
(2022) 02 TEL CK 0003
In the Telangana High Court
Case No : Writ Appeal No. 651 Of 2021

Komatireddy Janakiram Reddy	Vs	APPELLANT
State Of Telangana		RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 136, 141, 226
Telangana Rights in Land and Pattadar Pass Books Act, 1977 — Section 5(5), 9
Hindu Succession Act, 1956 — Section 8
Land Acquisition Act, 1894 — Section 18, 30

Citation : (2022) 02 TEL CK 0003

Hon'ble Judges : Satish Chandra Sharma, CJ;N.Tukaramji, J

Bench : Division Bench

Advocate : V M Krishna Reddy

Final Decision : Dismissed

Judgement

1. The present writ appeal is arising out of an order dated 08.11.2021, passed in W.P.No.19769 of 2021 by the learned Single Judge dismissing the writ petition filed by the appellant/petitioner.
2. The facts of the case reveal that the appellant/petitioner has filed the writ petition being aggrieved by an order passed by the Special Tribunal, Nalgonda in New Case No.F2/Spl.Tribunal/0264/2021 (Old Case No.F2/4244/2019), dated 10.07.2021 by which the order passed by the Special Tribunal in Old Case No.F2/4244/2019, dated 09.02.2021 was confirmed. The Special Tribunal by order dated 09.02.2021 has reversed the order passed by the Revenue Divisional Officer dated Nil.05.2019.
3. The facts further reveal that the appellant/petitioner came up before this Court stating that his father K. Sathi Reddy expired in the year 1970 and

the appellant/petitioner, and his brother late K.Neela Reddy, who is the father of respondents 7, 9 and 10, have succeeded to the ancestral land to an extent of Acs.56.00 guntas spread over in survey Nos.143, 144, 148, 149, 150, 151, 152, 153, 154, 155, 172, 175, 176, 187, 189, 190, 191, 192, 193, 201, 460 and 417 of Nomula Village, Nakrekal Mandal, Nalgonda District. The appellant/ petitioner further stated that the properties were partitioned between the appellant/petitioner and his brother late K.Neela Reddy and their names were mutated in the revenue records by the Tahsildar, Nakrekal Mandal, Nalgonda District. It has been further stated that the mother of the appellant/petitioner expired in the year 1977. The facts further reveal that the sixth respondent before this Court, Smt. Kandala Saraswathi, who is the real sister of the appellant/petitioner and late K.Neela Reddy filed an Appeal under Section 5(5) of the Telangana Rights in Land and Pattadar Pass Books Act, 1977 (for short, 'Pattadar Pass Books Act') asserting her right on the basis of pouthi issued by the Tahsildar in the year 1970-71 and claimed a share in the property and also sought cancellation of patta granted in favour of the appellant/petitioner. The appellant/petitioner defended the appeal and resisted the claim of the sister. The Appeal preferred before the Revenue Divisional Officer was dismissed on 09.08.2019 and the sixth respondent, Smt.Kandala Saraswathi preferred a Revision under Section 9 of the Pattadar Pass Books Act in old case No.F2/4244/2019 before the Additional Collector, Nalgonda and in the light of the G.O.Ms.No.4, Revenue (Assignment-I) Department, dated 12.01.2021, the case was transferred to the Special Tribunal and was re-numbered as New case No.F2/Spl. Tribunal/0264/2021. The Special Tribunal, after going through the material on record, allowed the Revision by order dated 09.02.2021 setting aside the order of the Revenue Divisional Officer, Nalgonda, dated nil.05.2019 with a direction to the Tahsildar to restore the patta in the name of the original pattadar Komatireddy Sathi Reddy by deleting the subsequent entries. The appellant/petitioner preferred a Review before the Special Tribunal and the Special Tribunal has dismissed the Review Petition by order dated 10.07.2021.

4. The appellant/petitioner came up before this Court stating that the Appeal preferred by his sister before the Revenue Divisional Officer, Nalgonda was rightly dismissed by passing a well reasoned judgment and therefore, the Special Tribunal has erred in law and on facts in setting aside the order

passed by the appellate authority. It was also contended that the Special Tribunal has passed an order contrary to the settled proposition of law by

accepting the claim of his sister as the properties were partitioned way back in the year 1977, the names of the co-parceners were mutated and

therefore, the settled position has been unsettled by cryptic and non-speaking order, which amounts to colourable exercise of power and therefore, the

order passed by the Special Tribunal is bad in law.

