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**(2002) 03 KAR CK 0037**

**In the Karnataka High Court**

**Case No :** Review Petition No. 156 of 2000 in Writ Appeal No. 2294 of 1999

|                                                               |            |
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| The Vyalikaval House Building Co-operative Society, Bangalore | APPELLANT  |
| Vs                                                            |            |
| V. Chandrappa and Others                                      | RESPONDENT |

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**Date of Decision :** 22-03-2002

**Acts Referred:**

**Citation :** (2002) ILR (Kar) 2113 : (2002) 4 KarLJ 126 : (2002) 3 KCCR 176 SN

**Hon'ble Judges :** V. Gopala Gowda, J;N.S. Veerabhadraiah, J

**Bench :** Division Bench

**Advocate :** R.N. Narasimha Murthy, K. Suman, for the Appellant; P. Krishnappa, for Respondent 1 and 2, P. Satyanarayana, A.G.A. for Respondent 3 to 5, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

V. Gopala Gowda, J.—This review petition is filed to review the order dated 17-1-2000 in Writ Appeal No. 2294 of 1999 passed by this Court. By that order the writ appeal was allowed setting aside the order of the learned Single Judge dated 11-11-1998 in W.P. No. 30622 of 1998, allowed the said writ petition, quashed the notification and the acquisition proceedings impugned therein only insofar as the appellants therein are concerned. The learned Single Judge dismissed the writ petition filed by respondents 1 and 2 inter alia on the ground of delay and laches. That was the subject-matter in W.A. No. 2294 of 1999, the order passed therein is sought to be reviewed as stated above.

2. The order sought to be reviewed was passed following the judgment of this Court in W.A. No, 2188 of 1998, DD: 17-1-2000. That judgment was based on another judgment in M/s. Vyalikaval House Building Co-operative Society, Bangalore Vs. Smt. Puttamma and Others, The ground sought to be made out by Sri R.N. Narasimha Murthy, learned Senior Counsel for the revision petitioner is that the observations made in paragraph 10 in W.A. No. 506 of 1996 is not followed. But, the said contention has been considered and it has been held that those observations cannot be ground for denying relief to the owners.

3. The question of delay and laches cannot be gone into and considered as this Court relied upon the decision in the case of Narayana Reddy and Another v. State of Karnataka and Ors. 1991 (3) Kar LJ. 545 : ILR 1991 Kar. 2248. In that case the Inquiry Report of G.V.K. Rao was taken into consideration. In that report it is stated that the present revision petitioner-House Building Co-operative Society had enrolled large number of bogus and ineligible members illegally and it is a bogus society. Such being the case, this Court cannot come to the aid of petitioner-Society, which is held to be engaged in fraudulent acquisition of land for its bogus members. Since the Society being bogus, is not entitled to acquire land. Interest of landowners cannot be thrown out on the ground of delay and laches especially when this Court granted relief to similarly placed persons. There cannot be different decisions on the same subject-matter although parties approach the Court belatedly.

4. Since. petitioner-Society is involved in fraudulent activities, it cannot raise hyper-technical issues like delay and laches. The effect of fraud has been considered in the leading judgment of Lord Denning in the case of Lazarus Estates Limited v. Beasley 1956(1) All E.R. 341 as hereunder.--

" . . . No Court in this land will allow a person to keep an advantage which he has obtained by fraud. 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. The Court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved it vitiates judgments, contracts and all transactions whatever, see as to deeds, Collinus v. Blantern 1976(2) KB 342) as to judgments, Duchess of Kingston's 1776 (1 Leach 146) case and, as to contracts Master v. Miller 1791 (4 Term Rep. 320) So here I am of opinion that if this declaration is proved to have been false and fraudulent, it is a nullity and void and .. .".

In the case of Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, it is stated in paragraph 118 thus:

"118. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh Vs. The State of Punjab, . A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Landley in

General Assembly of Free Church of Scotland v. Overtown 1904 AC 515 : 91 LJ 394: 20 ILR 730 "that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J., in *Short v. Pools Corporation* (1926) 1 Ch 66:

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative" .

5. There is one more reason not to grant relief in favour of the revision petitioner. It is an admitted fact that the acquisition proceedings pertaining to some of the owners, who were the petitioners in earlier writ petitions, had been quashed thereby their lands are not available to the petitioner-Society. The land involved in this case is 1 acre 25 guntas only as is clear from the averments in the writ petition out of which this revision arose. Such a small piece of land will not be useful to the Society in any way. Moreover, with the sticker attached to the Society that its members are bogus and the Society is engaged in illegal and unlawful activities, the petitioner should have desisted itself from further litigating the matter. We feel sad that in spite of all these drawbacks and stigma the petitioner-Society is still prosecuting the case.

6. There is no ground for review of the order under review. The review petition is wholly misconceived and devoid of merit.

7. Review petition stands dismissed.