(2019) 09 MP CK 0103

Madhya Pradesh High Court (Gwalior)

Case No: Writ Petition No. 3185 Of 2011

Rekha Gaud		APPELLANT
	Vs	
State Of Madhya Pradesh And Others		RESPONDENT

Date of Decision: Sept. 26, 2019

Acts Referred:
Constitution Of India, 1950 â€" Section 141, 226#Urban Land (Ceiling and Regulation) Act, 1976 â€" Section 6, 21

Citation: (2019) 09 MP CK 0103

Hon'ble Judges: Sheel Nagu, J

Bench: Single Bench

Advocate: Santosh Agrawal, Purushottam Rai, Arvind Dudawat

Final Decision: Dismissed

Judgement

1. The challenge in this petition under Article 226 of the Constitution by the petitioner claiming himself to be owner of survey No.47/2 min Halka No.4,

Mubarikpura, Narwar, District Shivpuri (M.P.) is to the order of Collector, Shivpuri dated 20/04/2011 (Annexure P/1) whereby on the basis of

preliminary enquiry conducted by the SDO, Karera which was taken cognizance of by the Collector, Shivpuri on 10/01/2011, two hectares of land

bearing survey No.47 was declared to belong to the Government, after canceling the order dated 30/09/2011 passed by the Tehsildaar settling the said

land which was earlier recorded as 'Pahad' in favour of one Hamum Khan S/o Sardar Khan.

2. Pertinently, the said Hamum Khan got himself recorded as bhoomiswami without following the due process of law whereafter it is alleged that the

land in question exchanged various hands and is presently recorded in favour of petitioner based upon the registered sale deed dated 26/03/2004 vide

Annexure P/2.

3. It is relevant to point out that highlighting the aforesaid unlawful change of use and transfer of Government land into private hands was highlighted

in PIL bearing WP No.2846/2010 which was disposed of by order dated 21/05/2010 in the following terms:-

Ã¢â‚¬Å“In this context, our attention has been drawn to Annexure P/- dated 28/10/2009 submitted by the petitioner to the Collector, Shivpuri.

Since the order has not yet passed by the Collector, Shivpuri we dispose of this petition with a direction to the Collector Shivpuri to decide the

application submitted by the petitioner on 28/10/2009 within a period of 15 days from the date of receipt of certified copy of this order.Ã¢â‚¬â€‹

3.1 When the aforesaid order in PIL was not complied with, contempt bearing CONC No.433/2010 was filed which was disposed of by order dated

02/05/2011 vide Annexure R(3)/10 in following terms :-

Ã¢â‚¬Å“The learned counsel for the petitioner has contended that the order dated 20/04/2011 has been passed in pursuance to the order passed by the

Lokayukt. However, as per the reply filed by the respondent, in our opinion, the order dated 20/04/2011 be treated as the order passed in pursuance to

the direction of this Court.

Learned counsel for the petitioner further submitted that the respondent has not taken possession of the land. In reply, the learned counsel for

respondent submitted that the possession shall be taken immediately, if it has not already been taken.

In view of the aforesaid undertaking given by learned counsel for respondent, the contempt petition is disposed ofÃ¢â‚¬â€‹

4. The aforesaid order passed in Contempt Petition No.433/2010 reveals that during pendency of the said case, the Collector Shivpuri, passed the

order dated 20/04/2011(impugned herein) canceling the earlier settlement of Govt. land in favour of the petitioner thereby paving the way for disposal

of the contempt petition in the aforesaid terms.

4.1. Pertinently, while disposing of contempt case No.433/2010 the division bench of this Court observed that the order dated 20/04/2011 passed by

Collector Shivpuri (impugned herein) be treated as the order passed in pursuance to the order passed in WP No.2846/2010.

4.2 The Collector on the basis of the report dated 06/10/2010 submitted by SDO, Karera took cognizance of the illegality and rampant irregularity

committed by the then Tehsildaar while passing order dated 30/09/1991 and after hearing the concerned parties pased the impugned order.

5. The principal contention of learned counsel for the petitioner is twofold:-

(1) The Collector Shivpuri could not have exercise suo motu powers after such a long period of time and by doing so it has violated the ratio laid down

by the Division Bench of this Court in Kamla Singh (Smt.) Vs.Smt. Alka Singh and other reported in 2011 MPRN 273

(2) The land in question was unoccupied and therefore, was rightly allotted in favour of Hamum Khan.