5. Another ground was raised by the appellant/ petitioner stating that the Special Tribunal has conveniently ignored the partition. The marriage of his

sister was performed in the year 1985 and the amendment to the Hindu Succession Act came into force in the year 1986 and the daughters are

entitled for share only with prospective effect and not from retrospective effect, and therefore the Special Tribunal has erred in law in passing the

order, ignoring the factum of partition.

6. The appellant/petitioner has placed reliance upon the order passed by the Honâ??ble Supreme Court in C.A.Diary No.32061 of 2018 and took a

ground that there was a partition between the parties and by no stretch of imagination, the factum of partition could have been ignored by the Special

Tribunal as has been done in the present case and the sister was not at all entitled for a share. The appellant/petitioner took another ground that the

appellant/petitioner and the legal representatives of his real brother, namely late K.Neela Reddy are having a litigation in O.S.Nos.151 of 2014, 89 of

2017 and 15 of 2018 and the factum of partition is in existence and the lands, which were the subject matter before the Special Tribunal, are also the

subject matter of all the civil suits and therefore, no order could have been passed by the Special Tribunal. The appellant/petitioner also took a ground

that out of the land admeasuring Acs.56.00 guntas, which was partitioned between the appellant/petitioner and his brother, late K.Neela Reddy, is not

available as most of the land has been alienated and therefore, as third party rights have been involved, the Special Tribunal in the absence of such

third parties/successors in title could not have decided the matter and in fact, the order passed by the Special Tribunal is not at all executable. The

appellant/petitioner also took a ground that his sister Smt. Kandala Saraswathi filed an Appeal against the order of the Tahsildar and the same was

rightly dismissed keeping in view the delay and laches and the settled position is

being unsettled after lapse of about 40 years. A prayer was made for quashment of the order passed by the Special Tribunal and the learned Single Judge has dismissed the writ petition.

7. This Court has heard the learned counsel for the parties and perused the record. The writ appeal is being disposed of at the motion hearing stage itself with the consent of the parties.

8. The undisputed facts of the case reveal that late K.Sathi Reddy was the owner of land to an extent of Acs.56.00 guntas spread over in survey

Nos.143, 144, 148, 149, 150, 151, 152, 153, 154, 155, 172, 175, 176, 187, 189, 190, 191, 192, 193, 201, 460 and 417 of Nomula Village, Nakrekal

Mandal, Nalgonda District. Late K.Sathi Reddy expired in the year 1970 leaving behind his wife, the appellant/petitioner, late K.Neela Reddy and the

respondent No.6, who is the daughter, as his legal heirs. The undisputed facts also reveal that succession was granted in favour of the wife and

children of late K.Sathi Reddy in the year 1970-71. The documents on record filed by the appellant/petitioner reveal that the appellant/ petitioner has

filed a copy of Faisal Patti granted in the year 1970-71, which categorically reflects that the succession was granted in favour of widow of late

K.Sathi Reddy, two sons, namely K.Janakiram Reddy (appellant/ petitioner) and late K.Neela Reddy and the daughter, Smt. Kandala Saraswathi. In

spite of the fact that the succession was granted in favour of all the legal legal heirs, the appellant/petitioner and late K.Neela Reddy, who are the two

brothers, partitioned the subject land between themselves and got mutation done in the revenue records, without giving any share to the daughter or

putting her to notice contrary to pouthi already granted in the year 1970-71. The undisputed facts reveal that the daughter was not heard in the matter

at all by the Tahsildar while mutating the names of the appellant/petitioner and his brother in the revenue records.

9. Much has been argued before this Court stating that the mutation done based upon the partition between the brothers could not have been disturbed

after long settled position which is in subsistence for the last 40 years. The facts of the present case reveal that a fraud was played upon the sister by

her real brothers and in spite of the fact that the succession was granted in favour of all the legal heirs of late K.Sathi Reddy in the year 1970-71, a

faisal patti was granted in the year 1970-71, the daughter was granted a share

in the property, behind her back both the brothers, i.e., the appellant/petitioner and late K. Neela Reddy got the property partitioned between themselves and certainly has played a fraud upon their sister.

