

(2012) 07 AHC CK 0229

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3898 of 2012

Jagat Narain Singh

APPELLANT

Vs

District Magistrate Lucknow and Others

RESPONDENT

Date of Decision : 31-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 137, 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 29(C)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122C,
122C(4), 122C(6), 122C(6)

Citation : (2012) 8 ADJ 80 : (2013) 3 ALJ 477

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Mohd. Arif Khan, Mohiuddin and Mohd. Aslam Khan, for the Appellant; Rajendra Kumar, S.S. Chauhan, Anoop Kumar Asthana, Gaurav Mehrotra and S.K. Bajpai, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Anil Kumar, J.—Heard Sri Mohd. Arif Khan learned Senior Advocate assisted by Sri Mohd. Aslam Khan Advocate and Sri Mohiuddin Advocate for the petitioner, Sri Rajendra Kumar learned State Counsel, Sri S.S. Chauhan, learned counsel for Lucknow Development Authority and Sri S.K. Bajpai who has filed Caveat on behalf of the M/s. MAK Sales Private Limited and perused the record. Facts, as submitted by Sri Mohd Arif Khan learned senior counsel for the petitioner are that on 21.7.1971 petitioner has been allotted a land measuring two biswa at plot No. 202 for construction of house by way of lease/patta situated in village Vijaipur H/o Risaha, Pargana, Tehsil and District Lucknow by the Land management Committee of Gram Sabha Vijaipur. Thereafter, he constructed his residential house on the land in question and at that point of time U.P Urban Planning & Development Act 1973 was not into force.

2. It is further submitted on behalf of the petitioner that after a lapse of twenty

years, Tehsildar, Nagar Mahapalika, Lucknow issued a notice to the petitioner calling upon him to show-cause as to how he has raised illegal construction on the land in question. In response to the same, he submitted his reply. Being satisfied with the reply furnished by the petitioner, by order dated 10.9.1992 (Annexure 2) proceedings against him were dropped by the Tehsildar.

3. On 6.8.2004 as the boundary wall of the petitioner was demolished by the authority of the Lucknow Development Authority trying to dispossess him, so for redressal of his grievance, he filed a suit (Regular Suit 163 of 2006) for permanent injunction in the Court of Civil Judge (Senior Division) Lucknow in which an application under Order 39, Rules I and 2 read with Section 151 CPC for grant of ad interim injunction has been moved.

4. By order dated 21.5.2008, Civil Judge (S.D) granted temporary injunction in favour of the petitioner thereby maintaining status quo.

5. Thereafter, an application u/s 122C(6) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "Act") has been moved in the month of February, 2011 for cancellation of housing lease in respect to part of plot No. 202 of village Vijaipur, H/c Risaha, Pargana, Tehsil and District Lucknow, now within the municipal limits of Nagar Mahapalika.

6. On the basis of said proceedings respondent No. 2/ Additional District Magistrate (Administration) Lucknow, after hearing the parties and going through the material on record, passed an order dated 21.4.2012 (Annexure 8) inter alia holding therein that the land in question is recorded as Khalihan in the revenue record so, as per the provisions as provided u/s 132 of the Act, the same cannot be allotted by way of lease to the petitioner for residential purpose as such the proceedings u/s 122C(6) of the Act for cancellation the patta/lease of the land in question granted in favour of the petitioner are valid.

7. Aggrieved by the said order, present writ petition has been filed by the petitioner before this Court for redressal of his grievance under Article 226 of the Constitution of India.

8. Sri Mohd. Arif Khan, learned Senior Counsel for the petitioner while assailing the impugned order submits that the proceedings initiated on an application moved by opposite party No. 3 u/s 122C(6) of the Act after lapse of more than 40 years for cancellation of lease granted in favour of the petitioner, was barred by limitation, as such the impugned order is illegal and arbitrary in nature. The said arguments has been further developed by learned counsel for the petitioner that u/s 122C(6) of the Act although no limitation has been provided to initiate a proceedings for cancellation of patta but as per the provisions provided u/s 341 of the Act read with Article 137 of the Limitation Act, the limitation should be three years as admittedly in the present case proceedings had been started beyond the said period, so the order in question is void ab initio. In this regard, Sri Khan had placed reliance on the judgment given by the Board of Revenue in the case of Sukhi v. Vinod Kumar and others, 1991 RD 484; 1991(2) AWC 50.

