(2011) 11 AHC CK 0465

In the Allahabad High Court

Case No : Writ C No. 27152 of 2008

Ashok Kumar Singh and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Societies Registration Act, 1860 — Section 12, 25

Citation : (2012) 1 ADJ 206

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Sunil Hali, J.—Question that arise in this case is as to whether in absence of any provision for review can a statutory authority exercise the same if it is found that the impugned order was obtained by misrepresentation and fraud.

2. In order to appreciate the controversy involved in this writ petition certain facts are required to be noted:-

3. A society in the name of Kisan Adarsh Samiti Kisan (in sort KAS) was registered at Sl No. 192 of 1953. Registration of the said society was never renewed as provided under the Statute. A resolution was passed by the KAS for forming a new society in the name ans style of Kisan Uchchttar Madhyamik Vidyalaya Samiti, Budhansi, Aligarh (in short KUMVS). As a sequel to the said resolution, an application for seeking registration of the said society namely KUMVS along with resolution dated 5.6.1983 was registered at Sl No. 4020 of 1983 dated 27.7.1983. Periodical renewal of the registration of the society has been done. Respondent no. 4 applied for fresh registration of the KAS on the ground that the original papers of the society has been misplaced and obtained registration at Sl No. 4420 of 1983 dated 29.9.1983. Registration of the petitioners'' society was questioned by the said respondents before the Asst./ Deputy Registrar, Bareilly on the ground that the registration has been obtained

by fraud and misrepresentation. Complaint of the respondent no. 4 was dismissed and the matter was referred to the Prescribed authority u/s 25 of the Society Registration Act for the purpose of resolving inter-se dispute amongst members of the society. Issue was decided in favour of the petitioners by the Prescribed authority vide order dated 18.12.1984. Thereafter, respondent no. 4 preferred a Civil Misc Writ Petition being C.M.W.P. No. 7860 of 1985 against the said order before this Court which is also dismissed vide order dated 16.9.1992. It transpires that the respondent no. 4 obtained a renewal of the erstwhile society on 19.1.1989. The said order was questioned before this Court in Civil Misc Writ Petition No. 3374 of 1989 and this Court stayed the operation of the impugned order. Another complaint filed by the respondent no. 4 against the registration of the petitioners'' society was rejected by the respondent no. 3. Thereafter, a complaint was filed by respondent no. 4 on 6.11.2003 in pursuance to which a notice u/s 12(d) of the Act was issued by the Deputy Registrar to the petitioners on 7.11.2003. Vide order dated 13.11.2003, respondent no. 3 cancelled the registration of KAS bearing No. 4420 and granted renewal against the Registration at Sl. No. 192/1953, after a lapse of 50 years of its initial registration for a period of 27 years by one stroke of pen. The said order was stayed by this Court in Civil Misc Writ Petition No. 52826 of 2003 vide order dated 1.12.2003. Respondent no. 3 cancelled the registration of the petitioners'' society KUMVS on 19.1.2004. The said order of cancellation was passed on the ground that five persons who are said to have participated in the agenda dated 19.5.1983 and resolution dated 5.6.1983 have filed their affidavits stating therein that the proceedings of the agenda and the resolution are fictitious as they never participated in the said proceedings. This order was questioned before the Commissioner, who in appeal remanded the matter back to the Deputy Registrar vide order dated 13.9.2004. This Court in its order dated 10.2.2005 set aside the order of remand dated 13.9.2004 and remanded the matter to the Commissioner for fresh consideration. On its remand, the matter was reconsidered and the appeal of the petitioner was dismissed. The writ petition filed by the petitioner bearing Civil Misc Writ Petition No. 74606 of 2005 was dismissed by this Court vide order dated 7.12.2005. This Court while dismissing the writ petition observed that the five persons who were shown to have participated in the meeting held by the petitioners at the time of the registration of the society in the year 1983 have denied their participation in any such meeting. This fact has not been controverted by the petitioners nor the statement of fact recorded in the order passed by the Assistant Registrar (Firms, Societies and Chits) has been questioned in the petition. Once person who were shown to have signed the agenda and participated in the meeting have disowned the participation in the said meeting, then certainly, it was a case of fraud and manipulation. What was concluded by the Court was that the petitioner had not denied the statements/affidavits were incorrect in any manner. A Special Appeal against the said order 7.12.2005 was preferred before Division Bench of this Court. While deciding the Special Appeal filed by the petitioners same conclusions were recorded. It was stated that five persons who are shown to have participated in the meeting held on 5.6.1983 had stated in their affidavits that they did not participate in any such meeting rendering same to be based upon non existent material. Finding recorded by the Assistant Registrar has not been questioned in the present writ petition. Consequence was that the Special Appeal was dismissed.