Therefore, the learned Single Judge has rightly held that fraud vitiates everything and the subsequent entries based upon the partition, which was held

behind the back of their sister, will not deprive the original owner of her legitimate right to claim share in the property. The learned Single Judge has

dismissed the writ petition and relevant portion of the order reads as under:-

“The main contention of the learned counsel for the petitioner is that the Special Tribunal has gone to the extent of dividing the property as per the

Hindu Succession Act, which it had no authority to do so, as it is the exclusive domain of the civil court to go into all those disputed questions of fact

and render a judgment based on the evidence let in by the parties. But the Special Tribunal without taking into account that there was a partition

between the brothers and that the mutation was done in their favour way back in the year 1970-71 and that the entries are in existence for the last

forty years, has erroneously allowed the revision filed by the respondent No. 6. The said contention of the learned counsel for the petitioner merits no

consideration. Because a perusal of the impugned orders passed by the learned Tribunal shows that the learned Tribunal, taking into consideration the

Faisal Patti of 1970-71, has allowed the revision setting aside the orders of the Revenue Divisional Officer and has directed the Tahsildar to restore

the entries as they stood prior to the death of late Sathi Reddy with a further direction to take up succession proceedings.

Admittedly, in the present case, succession in favour of legal heirs of late Sathi Reddy was granted in the year 1970-71 and the same was recorded in

the Faisal Patti. The writ petitioner himself has filed a copy of the said proceedings. When such is the case, it is not understandable as to how two

sons of late Sathi Reddy can deny the share of his daughter, the respondent No. 6. Furthermore, there is nothing on record to show that the

respondent No. 6 was put on notice before the mutation was effected in favour of petitioner and his late brother. It is also not the case of the

petitioner that the respondent No. 6 was given any other property in lieu of her share in the subject land in the settlement, if any, or she has executed

any deed of relinquishment in their favour. Admittedly, late Sathi Reddy had died

in the year 1970 intestate and the learned Special Tribunal, duly taking into account the provisions of the Hindu Succession Act, more particularly, Section 8 of the Hindu Succession Act, has merely directed the Tahsildar to restore the name of late Sathi Reddy and take up succession proceedings, but has not decided the shares of the parties, as contended by the learned counsel for the petitioner.

In *Chinnam Pandurangam vs. Mandal Revenue Officer* 2007 (6) ALD 348 (FB), a Full Bench of this Court, at paras 7 and 10, has held as under:

7. The above analysis of the relevant statutory provisions shows that proviso to Section 5 (1) and Section 5(3) represent statutory embodiment of the most important facet of the rules of natural justice i.e. audi alterem partem. These provisions contemplate issue of notice to the persons likely to be affected by the action/decision of the Mandal Revenue Officer to carry out or not to carry out amendment in the Record of Rights. Section 5 (3) provides for issue of written notice to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment. A copy of the amendment and the notice is also required to be published in the prescribed manner. If the Legislature thought that publication of a general notice in Form-VIII will be sufficient compliance of the rules of natural justice, then there was no occasion to incorporate a specific requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to other person whom the recording authority has reason to believe to be interested in or affected by the amendment.

10. The issue deserves to be considered from another angle. He can do so only if a notice regarding the proposed amendment is given to him by the recording authority. It need no emphasis that the rules of natural justice are applicable in all judicial and quasi-judicial proceedings. The rule of hearing is also applicable in purely administrative proceedings and actions where any public authority passes an order affecting the rights of any individual. The applicability of the rules of natural justice to purely administrative actions has been recognized by the Supreme Court in *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269 and has been reiterated in various

judgments including those of A.K. Kraipak v. Union of India, AIR 1970 SC 150, Maneka Gandhi v. Union of India, AIR 1978 SC 597, S.L.

Kapoor v. Jagmohan, AIR 1981 SC 136, Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818, and Olga Tellis v. Bombay Municipal

Corporation, AIR 1986 SC 180.â??

Therefore, in view of the above settled legal position, once it is admitted that succession has been granted in favour of the children of late Sathi Reddy,

including the respondent No. 6, the revenue authorities ought to have put her on notice before mutating the subject land in favour of the petitioner and

his late brother, Neela Reddy. As seen from the record, the two sons of late Sathi Reddy have not disclosed to the revenue authorities about the fact

that late Sathi Reddy had a daughter and that she is also entitled to a share in the property. The said suppression amounts to fraud. It is well settled

principle of law that fraud vitiates all solemn acts and any advantage that the party may claim on the basis of fraud has to be set aside.

