

Neutral Citation No. - 2024:AHC-LKO:25792

A.F.R.

RESERVE JUDGMENT

Court No. - 6

Case :- WRIT - C No. - 3000027 of 2011

Petitioner :- Ganga Prasad

Respondent :- State Of U.P.Through Secy. Finance And Revenue
Deptt.Lko.And

Counsel for Petitioner :- Pt.D.R.Shukla,Anurag Narain
Srivastava,M.D.Shukla,Manoj Kr. Singh,Sanjeev Kumar
Pandey,Sudhanshu Tripathi

Counsel for Respondent :- C.S.C.,Karunakar Srivastava,Mohd. Askam
Khan,Nitin Srivastava

Hon'ble Alok Mathur,J.

1. Heard Sri Anurag Narain Srivastava, learned counsel for the petitioner as well as learned Standing Counsel for the State respondents and Sri Mohd. Aslam Khan, learned Senior Advocate assisted by Sri Nitin Srivastava, learned counsel for the private respondents.

2. By means of present writ petition the petitioner has challenged:

(i) the order dated **25.07.2011**, passed by the Additional Commissioner, under Section 27(4) of the Imposition of Ceiling on Land Holdings Act, 1960 (*hereinafter referred to as "the Act, 2006"*), for cancellation of patta of predecessor in interest of petitioner namely Kishore.

(ii) the order dated **21.06.2011**, passed by Additional Commissioner, deleting the name of Kishore on account of his death without substituting the legal heirs of Kishore.

(iii) the order dated **16.07.2011**, passed by the Additional Commissioner whereby the recall application seeking recall of order dated 21.06.2011 has been rejected on the ground that registered will dated 18.10.2007 executed by Kishore in favour of the petitioner since declaration was not obtained by the petitioner from the competent Court in relation to the

petitioner that he is legal heir of Kishore on the basis of registered will.

(iv) order dated **26.10.1964**, pertaining to declaration of surplus land in relation to plot no. 1300, were set aside ex-parte and the recall application was also rejected on the ground that lease holder has got no right of opportunity of hearing and the petitioner has no right to file objections.

3. It is submitted by learned counsel for the petitioner that on 26.10.1964, the land of tenure holder Bhaiya Jagdish Dutt Ram Pandey was declared surplus under the provisions of the Act, 1960. The land was entered in the name of Bhaiya Jagdish Dutt Ram Pandey which is evident from the Khatauni and after about six years on 31.08.1970, out of surplus land of Bhaiya Jagdish Dutt Ram Pandey plot No. 521/1.70 acres was allotted to Kishore S/o Ram Karan being a landless labourer, it is pertinent to point out that over the patta document Ram Naresh (Lekhpal) @ Nanhe Lal Lekhpal was a witness and on the basis of patta name of Kishore was entered in the khatauni and the mutation register prepared under Rule 24.

4. It has been submitted by the petitioner that Ram Naresh (Lekhpal) had committed forgery in the revenue record as well as in UPCH Form - 45 and fraudulently got his name entered into the khatauni with intention to grab the land which was declared surplus by means of order dated 26.10.1964 by the Prescribed Authority. The Prescribed Authority had declared surplus land in relation to the original tenure holder - Bhaiya Jagdish Dutt Ram Pandey under section 10(2) of the Act of 1960 and the said order attained finality as it was never challenged by the recorded tenure holder in appeal.

5. It is stated that Ram Naresh (Lekhpal) had taken advantage of his posting as Lekhpal and entered his name in the revenue records without there being any order or title deed in his favour. Due to aforesaid act of fraud committed by Ram Naresh (Lekhpal) he got his name mutated in

the revenue records pertaining to Plot No. 521/1.50 acres and also manipulated the same in UPCH Form - 45 fraudulently.