4. Petitioner filed an application for seeing review of the order on the ground that five persons who are said to have filed the affidavits on the basis of which cancellation order was passed have denied having sworn any such affidavits. The affidavit of said persons has also been placed along with the application for seeking review. This evidence, according to the petitioner was not available at the time when the proceedings in respect of cancellation of registration of society was pending. Petitioner could not procure these documents as the same were not issued by the then Deputy Registrar R.K. Singh who is said to be close relative of respondent no. 4. It is only on his transfer that the documents and names of the persons who had sworn these affidavits were procured and issued to the petitioners. After obtaining the copy of the affidavits, persons who are said to have sworn these affidavits have denied having sworn any such affidavit which lead to the cancellation of the registration of the petitioner''s society. This aspect of the matter would not be placed before the Courts at that point of time. Disclosure of the fact leads to the conclusion that the order of cancellation was passed on the basis of the forged and fictitious document which tantamount to fraud and misrepresentation as such respondent no. 3 is bound to correct its own mistake by accepting the present review.

5. Case set out by the petitioners before the respondent no. 3 was that the evidence filed by the five persons and the contents of the affidavits filed by the said persons were not disclosed to them at the time of taking decision to the petitioners. Contents of the affidavits came to the knowledge of the petitioners only after one R.K. Singh, Deputy Registrar who was close relative of the respondent no. 4 was transferred. After obtaining the copies of the evidence, petitioners claim that these affidavit were forged at the behest of respondent no. 4. It is in the light of these facts coming to the notice of the petitioners that the application was filed for review/recall of the order dated 19.1.2004 whereby the registration of the petitioners'' society was cancelled. On this application being presented notices were issued to other side.

6. Petitioners filed the affidavits of the person who are said to have filed the affidavits which became the basis for cancellation of the registration whereby it is stated that no such evidence were filed by them on 15.12.2003 before the Deputy Registrar. Contrary to that they have stated that they have participated in the proceedings dated 5.6.1983 and the resolution dated 5.6.1983 on the basis of which the society came to be registered. One of the affidavit filed by Pokhpal son of Sri Karan Singh resident of Budhansi who was life member of the Society had died on 31.10.1984 as such any affidavit filed on his behalf on 15.12.2003 was fictitious. It is also contended that the Deputy Registrar had also on perusal

of the record found that the affidavit filed on behalf of Pokhpal Singh was forged.

7. On the other hand respondent no. 4 stated that the present review was not competent as such the writ petition is required to be dismissed. They did not however contest the plea raised by the petitioner that the affidavits filed by the person which became the basis for cancellation of the registration of the society were fictitious.

8. While rejecting the application of the petitioners, Deputy Registrar recorded a finding that the evidence relied upon by his predecessor while passing the impugned order dated 19.1.2004 are patently doubtful whose veracity cannot be authenticated. However, he refused to exercise the jurisdiction to review the impugned order on the ground that that the matter has been up-held by the Division Bench of this Court as there is no power of review under the statute. Appeal against this order also stands dismissed. It is under these circumstances the present writ petition has been filed.

9. Heard learned counsel for the parties and perused the material on record.

10. Question that call for consideration is as to whether the statutory authority could have exercised the power of review after certain facts relating to filing of the affidavits leading to the cancellation of the registration of the society have been filed by the petitioners indicating that the reliance placed on their affidavits was based upon forged documents.

11. It is trite in law that all orders passed by the Courts/authorities merges in the judgement of the final authority which in the present case is the Division Bench of this Court. After such judgement, it is not open to any party to the judgement to approach any court or authority to review/recall. The doctrine of merger clearly applies to such a situation. However, this principle is subject to the exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. Hon''ble Apex Court in one of the judgement reported in 2007 (3) AWC 2538 (SC) A.V. Papayya Sastry and others Vs Govt of A.P. And others has defined the expression ''fraud''. It is held that fraud and justice never dwell together. Following expression have been used by the Apex Court:-

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).

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 utilized as an engine of oppression by dishonest and fraudulent litigants.

13. Consequence of obtaining an order by fraud and its effect on the judicial system has also been dealt with by the Hon''ble Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and the following observation has been made by the Court:-

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, who''s case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

(emphasis supplied)

14. The Court while concluding the matter held that the principle of finality of litigation cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.

15. While examining the import of the aforesaid judgement, it clearly emerges that even if an order had attain finality in law the court can review/recall the order if it is established that the earlier order was obtained by fraud. In the present case, contention of the petitioner is that his registration was cancelled on the basis of evidence filed by five persons who denied having participated in the meeting held on 5.6.1983, have said that no such affidavits were fled by them which lead to such cancellation. In order to appreciate this following facts have to be taken into consideration:

(a) That the society of the petitioners was registered as KUMVS on the basis of resolution passed by the members of the Society including the five persons who subsequently filed the affidavits that they had not participated in such proceedings;

(b) That the petitioners had not questioned this finding of fact passed by Assistant Registrar that five affidavits filed by the said person was forged before all the forums including this Court;

(c) That the finding recorded by the Assistant Registrar in its order dated 19.1.2004 stands confirmed by the Division Bench of this Court where a clear finding has been recorded that the finding of the fact recorded has not been questioned by the petitioners.