In S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1, the Honâ??ble Supreme Court has held that a judgment or decree which is obtained by

fraud is to be treated as a nullity and can be questioned even in collateral proceedings. Non-disclosure of relevant material documents with a view to

obtain advantage amounts to fraud. At paragraph Nos.5 and 6, the Honâ??ble Supreme Court has further held as under:

â??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.

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. â?|â?|â?|â?|.. A litigant, who approaches the court, is bound

to produce all the documents executed by him which are relevant to the

litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.â??

In *Madhukar Sadbha Shivarkar v. State of Maharashtra* (2015) 6 SCC 557, the Honâ??ble Supreme Court has held that fraud vitiates the entire proceedings and can be challenged at any time.

Lastly, merely because the mutation entries are in existence for the last forty years, the petitioners cannot contend that the respondent No. 6 should be relegated to the civil court to pursue her remedies. In *State of U.P. vs. Amar Singh* AIR 1997 SC 1534, the Honâ??ble Supreme Court has held as under:

â??It is settled law that mutation entries are only for the purpose of enabling the State to collect the land revenue from the person in possession but it does not confer any title to the land. The title would be derived from an instrument executed by the owner in favour of an alienee as per Stamp Act and registered under Registration Act. The alienees being sons and daughters-in-law, the tenure-holder remained to be the owner and holder of the land.â??

Likewise, in *Balwant Singh vs. Daulat Singh (dead)* by L.Rs. AIR 1997 SC 2719, the Honâ??ble Supreme Court has reiterated a similar proposition, as under:

â??We have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue.â??

For the forgoing reasons, the writ petition fails and the same is accordingly dismissed confirming the orders of the respondent No. 2 in New Case No.

F2/Spl.Tribunal/0264/2021 (Old Case No. F2/4244/ 2019), dated 10.07.2021 confirming the orders passed by it on 09.02.2021.â??

10. The undisputed facts of the case reveal that after the death of late K.Sathi Reddy, succession was granted in favour of the legal heirs of late K.Sathi Reddy, which included the daughter, namely Smt. Kandala Saraswathi and the same was recorded in faisal patti. It was the appellant/petitioner and his real brother, namely late K.Neela Reddy, who played fraud in the matter ignoring the succession and partitioned the

properties. Their names were mutated in the revenue records and they are now raising hue and cry in the matter. The order of the Special Tribunal on the issue of Hindu Succession Act is also very clear and the same reflects that the Special Tribunal has not decided the share of the parties and the Special Tribunal has simply directed the restoration of the names of the persons, in whose favour succession was granted in the year 1970-71 and the same was recorded in faisal patti.

11. In the present case, a fraud has taken place as the appellant/petitioner and his brother in spite of the fact that a succession was granted in favour of their sister/respondent No.6, Smt. Kandala Saraswathi in the year 1970-71 and the same was recorded in faisal patti, got a partition done behind the back of their sister and therefore, as fraud vitiates everything, the Special Tribunal was justified in passing the order. (See *The State of Bihar v. Kripalu Shankar* AIR 1987 SC 1554, *S.P.Chengalvaraya Naidu v. Jagannath* AIR 1994 SC 853 and *Indian Bank v. Satyam Fibres (India) Private Limited* (1996) 5 SCC 550). It is a settled proposition of law that fraud vitiates every solemn proceedings and no right can be claimed by a fraudster on the ground of technicalities. (See *Badami v. Bhali* (2012) 11 SCC 574, *Venture Global Engineering LLC v. Tech Mahindra Limited* (2018) 1 SCC 656 and *Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh* (2019) 14 SCC 449.)

12. This Court has not reproduced the law laid down in the aforesaid cases, however, is reproducing certain paragraphs only in respect of the last judgment on the subject delivered in the case of *Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh* (supra). Paragraphs 65 to 81 of the aforesaid judgment read as under:-

65. The question in the instant case is as to whether an incumbent can be permitted to play blatant fraud time and again and court has to be silent spectator under the guise of label of the various legal proceedings at different stages by taking different untenable stands whether compensation can be claimed several times as done in the instant case and its effect. Before the land acquisition had been commenced in 1987, the land more than 1000 bighas had been declared a surplus in ceiling case and compensation collected, which indeed (quaere included) disputed land at Jhakari, it would be a perpetuating fraud in case such a person is permitted to claim compensation for

same very land. Fraud vitiates the solemn proceedings; such plea can be set up even in collateral proceedings. The label on the petition is not much material and this Court has already permitted the plea of fraud to be raised. Moreover, the appeal arising out of 72 awards is still pending in the High Court in which Reference Court has declined compensation on the aforesaid ground.