6. When the predecessor in interest of the petitioner namely Kishore (Patta holder) came to know about the fraudulent entry having been made by Ram Naresh (Lekhpal), he made a complaint, and an inquiry was ordered by the Chief Revenue Officer, Gonda. The matter was enquired into by Tehsildar, Karnelganj, Gonda. The inquiry report revealed that Ram Naresh (Lekhpal) has unauthorisedly without any order of competent authority entered his name into the revenue records pertaining to Plot No. 521/1.50 acres. It was stated that said entries in the name of Ram Naresh were fictitious and forged and they were liable to be rectified under Section 33/39 of the Land Revenue Act. There are allegations of manipulation in the revenue records regarding two other Gata Nos. also and after due inquiry it was revealed that the respondent had committed serious acts of forgery and therefore the matter was referred to the SDO, Karnelganj, Gonda for correction of entries and by means of order dated 24.08.1993, the entries made in UPCH Form - 45 was deleted and further direction was issued that the entries in the revenue records of the village may be corrected.

7. Aggrieved by the order of Chief Revenue Officer, Ram Naresh (Lekhpal) preferred two revisions being Revision No. 32 and 130 – 1992-93, before the Board of Revenue, Lucknow, which were dismissed by means of order dated 04.03.1998.

8. Being unsuccessful in proceedings before the Board of Revenue, Ram Naresh (Lekhpal) approached the Commissioner, Faizabad Division, Faizabad for cancellation of the lease granted in favour of Kishore. The application of Ram Naresh (Lekhpal) was dismissed by means of order dated 30.09.1995. Against the order dated 30.09.1995, he preferred Writ Petition (Ceiling) No. 178 (M/S) of 1995. The writ petition was dismissed on 07.12.1995. While dismissing the writ petition the Court observed that the application under Section 11(2) of the Imposition of Ceiling on Land Holdings Act which was pending, be decided on merits.

It has further been stated that in the writ petition Kishore was not made party.

9. Ram Naresh (Lekhpal) after getting his name mutated in the revenue records in place of Kishore, moved an application before the Prescribed Authority under Section 11(2) of the Ceiling Act for setting aside of the order dated 26.10.1994 by which the land of Bhaiya Jagdish Dutt Ram Pandey was declared surplus stating that he has been recorded as tenure holder and therefore the order was passed by the Prescribed authority without giving notice or any opportunity of hearing and therefore prayed that the order dated 26.10.1994 be set aside and land of Gata No. 521/1050 acres be excluded from the holdings of the original tenure holder. The Prescribed Authority by means of order dated 31.10.1996 allowed the application preferred by Ram Naresh (Lekhpal) under Section 11(2) of the Ceiling Act. It is stated that the State brought to the knowledge of the Prescribed Authority that the revenue entries have been made fraudulently by Ram Naresh (Lekhpal) himself which have been ordered to be deleted, and therefore no benefit of the same could have been granted, but he ignored the said arguments and by means of order dated 31.10.1996 allowed the application under section 11(2) of Act of 1960.

10. Kishore, on coming to know about the order dated 31.10.1996, moved an application stating that he had been granted patta and was necessary party in the said proceedings but his application for recall was rejected by order dated 04.08.1997.

11. It has been submitted by learned counsel for the petitioner that Kishore had died issue less and had bequeathed his entire property in favour of petitioner by means of registered will dated 18.10.2007. It has also been stated that Ram Naresh had moved an application under Section 27(4) of the Ceiling Act, 1960 praying that the revenue entries should be made in his favour and that name of Kishore has wrongly been recorded. During the pendency of the said application Ram Naresh (Lekhpal) as well as Kishore expired and Ram Naresh was substituted by

Devi Shanker Srivastava and Maya Shanker Srivastava while no substitution was made with regard to Kishore. The application filed by the respondent was allowed and the lease in favour of Kishore was cancelled and direction was made for recording of entry in name of Ram Naresh in the revenue records.

12. The petitioner being legal heir of Kishore moved an application for recall of order dated 21.06.2011 which was rejected. Another application preferred by the petitioner for substitution was also rejected on 16.07.2011 observing that there was no decree of the Court of competent jurisdiction declaring that the petitioner was legal heir of Kishore.

13. The application preferred by Ram Naresh was finally allowed on 25/07/2011 on merits. While allowing the application it was held that initially the prescribed authority by means of order dated 26/10/1964 had declared the land of the original tenure holder Jagdish Dutt Ram Pandey as surplus, and the said order was modified on 31.10.1996 an application under section 11 (2) of the act of 1960 preferred by Ram Naresh and the plot No. 521/1.5 acres was excluded from the land which was declared surplus by means of order dated 31/10/1996. In the meanwhile, the land which was declared surplus by the prescribed authority had been allotted in favour of Kishore on 31/08/1970, and on the application of Ram Naresh under Section 27(4) of the act of 1960, the patta granted in favour of Kishore was cancelled by means of the impugned order dated 25/07/2011.