9. Another argument has been raised by Sri Mohd Arif Khan that once lease has been granted in respect to the land in question i.e. plot No. 202 in which the petitioner has built up a house allotted by the Land Management Committee, thereafter receipts for premium has been issued by the Pradhan on 21.7.1971. In view of the said fact the action on the part of the respondent thereby initiating the proceeding on application moved on behalf of opposite party No. 3 u/s 122C(6) of the Act is wholly uncalled for, as the said authority has got no power to initiate the same in view of the provisions as provided under Rule 115 (P) of the U.P.Z.A. & L.R. Rules.

10. Sri Khan learned Senior counsel has also raised an argument on behalf of the petitioner that during the pendency of the suit in the Court of Civil Judge (S.D) filed by the petitioner, an injunction has been granted on 21.5.2008, so the action on the part of the respondent to proceed in the matter on application u/s 122C(6) of the Act, is an action which is wholly uncalled for rather the same has been initiated only in order to provide undue benefit to one M/S MAK Sales Private. Limited.

11. Sri Shailendra Singh Chauhan, learned counsel appearing on behalf of Lucknow Development Authority submits that while passing the impugned order dated 21.4.2012 (Annexure 8), respondent No. 2 has given clear and categorical findings that the land in question is recorded as "Khalihan" in the revenue record/ CH Form No. 45, thus the receipt of premium issued by Pradhan for construction of house on the land alleged to be allotted by the Land management Committee, is in contravention to the provisions as provided under 132 of U.P.Z.A.& L.R. Act, in this regard respondent No. 2 has given categorical findings in the order dated 21.4.2012 that the said document (premium receipt) is "Kootrachit" (concocted) obtained by way of fraud thus the proceedings u/s 122C of the Act has rightly been initiated against him, Lucknow Development Authority has got locus on the land in question, as such the order dated 21.4.2012 is perfectly valid, needs no interference.

12. Sri Chauhan, learned counsel appearing for Lucknow Development Authority further submits that the land in question vested with Gaon Sabha subsequently vested with Nagar Mahapalika Lucknow in the year 1987 and now the same is vested with Lucknow Development Authority. Accordingly, it is submitted by Sri Chauhan, learned counsel for the Lucknow Development Authority that the possession of the petitioner on the land in question is illegal one so the proceedings initiated on an application u/s 122C (6) of the Act is valid.

13. Sri Chauhan learned counsel for Lucknow Development Authority also submits that in identical circumstances in respect to part of same land at Khasra No. 202 of village Vijaipur Hamlet of Risaha, Pargana, Tehsil and District Lucknow having area 1 bishwa 15 biswansi, allotted to one Jagat Bahadur Singh, who is brother of the present petitioner and receipt has been issued by the Pradhan of the Village (Annexure 1 to the present writ petition) against him on an application moved u/s 122C(6) of the Act, the proceedings were initiated,

thereafter on 21.4.2012 an order was passed by Additional District Magistrate (Administration) Lucknow.

14. Aggrieved by the said order for redressal of his grievance, he approached this Court by filing Writ Petition No. 3246 (MS) 2012 (Jagat Bahadur Singh and another v. District Magistrate, Lucknow and others), dismissed by order dated 31.5.2012. So on the basis of the same, present petitioner is also not entitled for any relief and the present case, liable to be dismissed.

15. Learned State Counsel as well as Sri S.K. Bajpai who has filed caveat on behalf of MAK Sales has adopted the arguments advanced by Sri Shailendra Singh Chauhan, learned counsel for Lucknow Development Authority.

16. I have heard the learned counsel for the parties and gone through the record.

17. Section 122C of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "Act") was originally inserted by U.P. Act 21 of 1971. By the Amending U.P. Act 35 of 1976, the Explanation II to sub-section (3) was substituted and sub-section (9) was added to-wards the end.