66. Reliance has also been placed on the observations made in *Meher Rusi Dalal v. Union of India* [(2004) 7 SCC 362], in which this Court has dealt with the issue of apportionment of compensation for which claim was raised by the Union of India, not in the capacity of the owner but as a protected tenant. The claim of tenancy was not put forth before the LAO, though represented in the acquisition proceedings. This Court observed that in such a case it could reasonably be inferred that no right was being claimed and it ought to have been made before the LAO if it had any such claim in respect of pre-existing right. The LAO was not under a duty to make an enquiry. The claim of tenancy at the belated stage was an afterthought to frustrate the payment. The decision has no application to the instant case as the LAO in the awards passed, noted the factum of ceiling proceedings as such the effects of the same can always be considered.

67. In *Ahad Bros. v. State of M.P.* [(2005) 1 SCC 545], this Court observed that question of the title of the State over the acquired land, cannot be decided under Section 18 of the Land Acquisition Act, 1894. This Court considered that when an award has been passed and the appellant was recorded as owner in the revenue papers, he was entitled to receive compensation. There is no dispute in the aforesaid proposition, however, in the instant case facts are different and a person cannot be permitted to receive the compensation of vested land in the State under the Abolition Act and when the land had been declared surplus and compensation paid on wrong entry continued. The same wrong entry could not have been permitted to be utilised for award of compensation to a person under the LA Act. In the instant case, there had been earlier proceedings which make it clear that Rajinder Singh was not entitled to claim compensation under the LA Act. It is apparent that there was no subsisting right, title or interest left with Rajinder Singh or his LRs, thus, they could not be permitted to obtain the compensation.

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."

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.â??

71. In *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: (SCC

pp. 327-29, paras 15-18, 23 & 25)

â??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*.â??

(emphasis supplied)

72. In *Madhukar Sadbha Shivarkar v. State of Maharashtra* [(2015) 6 SCC 557 :

(2015) 3 SCC (Civ) 368 : (2015) 3 SCC (Cri) 239] , 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: (SCC pp. 569-70, para 27)

“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 [2006 SCC OnLine Bom 1268 : (2007) 2 AIR Bom R 361] of the Division Bench of the High Court.â??

(emphasis supplied)

73. In Jai Narain Parasrampur 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:

â??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

[(2004) 6 SCC 325 : 2005 SCC (L&S) 785] ; (3) State of A.P. v. T. Suryachandra Rao [(2005) 6 SCC 149] ; (4) Ishwar Dutt v. LAO [(2005) 7 SCC

190] ; (5) Lillykutty v. Scrutiny Committee, SC & ST [(2005) 8 SCC 283] ; (6) Maharashtra SEB v. Suresh Raghunath Bhokare [(2005) 10 SCC 465 :

2005 SCC (L&S) 765] ; (7) Satya v. Teja Singh [(1975) 1 SCC 120 : 1975 SCC (Cri) 50] ; (8) Mahboob Sahab v. Syed Ismail [(1995) 3 SCC 693] ;

and (9) Asharfi Lal v. Koili [(1995) 4 SCC 163] .]â??

(emphasis supplied)

74. In 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: (SCC pp. 152-53 & 155, paras 7-

10 & 13-16)

â??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.* [1963 Supp (2) SCR 585 : AIR 1963 SC 1572 : (1963)

2 CriLJ 434] and *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* [(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 [(2003) 8 SCC 319] .)

13. This aspect of the matter has been considered recently by this Court in 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 [(2003) 8 SCC 311], Ram Chandra Singh v. Savitri Devi [(2003) 8 SCC

319] and 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. (See Gowrishankar v. Joshi Amba Shankar Family Trust [(1996) 3

SCC 310] and 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 [(2003) 8 SCC 311] .

16. In 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)

75. In A.V. Papayya Sastry v. State of A.P. [(2007) 4 SCC 221], this Court as to the effect of fraud on the judgment or order observed thus: (SCC

pp. 231 & 236-37, paras 21-22 & 38-39)

"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."

