

Writ C No.24615 of 2023 (C/M Chandrawati
Shikshan Sanstahan And 7 Others
v. State Of U.P. And 3 Others).

Neutral Citation No.2023:AHC:202741

A.F.R.

Reserved on 03.10.2023.

Delivered on 19.10.2023.

Court No. - 10

Case :- WRIT - C No. - 24615 of 2023

Petitioner :- C/M Chandrawati Shikshan Sanstahan And 7 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Satyendra Prakash Srivastava

Counsel for Respondent :- C.S.C.,Gautam Baghel,Om Prakash
Singh

Hon'ble Kshitij Shailendra,J.

1. Heard Shri Gajendra Pratap, learned Senior Counsel assisted by Shri S.P. Srivastava, learned counsel for the petitioners, learned Standing Counsel for State-respondents and Shri Gautam Baghel for respondent no.3.

PREVIOUS PROCEEDINGS IN THIS CASE

2. This Court, after hearing learned counsel for both the sides, passed following order on 03.10.2023:-

“1. Supplementary affidavit filed today is taken on record.

2. Before hearing of this case commenced, Shri Gautam Baghel, learned counsel representing the respondent no.3 has placed before this Court, a copy of the order dated 14.09.2023 passed by the Assistant Registrar, Firms, Societies and Chits, Azamgarh Region, Azamgarh, which is taken on record.

3. Shri Gajendra Pratap, learned Senior Counsel was asked as to whether he proposes to challenge the said order or not, he submitted that since the subsequent order is a consequential order, in case the order impugned dated 17.06.2023 is found to be without jurisdiction and is set aside or stayed, the subsequent order would automatically stand nullified and, therefore, he does not propose to challenge the order dated 14.09.2023. With this submission, he proceeded to argue the matter.

4. Heard Shri Gajendra Pratap, learned Senior Counsel assisted by Shri S.P. Srivastava, learned counsel for the petitioners, learned Standing Counsel for State-respondents and Shri Gautam Baghel for respondent no.3.

5. **Order Reserved.**“

THE ORDER UNDER CHALLENGE

3. This writ petition has been filed challenging the order dated 17.06.2023 whereby the Assistant Registrar, Firms, Societies and Chits, Azamgarh Region, Azamgarh has, after recording certain findings with regard to the validity of list of

members of General Body and certain elections of office bearership relied upon by both the parties, declared the Committee of the Society as “defunct/barred by time” w.e.f. 19.09.2022 and, for the purposes of holding elections in exercise of powers under Section 25(2) of the Societies Registration Act, 1860 (hereinafter referred to as ‘the Act, 1860’), he has issued a tentative list of members of General Body directing the parties to submit objections against the same with a further direction that election of the time-barred Society shall be held after finalizing the electoral college/membership list/voter list.

FACTS OF THE CASE

4. Shorn of unnecessary details, the facts of the case as per the pleadings contained in the writ petition, are that Chandrawati Shikshan Sansthan is an educational society registered on 27.09.2002 under the Societies Registration Act, 1860 and has its registered bye-laws to run and manage its affairs by a Committee of Management, which is periodically elected every 5 years by the general body of the Society. From the very inception of the said Society and until 10.11.2020 there were in all 11 members in the Society and all of them comprised managing committee of the Society. Respondent no.3 held the office of Dy. Manager (Up-Prabandhak) in the managing committee since inception of the Society and is holding the same office until now. In the year 2020, the Society decided to enrol members of the general body and an