(3) No reasonable opportunity of being heard was extended to the petitioner before passing of the impugned order.

6. As regards the first ground of Collector having exercised suo motu powers with delay and latches, it is seen from the impugned order Annexure P/1

that the report of the SDO, Karera discovering the illegality in the order dated 30/09/1991 was prepared on 06/10/2010 whereafter the said report was

placed before the Collector who then took cognizance of the said illegality for the first time on 10/01/2011. Thereafter, the Collector heard the parties

concerned and passed the order dated 20/04/2011 i.e. within three months and 10 days which is within the limits prescribed by the Division Bench of

this Court in Kamla Singh (Supra). Thus, the said ground is of no avail to the petitioner.

7. The other ground of the land in question being unoccupied and therefore, rightly allotted to the predecessor in title of the petitioner is concerned, it is

seen from the record that the Collector found the land to be recorded as 'Pahad' belonging to the Govt. but the then Tehsildaar in connivance with

certain private individuals changed the use of land without following due process of law and entered the name of predecessor in title of the petitioner

in the revenue record as bhoomiswami of land in question.

8. From the finding recorded by the Collector Shivpuri the element of fraud becomes palpable in the entire transaction which led to passing of the

order by the then Tehsildaar on 30/09/1991. This element of fraud percolates down to all subsequent transactions which took place pursuant to the

order of Tehsildaar dated 30/09/1991. The order dated 30/03/2011 and its consequential and subsequent acts of land in question changing hands from

Hamum Khan to the petitioner is vitiated and rendered non-est in the eyes of law.

9. Fraud is a vice which corrupts and corrodes everything that comes in it's way. Any order or transaction or procedure executed with the aid of fraud

is rendered ab initio null and void in the eyes of law. Emphasizing the concept and sweep of fraud, the Apex Court in Satluj Jal Vidyut Nigam Vs. Raj

Kumar Rajinder singh reported in 2018 SCC Online SC 1636 has said thus:

70. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of appellants, reliance

has been placed on the definition of fraud as defined in the Black's Law Dictionary, which is as under:

49 Ã¢â‚¬Å“Fraud means: (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 willful) 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 actto his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of

the power arising out of the partiesÃ¢â‚¬â„¢ relative positions and resulting in an unconscionable bargain.Ã¢â‚¬â€‹

71. HalsburyÃ¢â,¬â„¢s Law of England has defined fraud as follows:

Ã¢â,¬Å“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

reckless on the part of the representor as the truth or falsity of the representation affords merely an instance of absence of such a belief.Ã¢â,¬â€‹

72. In KERR on the Law of Fraud and Mistake, fraud has been defined thus:

Ã¢â,¬Å“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 varietyÃ¢â,¬Â¦ Courts have always declined to define it, Ã¢â,¬Â¦ reserving to themselves the liberty to deal with it under whatever form it

may present itself. Fraud Ã¢â,¬Â¦ may be said to include property 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. Al surprise,

trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part

of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled too.Ã¢â,¬â€‹

73. In Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319, wherein it was observed that fraud vitiates every solemn act. Fraud and justice never

dwell together and it can not be perpetuated or saved by the application of any equitable doctrine including resjudicata. This Court observed as under:

Ã¢â,¬Å“15.Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud, as is wellknown, 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 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 willfully 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.

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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.

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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 resjudicata.

(emphasis supplied)

74. In Madhukar Sadbha Shivarkar v. State of Maharashtra, (2015) 6 SCC 557, 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 law though such orders have attained finality. Following

observations were made:

Ã¢â‚¬Å“27. The said order is passed by the StateGovernment 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 Tehsildar 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

subleases 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 sublessees Under Section 6 of the Act. The plea urged on behalf of the State Government and the defacto

complainantsowners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon

the Tehsildar 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 land holdings 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 subleases 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 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. 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 of the Division Bench of the High Court.Ã¢â‚¬â€‹

(emphasis supplied)

75. In Jai Narain Parasrampuria v. Pushpa Devi Saraf, (2006) 7 SCC 75,6 this Court observed that fraud vitiates every solemn act. Any order or

decree obtained by practicing fraud is a nullity. This Court held as under:

Ã¢â‚¬Å“55. It is now well settled that fraud vitiated all solemn act. Any order or decree obtained by practicing fraud is a nullity. [See (1) Ram Chandra

Singh v. Savitri Devi and Ors., (2003) 8 SCC 319 followed in (2) Vice Chairman, Kendriya Vidyalaya Sangathan, and Anr. v. Girdhari Lal Yadav,

(2004) 6 SCC 325; (3) State of A.P. and Anr. v. T. Suryachandra Rao, (2005) 6 SCC 149; (4) Ishwar Dutt v. Land Acquisition Collector and Anr.,

(2005) 7 SCC 190; (5) Lillykutty v. Scrutiny Committee, SC & ST Ors., (2005) 8 SCC 283 ;(6) Chief Engineer, M.S.E.B. And Anr. v. Suresh

Raghunath Bhokare, (2005) 10 SCC 465; (7) Smt. Satya v. Shri Teja Singh, (1975) 1 SCC 120; (8) Mahboob Sahab v. Sayed Ismail, (1995) 3 SCC

693; and (9) Asharfi Lal v. Koili, (1995) 4 SCC 163.]Ã¢â‚¬â€‹

(emphasis supplied)

76. In State of A.P. v. T. Suryachandra Rao, (2005) 6 SCC 149, it was observed that where 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:

Ã¢â‚¬Å“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 the error when the respondent had clearly committed a fraud.

8. By Ã¢â‚¬Å“fraudÃ¢â‚¬ is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the

other is immaterial. The expression Ã¢â‚¬Å“fraudÃ¢â‚¬ involves two elements, deceit, and injury to the person deceived. The injury is something other than

economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any

person in body, mind, reputation or such others. In short, it is a noneconomic or nonpecuniary loss. A benefit or advantage to the deceiver, will almost

always call 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 Dr. Vimla v. Delhi Administration, 1963 Supp (2) SCR 585 and Indian Bank v. Satyam Febres

(India) Pvt. Ltd., (1996) 5 SCC 550]

9. A Ã¢â‚¬Å“fraudÃ¢â‚¬ 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. Changalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.)

10. Ã¢â‚¬Å“FraudÃ¢â‚¬â€‹ 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 willfully 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. 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 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 and Ors., (2003) 8 SCC 319.)

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13. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal, (2002) 1 SCC 100, 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 andA shok Leyland Ltd.

v. State of T.N. and Anr., (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. Ã¢â‚¬Å“FraudÃ¢â‚¬ 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 it can be evidence of fraud; as observed in Ram Preeti Yadav,

(2003) 8 SCC 311.

16. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713: (All ER p. 345C)

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

In the same judgment, Lord Parker LJ observed that fraud Ã¢â‚¬Å“vitiates all transactions known to the law of however high a degree of solemnityÃ¢â‚¬â€‹.

(emphasis supplied)

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

19. Now, it is wellsettled 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.

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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

nonest in the eye of law. Such a judgment, decree or order by the first Court or by the final Courthas 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.

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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 applicant/plaintiff 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 nonexistent and nonest 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 nullity, whether by the court of first instance or by thefinal court. And it has to be treated as nonest by

every Court, superior or inferior.Ã¢â‚¬â€‹

10. As regards the ground of breach of principle of natural justice audi alteram partem is concerned, the same is of no avail to the petitioner since the

element of fraud which is palpable on record and which vitiates all the orders and transactions right from 1991 till date renders all the rights and

interests which appear to accrue in favour of the petitioner to be non existent thereby eliminating the requirement of affording opportunity of being

heard as a sine qua non before recalling the fraudulent orders/transaction. Importantly, the grant of any opportunity of being heard is a futile exercise

and an empty formality since the petitioner has not been able to demonstrate that the land in question did not belong to the Government prior to passing

of the order dated 30/09/1991.

10.1 More so, the ground of quashment of the impugned order merely on the ground of breach of principle of audi alteram partem would amount to

revival of fraudulent orders and transactions which can never be the object of the power of judicial review.

11. Consequently, the present petition having no force is dismissed with liberty to the petitioner to raise her grievance before the civil Court in

accordance with law.

No cost.