18. By U.P. Act 24 of 1986, sub-section (8) was omitted, and in sub-section (7), the word and figures "333-A" were inserted. Section 112C(8) was omitted in 1986 because of the addition of Section 122D.

19. By U.P. Act 27 of 2004, Section 122C was further amended as follows:

(i) In sub-section (1), for the words "the Scheduled Tribes", the words the Scheduled Tribes and the Other Backward Classes and the persons of general category living below poverty line" were substituted.

(ii) In sub-section (3), for the words "the Scheduled Tribe", the words "Scheduled Tribe or Other Backward Classes or a person of general category living below poverty line" were substituted.

(iii) In sub-section (3), after existing clause (iii), clause (iv) was newly inserted.

(iv) In sub-section (3), the Explanation III was re-numbered as Explanation IV,

(v) In sub-section (3), a new Explanation V was also inserted.

20. Further, Section 122C of the Act which came into force on 24.5.1971, contained as many as nine sub-sections. Subsection (1) simply empowers the S.D.O. For earmark (to identify or reserve) certain specified categories of land for abadi sites for the following persons :

(i) Members of the Scheduled Castes;

(ii) Members of the Scheduled Tribes;

(iii) Members of Other Backward Classes;

(iv) Persons of general category living below the poverty line;

(v) Agricultural labourers; and

(vi) Village artisans.

21. Sub-section (2) empowers the Land management Committee to allot land to persons referred to in sub-section (3). The order of preference for the purposes of allotment is also specified in sub-section (3). sub-section (4) is most important because it confers overriding powers on the S.D.O. To allot housing sites even without reference to L.M.C. Sub-section (5) deals with the terms and conditions of the allotment whereas sub-section (6) confers powers on the Collector to cancel irregular allotments- Sub-section (7) is comparable to Section 198(4) and rule 115P of the rules. Sub-section (8) gives finality to the orders passed by the S.D.O. And the Collector. Lastly, sub-section (9) omits sub-rule 115-L.

22. Moreover, provisions as provided u/s 122C and Rules 115-L and 115-M, all the three provisions deals with allotment of land for non-agricultural purposes, but they differ from each other in several respects.

23. Allotment of land under Rule 115-L relates to the category of persons referred to in Section 112C(3), whereas allotments made under Rule 115M falls outside the said category. Section 112C as well as Rule 115-L both authorise allotment of land for residential purposes, but under Rule 115-M, allotment can be made for charitable purposes and for cottage industries as well. The order of preference for allotment u/s 122C and rule 115-L differ from what has been provided under Rule 115-M.

24. Further, Rule 115 P of the Rules simply provides a procedure to be adopted by the Collector or Additional Collector while dealing with the cases of 122C (6) of the Act. The power of cancellation of the Abadi Patta was given to him by Section 122C (6) of the Act which order is made final and was not kept even subject to revision vide sub-section (7) of Section 122C of the-Act.

25. Thus, a careful reading of Section 122C shows that under sub-clause (1) S.D.O. is given power to earmark the land for abadi sites. Under sub-clause (2) and management committee is given power to allot the land mentioned therein for building houses with the previous permission of the S.D.O. Land not covered Section 3 of the Act prescribed the order of preference to be observed in making the allotment. The procedure to be followed by L.M.C. in the allotment of land is provided under present Rule 115-M. Where L.M.C. Fail to discharge its duties or to perform its function on it is otherwise necessary or expedient, the S.D.O. is authorized under sunder sub-rule (4) to allot such and in accordance with the provisions of subsection (3). This order of S.D.O. Is made final under sub-section (7).

26. The collector is authorised under sub-section (6) to interference in the order of the S.D.O. As well as in the matter of allotment by L.M.C. And is authorised to cancel such allotment. Sub-section (7) clearly debarred the revision under

Sections 333 and 333A against the order passed under sub-section (4) or (6) of Section 122C of the Act.