advertisement was got published in a daily newspaper, namely, Devvrat, dated 18.10.2020 by the Manager of the Society, pursuant where to, 8 persons were enrolled as life members in the Society, which is evident from the fact that each one of them had deposited with the Society a sum of Rs.1000/-, as subscription fee for the life membership prescribed in Clause 5 of the bye-laws. The so enrolled eight members are- (1) Sanjay Kumar Singh (Petitioner), (2) Sheela Singh, (3) Neeraj Singh, (4) Dharmendra Sharma, (5) Kushal Kumar Singh, (6) Dharmendra Singh, (7) Lata Singh and (8) Indu Singh. They all became life members of the Society from 10.11.2020, the date on which they deposited the said subscription fee with the then Manager of the Society. The petitioner nos.2 to 8 and Smt. Lata Singh, respondent no.4 are those eight (8) members that have been enrolled. According to Clause 10(4) of the bye-laws of the Society, the Manager of the managing committee is authorized to receive the membership/enrolment fee etc. and Clause 5 of the bye-laws provides that whosoever will give minimum Rs. 1000/- to the Society, would be its life member.

CONTENTIONS RAISED ON BEHALF OF PETITIONERS

5. The submission of Shri Gajendra Pratap, learned Senior Counsel, is that in the last undisputed elections held on 20.09.2017, one Faurang Ram was elected as President, Om Prakash Singh as Manager and Mukhtar Singh (respondent No.3) as Deputy Manager and that on 10.11.2020, eight new

members being petitioner nos.2 to 8 and the respondent no.4-Smt. Lata Singh were enrolled after publication of advertisement in the newspaper "Devvrat" dated 18.10.2010. A casual vacancy occurred on account of death of Faurang Ram on 10.01.2021 and another due to death of Shri Om Prakash Singh on 04.03.2021. He further submits that the casual vacancy of the office of President was filled up by electing respondent no.4-Smt. Lata Singh in the meeting of General Body of the Society dated 08.02.2021, as per the procedure provided in Clause 9 of the Bye-laws and that the other casual vacancy of the office of Manager was filled up by electing petitioner no.2-Sanjay Kumar Singh as the Manager in the meeting of general body of the Society dated 06.04.2021.

6. Learned Senior Counsel further submits that pursuant to the aforesaid proceedings, list of office bearers for the year 2022-2023 was registered by the Assistant Registrar on 30.04.2022, whereafter, respondent no.4-Smt. Lata Singh submitted before the respondent no.2 an application dated 30.06.2022, annexing therewith various documents setting up a rival election claim on the very same casual vacancies, saying that against the vacancy in office of President, one Sri Ashutosh Singh was elected and against the vacancy in office of Manager, she was elected in the meeting of general body dated 28.03.2021 and prayed for registration of her list of office bearers. He further submits that the respondent no.3 is none else than the real brother of petitioner no.1 and he falsely engineered the dispute only to anyhow oust the petitioner no.2

from the Managing Committee, and in this evil design, he successfully manipulated respondent no.4 on his side which is evident from the fact that after the entry of respondent no.3 in the dispute, the respondent no.4 submitted an application dated 24.02.2023 alongwith her affidavit before the respondent no.2 stating therein that she had not submitted any application earlier and any such application or document with her signatures, if on records, be treated as cancelled. Thus, not only the respondent no.4 abandoned her managerial claim but also made the very same prayers in her said application/affidavit as were made by respondent no.3 in his application.

7. Further submission of learned Senior Counsel is that despite the fact that the respondent no.4 had abandoned her claim and thus left with no cause or even locus to contest or participate in the pending dispute, the respondent no.2 not only allowed her to participate but even accepted her versions, knowing fully well that the same were not only false and wrong but wrapped with full of obvious lies. Further submission is that since the term (5 years) of committee of management last elected in the year 2017 was about to expire, the petitioner No.1 committee, as an out-going committee, held next periodical elections on 28.08.2022 in which the petitioner no.2 was elected Manager, who, through his application dated 20.09.2022, also submitted list of elected office bearers alongwith election papers and prayed for registering the same. It has also been argued that the impugned order with regard to enrolment of 8 life members is without jurisdiction, inasmuch