14. Sri M.A Khan ,Senior Advocate appearing on behalf of respondent 5 and 6 has vehemently opposed the writ petition. It has been submitted that the initial order passed by the prescribed authority pertaining to the land of the original tenure holder was passed on 26/10/1964 without giving any opportunity to the respondent of the petitioner was also declared surplus illegally and arbitrarily. Apparently the patta was allotted in favour of Kishore, respondent had filed an application for cancellation of the Patta under section 27(4) of the act of 1960. It was submitted that the application was illegally rejected, against which a writ

petition was filed being writ petition no. 178(Ceil.) of 1995 and the petition was disposed of on 07/12/1995 and that the application under section 11(2) of the act of 1960 be disposed of by the prescribed authority. As per the directions of this court, the application under section 11(2) was allowed by means of order dated 31/10/1996 and plot No. 521 was excluded from the surplus land declared by the prescribed authority previously. In this regard it has been submitted that the order dated 21/10/1996 has not been assailed by the petitioner in any proceedings and has become final and consequently submitted that there is no error in the impugned orders.

15. The State initially filed an affidavit of compliance supporting the case of the respondents, and the deponent was none other than Parmanand Tewari, who has authored the impugned order dated 25/07/2011, and consequently this Court taking a serious view of the matter by means of order dated 10/10/2011 directed the enquiry to be conducted by the Principal Secretary, Revenue, Government of U.P.

16. The enquiry was conducted by the Principal Secretary, Revenue, Government of U.P, and submitted his report on 31/01/2012 which was filed 03/05/2015. According to the enquiry report land situated at Gata No. 1300, the new number being Gata No. 521 was declared as surplus from the original holding of Bhaiya Dutt Jagdish Ram Pandey on 26/10/1964. Subsequently a mutation entry dated 23/09/1978 is existing on record whereby name of Ram Naresh, son of Sambhu Dayal has been entered as Sirdar, but there is no order for making the said mutation and accordingly prima facie the said entry seems to be suspect/doubtful. Even the procedure of making the said mutation seems to indicate the said mutation has been done by black ink while normal course such mutation is carried out in red writing. Another glaring infirmity is that the mutation was done when the proceedings under Section 9 of the Consolidation of Holding Act were underway. In such a situation the said mutation has to be reflected in the revenue records of the particular year, and in case the mutation has been done after the conclusion of

Consolidation proceedings then the same has to be done in accordance with provisions of section 109A of the Consolidation of Holdings Act, and only after approval of the Deputy director of Consolidation the Assistant Consolidation Officer will carry out the mutation in form 45 itself while in the present case the mutation has been done by the Consolidation Lekhpal on 28/09/1978 which is on the face of it illegal and without jurisdiction.

17. It has also been stated in the report that on the said land been declared surplus by the prescribed authority. Initially the land was allotted in favour of one Devi Shanker son of Nanhey Lal by order dated 13/05/1970, but subsequently the Pargna Adhikari cancelled the said allotment and passed another allotment order in favour of Ramkishore son of Ramkaran on 31/08/1970.

18. In the aakar form 45 with regard to Khata No. 723, the fraudulent in the entry made in favour of Ram Naresh a complaint was made by Kishore to the Commissioner Faizabad mandal on 27/29/11/1991 an enquiry was got conducted by the Pargna Adikari and it came on record that the revenue entry in favour of Ram Naresh was fraudulently done by means of order dated 28/09/1978.

19. It has further been stated that a complaint was made by Kishore with regard to the fraudulent entry made by the Ram Naresh to the Commissioner, an enquiry was conducted by the Pargana Adhikari who submitted his report on 05/08/1993. The said report was forwarded to the Chief Revenue officer, who in turn directed the Pargana Adhikari to delete the mutation in the revenue records in favour of Ram Naresh, but his order was not implemented by the concerned Lekhpal.