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.

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to 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. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.

Supervisory jurisdiction of the court can be exercised in case of error apparent on the face of the record, abuse of process and if the issue goes to the root of the matter.

76. In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1], this Court noted that the issue of fraud goes to the root of the matter and it exercised powers under Article 136 to cure the defect. The Court observed: (SCC p. 5, paras 5-6)

5. The High Court [*Jagannadh v. Perumal Naidu*, 1967 SCC OnLine Mad 103 :

(1969) 82 LW 167] , in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". 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. 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, the 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.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. 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. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ext. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellant-defendants could have easily produced the certified registered copy of Ext. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the

litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.â??

77. In *K.K. Modi v. K.N. Modi* [(1998) 3 SCC 573], it was observed that one of the examples cited as an abuse of the process of the court is re-

litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him.

78. The learned counsel for the respondent has placed reliance on the decision rendered in *Ujjagar Singh v. Collector* [(1996) 5 SCC 14] , wherein this

Court examined the effect of coming into force of the Punjab Land Reforms Act, 1972 and vesting of the surplus area in the State. In this case, the

area in possession of landlord was declared surplus under the Pepsu Act, but possession had not been taken by the State. It was held that area did not

vest finally as the surplus area under the Pepsu Act, owing to coming into force of the new Act, the ceiling area must be determined afresh under the

new Punjab Act. In the instant case, the order was passed in ceiling matter in the year 1980 and the adjudication order of the Collector (Ceiling) was

not questioned nor the order of remand to declare land as surplus and then the additional land was declared surplus in 1993. It was not the case of re-

opening of the case. In fact, the land has vested in the State under the Abolition Act. Thereafter, compensation has been obtained, obviously once land

has vested in the State, the possession of such land/open land is deemed to be that of the owner. In any view of the matter, in the facts and

circumstances of the instant case, compensation could not have been claimed.

79. In *State of H.P. v. Harnama* [(2004) 13 SCC 534], this Court observed that possession of land was not taken and the tenant was in occupation of

the land and had acquired ownership rights before the land was declared surplus as against the landlord. It was further observed that the land in

question had been notified as surplus and the fact that the original owner of the land had been paid compensation, would be of no avail to the State if

before the date of actual vesting non-occupant tenant in possession of the land had acquired ownership rights. It is totally distinguishable and cannot be

applied to the instant case.

80. The learned counsel on behalf of the respondent has referred to the decision

rendered in Madan Kishore v. Sudhir Sewal [(2008) 8 SCC 744] ,

wherein question arose with respect to entitlement of sub-tenant to apply under Section 27(4). It was held that the expression in Section 27(4), such

tenant who cultivates such land, does not entitle a sub-tenant either to claim proprietary rights or apply for the same under Section 27(4). It was held

that he was not a sub-tenant. The decision is of no help to the cause espoused on behalf of LRs of Rajinder Singh.

81. In the peculiar facts projected in the case the principle fraud vitiates is clearly applicable, it cannot be ignored and overlooked under the guise of

the scope of proceedings under Sections 18/30 of the LA Act.â??

13. In the light of the aforesaid Judgment, as fraud vitiates everything and in the present case, the appellant/petitioner and his brother have played a

fraud upon their sister, no case for interference is made out in the matter.

14. In the considered opinion of this Court, the learned Single Judge has rightly dismissed the writ petition and it is nobodyâ??s case that the

succession granted in favour of the legal heirs of late K.Sathi Reddy, which included the respondent No.6/Smt. Kandala Saraswathi was set aside by

any Court/Tribunal and therefore, the Special Tribunal was right in directing the restoration of the entries which stood in the year 1970-71 based upon

the succession granted in favour of the legal heirs. It is needless to mention that in case the appellant/petitioner is claiming the title over the entire

property, the disputed question of facts cannot be looked into in a writ petition under Article 226 of the Constitution of India and the appropriate

remedy is to file a civil suit, wherein on the basis of evidence adduced on behalf of the parties, the trial Court can decide the matter on merits. This

Court does not find any reason to interfere with the order passed by the learned Single Judge and therefore, the writ appeal deserves to be dismissed.

15. Resultantly, the writ appeal is dismissed.

Miscellaneous applications, if any pending, shall stand dismissed. There shall be no order as to costs.