27. Moreover, sub-section 3 of Section 112C of the Act deals with eligibility of persons entitled for allotment of land for building of houses as well as with the order of preference for such allotments. If a person does not fall within the categories specified in this sub-section, then he does not deserve any allotment of land u/s 122C and the Collector is competent to cancel any allotment if it has been granted in favour of ineligible person (See. *Padam Chand v. State of U.P.*, 2000 RJ 363).

29. In nut shell, the position of law arising out of Section 122C of the Act can be summarized as under :

Before the introduction of Section 112C of U.P.Z.A. & L.R. Act i.e. before 24.5.1971 there was no provision in the Act for the allotment of Patta for the purposes of Abadi, though such Pattas were granted under Rule 115L to 115M of the U.P. Z.A. & L.R. Rules and the power in its cancellation was given to Asstt. Collector incharge of sub-division under Rule 115M of U.P.Z.A. & L.R. Rules, as they existed at that time. When present Section 112C was introduced by U.P. Ordinance No. 8 of 1971, which came into force with effect from May 24, 1971, then as per Section 128 of the Act Government has been given power to make rules prescribing the procedure for allotment of the Land u/s 122C and the terms and condition be held. The same was confirmed by U.P. Land Laws (Amendment) Act 1971 (U.P. Act No. 21 of 1971).

29. Now reverting to the facts of the present case, from the documents on record, the position which emerge out is that the land in question is recorded as "Khalihan" at the relevant point of time in CH Form 45 of the revenue record thus, the owner of the said land is Gaon Sabha. In view of the above said fact as per the provisions provided under sub-section (vii) of Section 132 of the Act, the said land is "Khalihan" land, set a part for the public purpose under U.P. Consolidation of Holdings Act, 1953, so same cannot be allotted for any other purpose. Because Section 29(C) of the U.P. Consolidation and Holding Acts, 1953 also creates a legal bar to the effect that the land contributed for public purpose under this Act shall with effect from the date on which the tenure-holders became entitled to enter into possession of the chaks allotted to them under the provisions of this Acts amended from time to time, vest and be always deemed to have vested in the Gaon Sabha [in an area in which Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 applies and in the State Government in any other area] and shall be utilized for the purpose for which it was earmarked in the final Consolidation Scheme, or in case of failure of that purpose, for such other purposes as may be prescribed.

30. Thus, in view of the said fact the land in question cannot in any manner be allotted in favor of the petitioner by the Land Management Committee in the year 1971 for the purposes of construction of house which is contrary for the purpose

for which it reserved under the provisions of Consolidation Act i.e. "Khalihan" land.

31. Even otherwise, the stand taken by the petitioner in the present case that the land in question i.e. a part of land measuring two biswa at Khasra No. 202 for construction of house situate in village Vijaipur Hamlet of Risaha, Pargana, Tehsil and District Lucknow has been allotted by the Land management Committee and thereafter premium has been paid by him for which receipt has been issued by the Pradhan of the village filed alongwith supplementary affidavit (Annexure SA-1) for construction of house on the basis of which he has claimed his right over the land in question, is also incorrect stand taken on behalf of the petitioner because admittedly on 24.5.1971 Section 122C (6) of the Act has been inserted by U.P. Act No. 21 of 1971, thereafter, the Land management Committee has got no authority whatsoever to allot the land in question to the petitioner.

32. In this regard, respondent No. 2 while passing the impugned order has given categorical findings to the effect that Section 122C(6) of the Act has come into force on 24.4.1951. Thereafter, any allotment shall be made only by the Pargana Adhikari/Assistant Collector and in the present case the alleged allotment in favour of the petitioner on the basis of resolution of Land Management Committee is after 24.5.1971, as such the same is void and without jurisdiction on the part of Land Management Committee is in contravention of provisions as provided u/s 132 of the Act being "Khalihan" i.e. public utility land, thus the said findings given by opposite party No. 2 is neither illegal nor contrary to the facts on record, perverse in nature, accordingly, needs no interference by the Court while exercising the power of judicial review under Article 226 of the Constitution of India.