20. Another important aspect stated in the said report is with regard to the fact that Ram Naresh, the concerned Lekhpal and was working on the said post during the period when the mutation was carried out in his favour. After the said facts have come to the knowledge of the higher authorities enquiry was been ordered. The Pargna Adhikari has also been

held to be guilty of not complying with the Chief revenue Officer. It is only because in the revenue records the name of Ram Naresh continued to be recorded in Gata No. 521, which persuaded the Prescribed Authority to allow the application filed by Ram Naresh under section 11(2) of the act of 1960, and hence order was passed in his favour.

21. I have heard the counsel for the parties and perused the record. The petitioner has questioned the dated 21/06/2011 whereby on the application for substitution of Kishore, it was stated that he has died interstate and it was recorded dead in front of his name and the petitioner.

22. Considering the submissions made on behalf of parties, the point in issue in the present case is as to whether Ram Naresh (Lekhpal) had misused his official position as Lekhpal and fraudulently manipulated the revenue record whereby the entry in his name against Gata No. 521 was recorded. This aspect gains relevance inasmuch as it is only because of the entry in the revenue record pertaining to Gata No. 521 that initially when the said entry was ordered to be deleted by the Chief Revenue Office the petition against the same were dismissed at the behest of Ram Naresh and secondly his claim for exclusion of the said land from the holdings of the original tenure holder in proceedings under Section 11(2) of the Act, 1960 was made only on the basis of entry existing in his name against Gata No. 521.

23. Though there is denial by respondent nos. 5 and 6 in their counter affidavit that Ram Naresh was the concerned Lekhpal at the time when the alleged fraudulent entry was made deleting the name of Kishore and replacing it with the name of Ram Naresh, but the enquiry conducted by the Chief Secretary (Revenue) has made it clear that it was Ram Naresh who was in fact posted as Lekhpal when the said manipulation in the revenue record took place. It is also pertinent to note that signatures of Ram Naresh were existing on the Patta given to Kishore. Further the inquiry report of Chief Secretary (Revenue) has also confirmed the fact that there was no order by any competent authority preceding the entry

made in favour of Ram Naresh. Even in the entire counter affidavit filed before this Court no such order has been produced which could indicate that there was any semblance of legality in deletion of name of Kishore and its substitution in the name of Ram Naresh.

24. The weak resistance put up by the private respondents is on account of the fact that Gata No. 521 was initially allotted in the name of one Devi Shanker, son of Nanhe Lal vide order dated 13.05.1970 and the said allotment was cancelled and subsequently allotment was made in the name of Kishore S/o Ram Karan on 31.08.1970. The previous cancellation vide order dated 13.05.1970 was never assailed before any authority and consequently it became final.

25. When Kishore came to know about the deletion/modification of the entry pertaining to Gata No. 521, he had moved an application before the Commissioner, Lucknow Division, Lucknow for inquiry and for restoration of his name. An inquiry was conducted in this regard in 1993 by the Parganadhikari where it came forth that entry in the name of Ram Naresh was unauthorisedly made without there being any order and consequently the Chief Revenue Officer directed that the entry existing in the name of Kishore be restored. Despite orders having been passed by the competent authority correction as directed was never carried out and accordingly illegal entry in the name of Ram Naresh continued to exist in the revenue record.

26. On the strength of illegal and improper entry existing in the name of Ram Naresh efforts were made on the judicial side fortifying his claim on the said land and as efforts to set aside the order dated 24.08.1993 by which the entry was directed to be cancelled was rejected at the behest of Ram Naresh and he could not succeed at that stage. Subsequently, Ram Naresh filed a writ petition before this Court where liberty was granted to him to pursue his application under Section 11(2) of the Act, 1960.

27. Before the Prescribed Authority the State had informed about the order passed by the Chief Revenue Officer dated 24.08.1993, for

deletion of the entry existing in the name of Ram Naresh, but this argument was not considered as in the revenue records name of Ram Naresh continued to exist and merely on the basis of said record, application under Section 11(2) of the Act, 1960 was allowed and Gata No. 521 was excluded from the holdings of the original tenure holder and also order of Prescribed Authority dated 31.10.1996, was suitably modified.

