exercised for extraneous or irrelevant considerations or reasons, the exercise of power is a colourable exercise of power or fraud on power which vitiates the action.

38. There cannot be any dispute on the proposition of law as in **Pankaj Bansal** (supra) that 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. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, it is called a colourable exercise of power. The fraud on power voids the order if it is not exercised bona fide for the end designed, is also not a proposition in dispute. But, in the present case, the question is of the applicability of the principle. We have already observed in the earlier part of this judgment that the power has been exercised under the statutory provisions of the IT Act under Section 131 (1A) and the plea of malafide could not be established. So the principles of law as in **Pankaj Bansal** (supra) cannot be attracted to the present case to support the contention of the petitioner's counsel either of malice, fraud of power, or colourable exercise of power.

39. In **Ishverlal J.Naik** (supra) it was observed that when the reply was cryptic and also vague it did not amount to any denial of the averments of facts pleaded by the petitioner and it could be assumed that they were true and

it would not be wrong to proceed on that assumption. We observe that the principle is well settled that if a factual aspect has been pleaded and has not been denied specifically, and the reply is only cryptic and vague, it would not amount to the denial, but, still it is in the exercise of judicial discretion to proceed or not, based on such fact. The Court may still require the petitioner to prove that fact. However, in the present case the contention of the petitioner raised in the writ petition with respect to the *malice, mala fide* on the part of some of the respondents has been specifically denied in the counter of the respondents.

40. The next submission of the learned senior counsel for the petitioner is on the lack of jurisdiction in the Income Tax Officer (Investigation) to issue summons/notice submitting that he is not an authorized officer included under Section 131 (1A) of the IT Act.

41. As per Section 131 (1A) of IT Act, the authorities mentioned thereunder are the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub-section (1) of section 132. As per Section 132 (1) (A) the income tax officer is included therein on being authorized by the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and under clause (B), authorized by Additional Director or Additional Commissioner or Joint Director or Joint Commissioner. Reading both the provisions together it cannot be said that the

Income Tax Officer is not included under Section 131 (1A) for issuance of the summons/notice under the said Section.

42. There is no pleading in the writ petition, taking any ground of challenge of want of jurisdiction in the Income Tax Officer (Investigation) to issue summons/notice. It has also not been pleaded that the Income Tax Officer (Investigation) was not authorized under Section 131 (1A) r/w. Section 132 of the IT Act. A plea of want of jurisdiction certainly can be raised at any stage but it has to be raised. Such a plea has not been raised in the writ petition and at the time of arguments, the other side cannot be taken by surprise, by raising an argument not born from the record/pleadings on factual aspect. The ground No.2 in the writ petition is not 'lack of jurisdiction' but relates to the exercise of jurisdiction emphasizing the ground of *malice / mala fide* due to O.S.No.608 of 2025.

43. So far as the other judgment relied upon by the learned counsels for both the sides is concerned, we consider as follows:

- i. In ***Laljibhai Kanjibhai Mandalia*** (supra) on which the reliance was placed by the learned counsel for the respondents, the Hon'ble Apex Court reiterated the principles in exercising the writ jurisdiction in the matter of search and seizure under Section 132 of the Income Tax Act. However in the present case, the stage of search and seizure under Section 132 of the Act has yet not been reached. The stage is issuance of summons/notice calling for

investigation, relevant documents as under Section 131 (1A) of the Act.

- ii. In ***N.K.Jewellers*** (supra) it was held that the reason to believe or reason to suspect, as the case may be, under Section 132 or 132A of IT Act, shall not be disclosed to any person or any authority or the Appellate Tribunal.
- iii. ***Naseem Bano*** (supra) is not on the point. It's under service law, i.e., qualifications for promotion of C.T. grade teacher to L.T. grade teacher.
- iv. ***Skyview Consultants Private Limited*** (supra) is a case of reopening of the assessment for the particular assessment year under Section 148 of the Act. The present is the stage only under Section 131 (1A) asking for the documents for verification and at this stage it cannot be said that the matter would or would not be opened and it is not the petitioner's case pleaded in Writ Petition or in their reply submitted before authorities about no authorization of Income Tax Officer (Investigation) under Section 131 (1A).
- v. In ***Pawan Kumar Garg*** (supra) the challenge was to the search and seizure made on 02.12.2020 under Section 132 of the IT Act and the notice issued, after the search and seizure, under Section 131 (1A) of the Act. It was held by the Guwahati High Court that the notices issued under Section 131 (1A) of the Act were after

the search and seizure operation under Section 132 of the Act which went to show that there was neither any reason to suspect nor material before the Authorizing Officer on the basis of which search operation could have been conducted under Section 132 of the Act. It was held that the notice under Section 131 (1A) of the Act was a precondition for search and seizure operation under Section 132 of the Act and in the absence of any such notice under Section 131 (1A) of the Act, prior to the search and seizure, the search and seizure made under Section 132 of the Act was without any material and could not be sustained. The Guwahati High Court thus held that the notice under Section 131 (1A) is a precondition for proceeding under Section 132 of the Act.

- vi. We observe that on the said aspect different High Courts have taken a different view. We are not concerned with the said issue in the present case, the reason being that present is only the stage of Section 131 (1A). It is not a case of conducting the search and seizure without making compliance of Section 131 (1A). It is not a case of issuing the summons/notice under Section 131 (1A), after the stage of Section 132. The aforesaid judgment is no help to the petitioner.

44. No other argument was advanced.

45. We hold that the impugned notice/summons under Section 131 (1A) of the Income Tax Act cannot be said to be illegal or suffering from any

infirmity, neither on the ground of *malice* nor on the ground of jurisdictional error.

46. I.A.No.4 of 2026 has been filed by the petitioner for direction to the respondents 1 and 2 to report on what action was taken on the representation of the petitioner dated 01.12.2025, sent *inter alia* to respondents 1 and 2 through registered post. The prayer has been made contending that those respondents have not filed any counter affidavit and that despite receiving the same on 04.12.2025, any response or action has not been taken.

47. We do not find any force in the application I.A.No.4 of 2026, as firstly, the said representation could not be shown to us to be statutory in nature, and secondly, in the writ petition, there is no prayer made with respect to the said representation. Any interim prayer beyond the scope of the main petition is not permissible. Finally, we are of the view that it is not relevant to ask what action has been taken on the petitioner's representation, as the proceedings of summons / notice under Section 131 (1A) of the IT Act, impugned in the present writ petition are under the statute, and any action or decision taken or not taken, on the petitioner's representation outside the scope of such provision of the Income Tax Act, is of no relevance for the decision of this writ petition.

48. I.A.No.4 of 2026 therefore stands rejected.

49. In the result, for the aforesaid reasons, the writ petition lacks merit and is dismissed.

Pending miscellaneous petitions, if any, including I.A.No.3 of 2026, shall stand closed in consequence.

RAVI NATH TILHARI, J

BALAJI MEDAMALLI, J

Date: 18.03.2026
Dsr/AG

Note:
LR copy to be marked
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Dsr