33. Moreover, in the present case petitioner's real brother Sri Jagat Bahadur Singh had come with the case that a part of same land of Khasra No. 202 of village Vijaipur Hamlet of Risaha, Pargana, Tehsil and District Lucknow having area 1 bishwa 15 biswansi has been allotted by the Land management Committee in his favour, a receipt has been issued by the Pradhan of the Village dated 29.10.1971 (Annexure 1 to the present writ petition), against him a proceeding u/s 122C(6) of the Act has been initiated on an application moved by Lucknow Development Authority and the matter has come up for consideration before the Additional District Magistrate (Administration) Lucknow. The said authority on 21.4.2012 passed the order holding that the land in question cannot be allotted in favour of Sri Jagat Bahadur Singh in view of Section 132 of the Act, and up held the proceedings initiated u/s 122C (6) of the Act.

34. Aggrieved by the said order, he approached this Court for redressal of his grievance by filing Writ Petition No. 3246 (MS) 2012 (Jagat Bahadur Singh and another v. District Magistrate, Lucknow and others), dismissed by order dated 31.5.2012, which on reproduction reads as under :

Heard Sri Anurag Srivastava, learned counsel for petitioners, learned Standing Counsel for opposite party Nos. 1 and 2 and Sri Rajesh Singh Chauhan for opposite party No. 3.

With the consent of learned counsel for parties, the writ petition is being decided finally at the admission stage itself.

Under challenge in the instant writ petition is an order passed by Additional Collector (Administration) dated 21.4.2012 whereby the application u/s 122C (6) of U.P. Zamindari Abolition & Land Reforms Act (hereinafter referred to as the "Act") seeking cancellation of patta allegedly executed in favour of the petitioners in respect of land for housing site has been allowed and alleged patta has been held to be illegal.

Learned counsel for the petitioners submitted that the finding recorded by the Additional Collector (Administration) in the impugned order to the effect that Section 122C (4) of the Act was inserted in the Principal Act on 24.5.1971 by the State Legislature, is wrong for the reason that the said provision was inserted in the Principal Act by means of U.P. Land Laws (Amendment) Act 1971 (U.P Act No. 21 of 1971) which came into force w.e.f. 22.8.1971. He has drawn attention of this Court to Annexure 8 of the writ petition, which is copy of the U.P. Land Laws (Amendment) Act, (U.P. Act No. 21 of 1971), whereby provisions of subsection 4 of Section 122C were inserted.

Learned counsel for the petitioners, on the basis of aforesaid assertions, tried to impress upon the Court that at the time when the patta in favour of the petitioners was granted by the Bhumi Prabandhak Samiti on 21.7.1971, the provisions of Section 122C(4) were not in operation and hence, there was no requirement of approval of such a patta pertaining to housing site by the Assistant Collector in-charge of Sub-Division. He further submitted that there is no illegality in grant of patta in favour of the petitioners, thus, order passed by the Additional Collector is not sustainable.

Refuting the contention of learned counsel for petitioners, Sri Rajesh Singh Chauhan, learned counsel appearing for Lucknow Development Authority submits that prior to passing of the U.P. Act No. 21 of 1971 by the State Legislature, provisions of sub-section 4 of Section 122(C) of the Act were introduced and inserted in the Principal Act by way of issuance of an ordinance, namely, Uttar Pradesh Zamindari Abolition & Land Reforms (Amendment) Ordinance 1971 (U.P.

Ordinance No. 8 of 1971) which was promulgated on 24.5.1971. He has produced a copy of aforesaid ordinance No. 8 of 1971 which clearly reveals that the same was promulgated on 24.5.1971. Sri Chauhan submitted that in view of promulgation of U.P. Ordinance No. 8 of 1971, the provisions of sub-section 4 of the Act were inserted in the Principal Act on 24.5.1971 and not on 22.8.1971, as contended by learned counsel for the petitioners.