28. The Additional Commissioner (Judicial) had illegally rejected the application for impleadment preferred by the petitioner despite the fact that he had produced copy of registered will clearly indicating that the deceased Kishore had bequeathed his property in favour of petitioner. There was no other claim to the property of Kishore and no one has raised dispute in this regard and consequently rejection of his application merely on account of the fact that there was no decree from the Court of competent jurisdiction regarding declaration of the petitioner as successor in interest of Kishore, he declined to accept the application for substitution.

29. The respondents could not show any law which provides that application for substitution can be accepted only when the person claiming his rights produces a copy of decree of declaration of the competent Court that he is the successor in interest of the deceased. At the stage of consideration of the application for substitution, the court has to look only into the relevant documents and relationship claimed by the applicant on the basis of which the application for substitution has been made. It has to be borne in mind that even if the application for substitution is allowed it does not vest any substantial right in the applicant, except to contest the said case. The applicant having produced a certified copy of the registered will of the deceased, which was sufficient in itself for the concerned authority to have allowed the said application, where no doubts were expressed for its existence and validity by the other side. Accordingly, the findings of the Additional Commissioner (Judicial) in this regard are illegal and arbitrary and are

set aside. The order is clearly arbitrary and illegal and also deserves to be quashed.

30. The next issue raised is with regard to the validity of the entry made in favour of Ram Naresh, and as to whether on the basis of the said entry the land was rightly excluded from the holding of the original tenure holder and the patta of the petitioner was rightly cancelled.

31. As discussed above, there is no doubt that the revenue records were tampered by the Lekhpal i.e. Ram Naresh, who was responsible for entering his name in place of Kishore illegally and without authorisation. He himself was the concerned Lekhpal and has manipulated the revenue records. We have no reasons to doubt the report submitted by the Principle Secretary, Revenue who has carefully examined the entire record and dealt with all the issues in detail. We take serious note of the fraudulent conduct of the respondent in this regard. The Hon'ble Supreme Court in a number of judgments has discussed the aspect of fraud. Some of such judgments are quoted herein below.

32. Hon'ble Apex Court in the case of ***Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh, (2019) 14 SCC 449***, has held :-

“68. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of the appellants, reliance has been placed on the definition of “fraud” as defined in Black's Law Dictionary, which is as under:

“Fraud : (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is wilful) it may be a crime. ... (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain.”

33. The Court in ***Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh (supra)*** has further observed that :

“69. Halsbury's Laws of England has defined “fraud” as follows:

“Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately, indifference or recklessness on the part of the representor as to the truth or falsity of the representation affords merely an instance of absence of such a belief.

70. *In Kerr on the Law of Fraud and Mistake, “fraud” has been defined thus:*

“It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... Courts have always declined to define it, ... reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include property (sic properly) all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a wilful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to.”

71. *In Ram Chandra Singh v. Savitri Devi [Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319] , it was observed that fraud vitiates every solemn act. Fraud and justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. This Court observed as under :*

“15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud, as is well known, vitiates every solemn act. Fraud and justice never dwell together.

16. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*.”

(emphasis supplied)

72. In *Madhukar Sadbha Shivarkar v. State of Maharashtra* [*Madhukar Sadbha Shivarkar v. State of Maharashtra*, (2015) 6 SCC 557, this Court observed that fraud had been played by showing the records and the orders obtained unlawfully by the declarant, would be a nullity in the eye of the law though such orders have attained finality. Following observations were made :

“27. The said order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by playing fraud upon the Tahsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid sub-leases are made and they are accepted by them in the proceedings under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees under Section 6 of the Act. The plea urged on behalf of the State Government and the *de facto* complainant owners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon the Tahsildar and appellate authorities to get the illegal orders obtained by them to come out from the clutches of the land ceiling provisions of the Act by creating the revenue records, which is the fraudulent act on their part which unravels everything and therefore, the question of limitation under the provisions

to exercise power by the State Government does not arise at all. For this purpose, the Deputy Commissioner of Pune Division was appointed as the enquiry officer to hold such an enquiry to enquire into the matter and submit his report for consideration of the Government to take further action in the matter. The legal contentions urged by Mr Naphade, in justification of the impugned judgment and order prima facie at this stage, we are satisfied that the allegation of fraud in relation to getting the landholdings of the villages referred to supra by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of the law though such orders have attained finality; if it is found in the enquiry by the enquiry officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. The landowners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and therefore, we accept the submission to justify the impugned judgment and order Babu Maruti Dukare v. State of Maharashtra [Babu Maruti Dukare v. State of Maharashtra, 2006 SCC OnLine Bom 1268 : (2007) 2 AIR Bom R 361] of the Division Bench of the High Court.”