(d) That the evidence in the shape of affidavits of the persons who are said to have filed earlier affidavits were filed along with review petition which according to them clearly reflects that the order of cancellation was obtained by fraud.

16. In the light of these facts the question that arise for consideration was whether an order obtained by fraud can be reviewed or recalled by the said authority. The stand of the petitioners before the statutory authority was that the contents and the names of persons who had filed these affidavits were not known to them during the period earlier proceedings were going on and the same was disclosed only after the then Deputy Registrar R.K. Singh was transferred. It was on the revelation of the said fact that the petitioners came to know that the affidavits filed by all five persons which lead to the cancellation of the society were forged. The affidavits filed by four person have categorically denied of having filed any such affidavits before the Deputy Registrar on 15.12.2003. Evidence also mentions the fact that they had participated in the proceedings held in June 1983 as reflected from the order of the Deputy Registrar. Respondent no. 4 did not contest this aspect of the matter but sought the dismissal of the application on the ground that no review was permissible and also that this finding stands confirmed by the Division Bench of this Court.

17. It may also be noted that Deputy Registrar while dismissing the application for review has recorded finding that evidence filed by these persons are doubtful and suspicious in nature. It has also found that one of the person whose affidavits is said to have filed was not life member of the society and had died in the year 1984. He however, decline to interfere on the ground that there was no power for review under the statute.

18. These are the facts which have come to light after the conclusion of the proceedings in the matter. Grounds and reasons taken by the petitioners in the said review application could not have been brushed aside merely on the ground that the power to review is excluded under the statute after having recorded a finding that correctness of these affidavits filed before his predecessor was doubtful. It is also a fact that no finding has been recorded on the issue that the documents filed in the year 2003 are forged. Once the authors of these documents filed their affidavits before the reviewing authority minimum duty caste on the authority/respondent no. 3 was to examine the question of fraud and genuineness of the affidavits which were filed at the time the order of cancellation was passed and subsequent affidavit filed by the same person before the said authority. If on enquiry it was found that the subsequent affidavits filed by the said person were not correct then the application for review was required to be dismissed. However, if it is found on the said enquiry that the subsequent affidavits filed by the said person are correct then the very foundation of the order passed on 19.1.2004 was required to be reconsidered. I say so because the order which has been obtained by fraud is always deemed to be non est in the eyes of law as held by the Hon''ble Apex Court as stated herein supra.

19. Connected with this issue is the fact as to whether the statutory authority who is respondent no. 3 could review his order in absence of power to review

under the Statute even if he had found on subsequent enquiry that the affidavits filed were forged. Hon''ble Supreme Court had an occasion to consider the issue that if the statute does not provide any such power the same be exercised if it is found that the order impugned has been obtained by fraud. Hon''ble Supreme Court while dealing with the issue in the case of fraud has held that the Court will always have power to rectify its own mistake in order to ensure that the principle of finality of litigation should not be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants. Following observation has been made by the Hon''ble Apex Court in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, which is as under:-

Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

20. Aforesaid principle will clearly apply to the present case inasmuch as on discovery of the new facts amounting to fraud do require determination by the respondent no. 3 for which there is no constrain imposed by law even if no review was permissible under the Statute.

21. A co-ordinate Bench of this Court also had a occasion to consider this issued in Oriental Insurance Co. Ltd Vs. Motor Accident Claims Tribunal and others reported in 2009 a AWC 358, in which it has been held while relying upon the judgement of the Hon''ble Apex Court (supra) that even if there is no power to review or recall the Court/Tribunal is still not powerless to review/recall its order obtained by misrepresentation or fraud. It is trite in law that this Court while exercising its plenary power has inherent right to review any order. There is no constraint in exercising of such power. This may not be true while the Court is considering an issue under the Statute which excludes the power of review. Any Tribunal or any statutory authority cannot exercise such power unless and until statute so provides. However, exception to such principle is that if any order has been passed/obtained by fraud the authority/Tribunal shall always have such power to review/recall its mistake in this behalf. The principle on the basis of which such power has to be exercised is to ensure that a dishonest litigant is not allowed to use the courts for obtaining an oblique purpose. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court''s business.

22. Applying this principle in the present case, I hold that the order impugned is

required to be quashed with a direction to the respondent no. 3 to re-consider the application of the petitioners for review/recall of the order dated 19.1.2004. However, before considering the matter, respondent no. 3 shall first ascertain the correctness of the affidavits filed by five persons who have denied that any such evidence was filed by them on the basis of which the impugned order has been passed.

23. In the result, the writ petition is allowed. The order dated 19.1.2004 is hereby set aside. Authorities are directed to decide the application within a period of three months from the date of production of certified copy of this order. There shall be no order as to costs.