Reliance being placed by learned counsel for the petitioners on U.P. Act No. 21 of

1971 having been enacted by State Legislature on 22.8.1971 is of no avail to the petitioners for the reason that before the said enactment, provisions of Section 122C (4) of the Act were inserted in the Principal Act by the ordinance, namely, U.P. Ordinance No. 8 of 1971 w.e.f. 24.5.1971. Thus, on promulgation of the aforesaid Ordinance No". 8 of 1971 provisions of Section 122C (4) were introduced and inserted on 24.5.1971. Admittedly, no approval as envisaged u/s 122C of the Assistant Collector-Incharge of the Sub-Division was obtained on the resolution for grant of patta in favour of the petitioners regarding housing site and hence, for non-compliance of provision of Section 122C(4) of the Act, the patta in question cannot be said to be lawful. The said patta does not confer any right on the petitioners.

In view of above discussions, the Court does not find any illegality in the impugned order dated 21.4.2012 passed by Additional Collector (Administration), Lucknow. The writ petition is, therefore, highly misconceived and is hereby dismissed. There will be no order as to cost.

35. Needless to mention herein that the document i.e. the receipt issued by Pradhan on the basis of which it has been claimed that the Land Management Committee has granted the lease in favour of the present petitioner as well as Jagat Bahadur Singh, are identical in nature, thus there is neither any reason nor any ground, not to agree with the judgment passed by this Court in Writ Petition No. 3246 (MS) 2012 (Jagat Bahadur Singh and another v. District Magistrate, Lucknow and others).

36. So far as the arguments advanced by Mohd. Arif Khan, learned counsel for the petitioner that although there is no limitation provided u/s 122C (6) of the Act, so keeping in view the said fact read with the provisions as provided u/s 341 of the Act and Article 137 of the Limitation Act, the limitation for initiating the proceedings for canceling the lease will be three years is also incorrect arguments as in the present case, once it has been held by the respondent No. 2 on the basis of documents on record that premium receipt is the basis on which the petitioner claims his title, is a forged document rather fraudulent act on the part of the petitioner, as the land in question is recorded as "Khalihan" in revenue record, cannot be allotted to any person for "Abadi" purpose as per the provisions as provided under sub-section (vii) of Section 132 read with Section 29(c) of the U.P. Consolidation of Holdings Act, 1953. Thus, in view of the said facts 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 because fraud and justice never dwell together. (Frans at Jus Nunquam Cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Petitioner cannot derive any benefit from the argument in question because once there is a fraud then there is no bar of limitation in initiating the proceeding to correct the document obtained by fraud.

37. In Smith v. East Elloe, Rural Distt. Council, (1956) L All ER 855 the House of Lord held that the effect of fraud would normally be to vitiate any act or order.

38. In another case, *Lazarus Estates Ltd. v. Beasley*, (1956) I ALL ER 341, Denning L.J. Said:

No judgment of a Court, no order of a Minister, cant be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

39. In the case of *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, , Hon''ble Supreme Court after taking into consideration above two judicial pronouncement had held as under :

The judiciary in India also possesses inherent power, specially u/s 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. 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 behavior. This power is necessary for the orderly administration of the Court's business.

Since fraud affects the solemnity, regularity and orderliness of the proceeding of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court.

40. In the case of *A.R. Antulay Vs. R.S. Nayak and Another, and Budhia Swain and Others Vs. Gopinath Deb and Others*, , Hon''ble Supreme Court has further held under following conditions matter/ judgment can be reopened :

(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented.

(ii) a judgment was obtained by fraud,

(iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision *ex debito justitiae* on proof of the fact that there was no service.

41. In the case of *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , Hon''ble Supreme Court has held :

Fraud avoids all judicial acts, ecclesiastical or-temporal- observed. Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non-exist in the eyes of law. Such a judgment decree- by the first Court or by the highest Court- has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

42. In the case of United India Insurance Company Limited v. Rejendra Singh and others, 2000 (18) LCD 586 SC, the Hon"ble Supreme Court further held that :

It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation of file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

The allegation made by the appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further prove into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards, Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice.

43. Accordingly the arguments advanced by the learned counsel for the petitioner in this regard are wholly incorrect and the petitioner cannot derive any benefit in his favour on the basis of the law laid down in the case of Sukhai (Supra) by the Board of Revenue. For the foregoing reasons, the writ petition lacks merit and is dismissed.