(emphasis supplied)

73. In *Jai Narain Parasrampuriah v. Pushpa Devi Saraf* [*Jai Narain Parasrampuriah v. Pushpa Devi Saraf*, (2006) 7 SCC 756] , this Court observed that fraud vitiates every solemn act. Any order or decree obtained by practising fraud is a nullity. This Court held as under:

“55. It is now well settled that fraud vitiates all solemn act. Any order or decree obtained by practising fraud is a nullity. [See (1) *Ram Chandra Singh v. Savitri Devi* [*Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319] followed in (2) *Kendriya Vidyalaya Sangathan v. Girdharilal Yadav* [*Kendriya Vidyalaya Sangathan v. Girdharilal Yadav*, (2004) 6 SCC 325 : 2005 SCC (L&S) 785] ; (3) *State of A.P. v. T. Suryachandra Rao* [*State of A.P. v. T. Suryachandra Rao*, (2005) 6 SCC 149] ; (4) *Ishwar Dutt v. LAO* [*Ishwar Dutt v. LAO*, (2005) 7 SCC 190] ; (5) *Lillykutty v. Scrutiny Committee, SC & ST* [*Lillykutty v. Scrutiny Committee, SC & ST*, (2005) 8 SCC 283] ; (6) *Maharashtra SEB v. Suresh Raghunath Bhokare* [*Maharashtra SEB v. Suresh Raghunath Bhokare*, (2005) 10 SCC 465 : 2005 SCC (L&S) 765] ;

(7) *Satya v. Teja Singh* [*Satya v. Teja Singh*, (1975) 1 SCC 120 : 1975 SCC (Cri) 50] ; (8) *Mahboob Sahab v. Syed Ismail* [*Mahboob Sahab v. Syed Ismail*, (1995) 3 SCC 693] ; and (9) *Asharfi Lal v. Koili* [*Asharfi Lal v. Koili*, (1995) 4 SCC 163] .]”

(emphasis supplied)

74. In *State of A.P. v. T. Suryachandra Rao* [*State of A.P. v. T. Suryachandra Rao*, (2005) 6 SCC 149] , it was observed that where the land which was offered for surrender had already been acquired by the State and the same had vested in it. It was held that merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud. Following observations were made :

“7. The order of the High Court is clearly erroneous. There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.

8. By “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill-will towards the other is immaterial. The expression “fraud” involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla v. Delhi Admn.* [*Vimla v. Delhi Admn.*, 1963 Supp (2) SCR 585 : AIR 1963 SC 1572 : (1963) 2 Cri LJ 434] and *Indian Bank v. Satyam Fibres (India) (P) Ltd.* [*Indian Bank v. Satyam Fibres (India) (P) Ltd.*, (1996) 5 SCC 550]]

9. A “fraud” is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu v. Jagannath* [*S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1] .)

10. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words,

which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh v. Savitri Devi* [*Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319] .)

13. This aspect of the matter has been considered recently by this Court in *Roshan Deen v. Preeti Lal* [*Roshan Deen v. Preeti Lal*, (2002) 1 SCC 100 : 2002 SCC (L&S) 97] , *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [*Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education*, (2003) 8 SCC 311] , *Ram Chandra Singh v. Savitri Devi* [*Ram Chandra Singh v. Savitri Devi*, (2003) 8 SCC 319] and *Ashok Leyland Ltd. v. State of T.N.* [*Ashok Leyland Ltd. v. State of T.N.*, (2004) 3 SCC 1]

14. Suppression of a material document would also amount to a fraud on the court. (*Gowrishankar v. Joshi Amba Shankar Family Trust* [*Gowrishankar v. Joshi Amba Shankar Family Trust*, (1996) 3 SCC 310] and *S.P. Chengalvaraya Naidu v. Jagannath* [*S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1] .)