as, it is not referable to any law whatsoever, not even to one under Section 4-B of the Act, 1860; that the findings recorded in respect of said enrolment of members suffer from errors apparent on the face of the record, inasmuch as, the same are based on consideration of wholly irrelevant material leaving aside the relevant ones; that the respondent no.2 acted arbitrarily and in violation of the principles of natural justice in cancelling membership of petitioner nos. 3 to 8 without giving them opportunity of hearing and that the impugned order rescinding order of registration of the list of office bearers is without jurisdiction as the concerned respondent does not have power of review of his order under the Act, 1860. Learned Senior Counsel has also argued with reference to Section 4-B of the Act, 1860 that the Assistant Registrar has no power to record any finding with respect to validity of membership or enrolment of any new member(s) and that no such exercise was, even otherwise, open to be undertaken by the Assistant Registrar in the present case. He further submits that only the Prescribed Authority has power to determine the valid membership or even to decide as to whether enrolment of any member(s) was according to law. He further submits that the Assistant Registrar, by the order impugned, has decided the validity of rival elections, which course was not open for him as per the settled proposition of law. He further submits that the impugned order has been passed entertaining the application dated 17.01.2023 submitted by the respondent no.3-Mukhtar Singh, the Deputy Manager and by referring to the said

application, it has been argued that adjudication made is beyond the scope of the application and, even otherwise, the said application being not maintainable, it was not liable to be entertained at all and, even if, it was found to be entertainable, adjudication of past dispute is beyond the competence of the Assistant Registrar. In support of his contentions, learned Senior Counsel has placed reliance upon the following Authorities:-

(i). Lachi Ram Yadav & Ors. v. Asstt. Registrar Firms, Chits and Societies and Others, (2015) 1 UPLBEC 830;

(ii). Committee of Management, Anjuman Kherul Almin Allahgranj And Another v. State of U.P. And Ors., 2014 (1) ADJ 44;

(iii). Board of Trustee of the Shia College v. State of U.P. (Allahabad), 2015 (6) ADJ 500.

CONTENTION OF LEARNED STANDING COUNSEL

8. Learned Standing Counsel, on the other hand, has argued that pure findings of fact have been recorded by the Assistant Registrar based upon documents produced before him and, once, the findings have been recorded that order registering the list of Managing Committee dated 30.04.2022 was obtained by fraudulent means, the Assistant Registrar was competent enough to examine the correctness of the documents filed before him and having gone into the documents, the claim of

the petitioners as well as respondent no.4-Smt. Lata Singh has been rightly rejected, considering the expiry of term of the erstwhile Committee appointed in 2017 and lawful direction has been issued to hold elections under Section 25(2) of the Act, 1860.

CONTENTION OF RESPONDENT NO. 3

9. Shri Gautam Baghel, learned counsel for respondent no.3 has vehemently opposed the writ petition and has argued that admittedly, the list of 11 members was registered in 2002 since the very inception of the Society and the undisputed elections were held on 20.09.2017. While referring to the findings recorded in the order impugned, it has been argued by Shri Baghel that under Section 4-B of the Act, 1860, the Assistant Registrar is empowered to examine the correctness of the list of members of the General Body on the basis of register of members, minutes book, cash book, receipt book of membership fees and bank passbook of the Society not only at the time of registration of Society but also at the time of its renewal or any change in the list of members of the General Body on account of induction, removal, resignation or death of any member. He further submits that by the order impugned dated 17.06.2022, only a tentative list was issued and the parties were directed to file objections against the same and, insofar as the petitioners are concerned, the petitioner no.2 preferred objections before the Assistant Registrar and after

taking into consideration the said objections and after providing full opportunity of hearing to the petitioner no.2, who claims to be Manager of the petitioner no.1-Committee, a detailed order has been passed on 14.09.2023 finalizing the electoral college for the purposes of holding elections under Section 25(2) of the Act, 1860. He further submits that admittedly the order dated 17.06.2023 having been given effect to and the order dated 14.09.2023 having not been challenged, the petitioners have no case. With regard to the merits of the claim of the petitioners, as pleaded in the writ petition, reference to the following findings of the order dated 14.09.2023 has been made:-

