
(2010) 04 AHC CK 0254

In the Allahabad High Court

Case No : Review Petition No. 190 of 2009 in Writ Petition No. 2451 of 1997,
Review Petition No's. 191, 192 and 205 of 2009 in Writ Petition No's.
2445 and 2436 of 1997 and W.P. No. 761 of 2002

Lucknow Nagar Nigam

APPELLANT

Vs

Shri Kant and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 17
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 137, 18(2),
195, 197, 198

Citation : (2011) 112 RD 10

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Narayan Shukla, J.—Heard Mr. S.P. Singh learned Counsel for Lucknow Nagar Nigam and Mr. Mohd. Arif Khan, learned Senior Advocate as well as Mr. S.N. Goswami, learned Counsel for opposite parties.

2. The above noted review applications have been filed by Lucknow Nagar Nigam to review the order dated 1.7.2009 passed by me in Writ Petition No. 2451 (M/S) of 1997 and other connected writ petitions.

3. In the case of Shri Kant it is stated that he was not resident of village Para and his father was Government Servant, as such he was not falling in the category of agricultural labour. It is further stated that the Petitioner and his family was jointly holding 14.75 acre of land which is more than 6.25 acres of land in the circle. Accordingly, it is stated that he was not eligible for allotment of land u/s 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

In the case of Smt. Gyaneshwari Devi it is stated that she was not resident of

village Para and her husband was Government Servant, as such he was not falling in the category of agricultural labour, being so she was not eligible for allotment of land u/s 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, moreover, she and her family was jointly holding 14.75 acre of land which is more than 6.25 acres of land in the circle.

In the case of Kalindi Devi it is stated that she was not resident of village Para and her husband was Government Servant, as such she was not falling in the category of agricultural labour, being so she was not eligible for allotment of land u/s 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. It is further stated that no patta was existing in favour of her husband.

In the case of Mr. Balram Nath it is stated that lessee Smt. Chandra Kunwari was not resident of village Para, as such she was not eligible for allotment of land u/s 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. It is further stated that Mr. Balram Nath son of Smt. Chandra Kunwari was Government Servant, therefore, Smt. Chandra Kunwari was not falling in the category of agricultural labour. It is further stated that no valid patta was existing in favour of the Petitioner.

4. Mr. S.P. Singh, learned Counsel for Lucknow Nagar Nigam invited the attention of this Court towards Section 198 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, which is reproduced hereinunder:-

198. Order of preference in admitting persons to land under Sections 195 and 197.- (a) a co-operative farm established under this Act, holding land within the jurisdiction of the Gaon Sabha to enable it to possess a suitable area of agricultural or culturable land,

(b) a bhumidhar to whom Sub-section (2) of Section 18 or Section 137 applies and who is holding less than six and a quarter acres in area in circle,

(c) a tenure-holder other than the bhumidhars to whom Clause (b) applies holding land less than six and a quarter acres in area in the circle,

(d) a landless labourer residing in the circle, and

(e) any other person:

Provided that the land allotted to a cooperative farm under Clause (a) shall, if the registration of such farm is cancelled within two years of the allotment, revert upon such cancellation to the Gaon Samaj, and any person holding or retaining possession of such land shall be deemed to be occupying it without title liable to ejectment under Clause (b) of Section 209:

Provided further that in the case to which Clauses (b) and (c) apply only such land shall be allotted to such tenure holder as shall be sufficient to bring the total area held by him to 6/1/4 acres.

(2) any person aggrieved by an order of the Gaon Sabha passed under Sub-

section (1) may file an appeal to the Sub-Divisional Officer who shall hear and decide the same in such manner as may be prescribed.

5. In the light of the aforesaid provision Mr. S.P. Singh, learned Counsel for the review Petitioners submits that fraudulently in connivance of Circle Lekhpal the writ Petitioners have managed the allotment of land in their favour, which do not confer any right upon them as fraud renders all judicial act and a decree obtained by playing fraud void.

6. In support of his contentions he cited a decision of Hon"ble Supreme Court rendered in the case of The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao, in which it has been held as under:-

Fraud and collusion vitiates even the most solemn proceedings in any civilized system of jurisprudence. It is concept descriptive of human conduct. Michal Levi likens fraudster Milton's scorcere, comus, who exulted in his ability to, "wining me into the easy hearted man and trap him into snarers." It has been denied as an act of trickery or deceit. In Webster's Third New International dictionary "fraud" is equity has been denied as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Blacks Law Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right. A false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek 1886 All ER 1. what constitutes "fraud" was described thus: (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (I) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983)1 All ER 765 . that it is dangerous to introduce maxims of common law as to effect of fraud

while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a Court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or Tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a Section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions nondisclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. See Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers,

7. He further submits that the fact that the alleged patta filed by the writ Petitioners came to the notice of this Court during the course of hearing of the writ petitions when the officer of Nagar Palika tried to trace out the record for filing a suit for cancellation of lease, which revealed that no patta was allotted to any of the writ Petitioners, thus they have fraudulently fabricated the documents in their favour. Therefore, review Petitioner persuaded to file the present review applications before this Court. He further submits that some facts have been incorrectly dealt with as the village in question had come in municipal limit on 11.2.1959 whereas the alleged patta was admittedly executed on 22.12.1959. By that time the land management committee had lost its authority to execute any such lease.

8. On the other hand, Mr. Mohd. Arif Khan, learned Senior Advocate appearing for the opposite parties pointed out that there is no reason to review the order passed by this Court. He further pointed out that there is limited scope of High Court to review the order.

9. In support of his contentions he cited a decision of the Hon''ble Supreme Court rendered in the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, in which it has been held that "the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, Code of Civil Procedure. The Hon''ble Supreme Court by following the judgment rendered in the case of Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others, . has held as under:-

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review as may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

10. Upon perusal of the order dated 1.7.2009 passed by this Court in Writ Petition No. 2451 (M/S) of 1997 and other connected writ petitions I find that the facts which have been brought to the notice of this Court by the review Petitioner were not brought to the knowledge of the Court at the time of decision of the writ petitions. Had these facts been brought to the knowledge of this Court at the time of decision of writ petitions, I am of the definite view that the writ petitions would have been dismissed.

11. After considering the facts and circumstances of the case when I go through the judgment which is under review I find that there is apparent error on the face of the record. Therefore, I am of the view that writ petitions deserve to be dismissed.

12. The review applications are allowed. The writ petitions are dismissed.