15. “Fraud” is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence of fraud; as observed in *Ram Preeti Yadav* [*Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education*, (2003) 8 SCC 311] .

16. In *Lazarus Estates Ltd. v. Beasley* [*Lazarus Estates Ltd. v. Beasley*, (1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] , Lord Denning observed at QB pp. 712 and 713 : (All ER p. 345 C)

‘No judgment of a court, no order of a minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.’

In the same judgment, Lord Parker, L.J. observed that fraud ‘vitiates all transactions known to the law of however high a degree of solemnity’ (All ER p. 351 E-F).”

(emphasis supplied)

34. The Apex Court in the case of **A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221** has observed as under :-

“21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

“Fraud avoids all judicial acts, ecclesiastical or temporal.”

35. The Apex Court in the case of **A.V. Papayya Sastry v. Govt. of A.P., (2007) 4 SCC 221** has held as under :

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. In the leading case of *Lazarus Estates Ltd. v. Beasley* [(1956) 1 All ER 341] Lord Denning observed :

“No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.”

24. In *Duchess of Kingstone*, Smith's *Leading Cases*, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was “mistaken”, it might be shown that it was “misled”. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said : *fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of “finality of litigation” cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.

27. In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1] this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that “there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence”. B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as “wholly perverse”, Kuldip Singh, J. stated :

“The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

36. The factual matrix of the present case is no longer in dispute, considering the manner in which the mutation was carried out in favour of Ramnaresh, and these facts have been duly brought forth in the report submitted to this Court by the Principal Secretary (Revenue), Government of U.P where it is clear that the land situated at Gata No. 521 was declared surplus, and was allotted in favour of Kishore.

Ramnaresh was the concerned Lekhpal, who was also a signatory to the said Patta. Thereafter the revenue records were manipulated and without there being any order of any competent authority the name of Kishore was deleted and in its place name of Ramnaresh was entered. The entire subsequent proceedings in favour of Ramnaresh were made on the basis of the forged revenue entry . The matter becomes more alarming when it has been informed that subsequent to an enquiry having been conducted, when the said forgery came to be known an enquiry was conducted by the Paragana Adhikari and orders were passed for rectification of the said entry, the order was not complied in the entry and the name of Ramnaresh continued on records. This depicts a sorry state of affairs, orders of the Superior are not complied with and no action is taken till a judicial note of the same is taken. It is only when this court had directed an enquiry to be conducted by the principal Secretary, Revenue after passage of much time, that the enquiry got conducted.

37. The golden thread of fraud is found in the entire action of Ramnaresh (Lekhpal). He himself got his name included in the revenue records illegal and unauthorizedly. The said mutation was not only without jurisdiction, there was no semblance of any legality, nor was any order passed for mutating the name of Ramnaresh in place of Kishore, who resisted compliance of the order of the Chief Revenue Officer when directions were issued for deletion of his name and restoration of the name of Kishore. The aforesaid facts clearly indicate active connivance and indulgence of Ramnaresh in the aforesaid acts of fraud and manipulation in the revenue records.

38. Applying the principles enunciated by the Supreme Court in the judgements referred to herein above, it is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first Court or by the final Court—has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. There is no doubt that all the orders passed in

favour of Ramnaresh were obtained by playing fraud upon the authorities at each stage, and accordingly all the orders deserve to be set aside, restoring the land in favour of Kishore and his successors.

39. In light of the aforesaid discussions, the the impugned orders dated 21.06.2011, 16.07.2011, 25.07.2011 passed by the Additional Commissioner, Devi Patan Division, Gonda as well as orders dated 31.10.1996 and 04.08.1997 passed by the Prescribed Authority, are hereby set aside.

40. The writ petition is accordingly **allowed** with cost of Rs.50,000/- to be paid by respondent nos. 5 and 6 to the petitioner. Let the said amount be paid within two months failing which the same shall be recovered as arrears of land revenue by District Magistrate, Gonda from respondent Nos. 5 and 6 and be paid to the petitioner.

Order Date :- 22.03.2024

A. Verma

(Alok Mathur, J.)