“श्री संजय कुमार सिंह द्वारा अपने प्रतिनिधि अधिवक्ता के माध्यम से दिनांक 08.08.2023 को समय लिए जाने के बावजूद किसी प्रकार का कोई साक्ष्य/दिनांक 04.10.2020 के पूर्व का मूल अभिलेख प्रस्तुत नहीं किया गया। श्री संजय कुमार सिंह द्वारा पूर्व में जो मूल अभिलेख कार्यालय आदेश दिनांक 17.06.2023 पारित किये जाने के पूर्व दिनांक 18.04.2023 को प्रस्तुत किये गये थे, उक्त अभिलेख कार्यालय में जमा है। श्री संजय कुमार सिंह द्वारा प्रस्तुत उक्त अभिलेखों में बैंक पासबुक बड़ौदा यू०पी० बैंक शाखा तरवां खाता संख्या 82870200000014 का खाता दिनांक 13.07.2022 को खोला गया है तथा दिनांक 14.07.2022 को नगद पैसा कुल 8000 रूपया जमा किया गया है। उक्त के अतिरिक्त पासबुक में कोई प्रविष्टि अंकित नहीं है। उक्त से यह स्वतः स्पष्ट है कि संजय कुमार सिंह व अन्य का सदस्यता शुल्क वर्ष 2020 में तत्समय प्रबन्धक रहे श्री ओमप्रकाश सिंह द्वारा न तो प्राप्त किया गया और

न ही समिति के खाते में जमा किया गया बल्कि कोरोना काल के दौरान संस्था से पूर्णतया असम्बद्ध व बाहरी व्यक्ति संजय कुमार सिंह द्वारा नये सिरे से दिनांक 04.10.2020 की तिथि से स्वयं नया रजिस्टर सूचना पंजिका/कार्यवाही पंजिका तैयार करके समिति पर कब्जा करने के उद्देश्य से ओमप्रकाश सिंह के फर्जी हस्ताक्षर से स्वयं को व अन्य को समिति का सदस्य चयनित होना दर्शाकर छल-कपट एवं फ्राड के आधार पर प्रबन्ध समिति की सूची वर्ष 2022-23 का पंजीयन दिनांक 30.04.2022 को करा लिए जाने के उपरान्त समिति का अवैध ढंग से नया खाता खोलकर सदस्यता शुल्की की रसीदें ओमप्रकाश सिंह के फर्जी हस्ताक्षर से स्वयं काटकर समिति के बैंक खाते में दिनांक 14.07.2022 को जमा किया गया। कार्यालय पत्रावली में ओमप्रकाश सिंह द्वारा समय-समय पर समिति के नवीनीकरण/पंजीकरण के समय प्रस्तुत प्रपत्रों/कार्यवाहियों पर किये गये हस्ताक्षर से संजय कुमार सिंह द्वारा प्रस्तुत सदस्यता रसीदों व कार्यवाही पंजिका/सूचना पंजिका पर बनाये गये हस्ताक्षर का मिलान करने पर यह पाया गया कि ओमप्रकाश सिंह का हस्ताक्षर पूर्व में प्रस्तुत प्रपत्रों/कार्यवाहियों से भिन्न व अलग-अलग है तथा जहां-जहां संजय कुमार सिंह द्वारा प्रस्तुत अभिलेखों/कार्यवाहियों में हस्ताक्षर बनाया गया है सब भिन्न-भिन्न नजर आ रहा है। श्री फौरंग राम का हस्ताक्षर समिति की मूल पत्रावली में उपलब्ध स्मृति पत्र पर अंकित है जबकि संजय कुमार सिंह द्वारा प्रस्तुत सूचना पंजिका/कार्यवाही पंजिका में फौरंग राम का निशानी अंगूठा लगाया गया है। उपरोक्त विवेचना से यह स्पष्ट है कि श्री संजय कुमार सिंह द्वारा कोरोना काल व समिति के अध्यक्ष एवं प्रबन्धक के निधन का फायदा उठाकर उनके फर्जी निशानी अंगूठा एवं हस्ताक्षर से नये सिरे से दिनांक 04.10.2020

की तिथि से सूचना एवं दिनांक 10.11.2020 की तिथि में प्रथम कार्यवाही स्वयं सहित 8 अन्य को सदस्य बनाये जाने का फर्जी तरीके से होना दर्शाकर समिति उपरोक्त की प्रबन्ध समिति की सूची वर्ष 2022-23 का पंजीकरण करा लिया गया था जिसे कार्यालय आदेश पत्रांक 465, दिनांक 17.06.2023 द्वारा निरस्त घोषित किया जा चुका है। अतएव पुनः संजय कुमार सिंह व अन्य द्वारा स्वयं को समिति का सदस्य बताकर प्रस्तुत आपत्ति दिनांक 07.07.2023 व अन्य स्वीकार किये जाने योग्य नहीं है।”

10. The submission, therefore, is that though the petitioners claim to have been enrolled on 10.11.2020, the bank account has been opened on 13.07.2022 and not only taking into consideration opening of the bank account and subsequent deposit of money therein, but also the documents referred to in Section 4-B of the Act, 1860, the Assistant Registrar has found that the entire case of the petitioners is based upon forgery, fabrication and fraud. Shri Baghel has also referred to the minutes of meeting dated 10.11.2020, annexed to the writ petition, which contain thumb impression of President Faurang Ram and submits that the said meeting has been shown to have been held under the Presidentship of Faurang Ram without even mentioning his name as President in the minutes and, even otherwise, Faurang Ram never used to put his thumb impression as also recorded by the Assistant Registrar in the order dated 14.09.2023 that signatures of Faurang Ram are available in the original record and by fraudulently putting alleged impression, the proceedings dated 10.11.2020 have been fabricated which are liable to be ignored. In support of

his contentions, Shri Baghel has placed reliance upon the following Authorities:-

(i). Committee of Management, Maulana Abdul Kalaam Azad Education Society v. Assistant Registrar, Firms, Societies And Others, 2022 (10) ADJ 58;

(ii). Committee of Management, Darul Ulum Samadhiya And Another v. State of U.P. And Others, 2023 (8) ADJ 293;

(iii). Shailendra Singh And 2 Others v. State of U.P. And 3 Others reported in 2017 (6) ADJ 602.

DISCUSSION AND FINDINGS

11. Having heard the learned counsel for the parties, I find that the main argument of the petitioners is that the order impugned is without jurisdiction and exercise undertaken by the Assistant Registrar, purported to be under Section 4-B of the Act, 1860 is wholly unwarranted. For a ready reference, Section 4-B of the Act, 1860 is quoted hereinbelow:-

“4-B (1) At the time of registration/renewal of a society, list of members of General Body of that society shall be filed with the Registrar mentioning the name, father’s name, address and occupation of the members. The Registrar shall examine the correctness of the list of members of the General Body of such society on the basis of the register of members of the General Body and minutes book thereof, cash book,

receipt book of membership fee and bank pass book of the society.

(2) If there is any change in the list of members of the General Body of the society referred to in sub-section (1), on account of induction, removal, registration or death of any member, a modified list of members of General Body, shall be filed with the Registrar, within one month from the date of change.

Any change in the list of the General Body shall not be valid unless it is approved by the Managing Body.

(3) The list of members of the General Body to be filed with the Registrar under this section shall be signed by two office bearers and two executive members of the society.”

12. From a bare reading of the aforequoted provision, it reflects that whenever a dispute comes before the Assistant Registrar either with regard to registration of the Society or its renewal, or induction/enrolment of new member(s) on account of resignation or death of any member, he is under statutory obligation to examine the correctness of the list of members of the General Body of such society on the basis of register of members of the General Body and minutes book thereof, cash book, receipt book of membership fee and bank pass book of the Society. In the present case, the entire claim of the petitioners is based upon induction of new members on 10.11.2020. Having perused the minutes of meeting dated 10.11.2020 which contain thumb impression of Faurang Ram as President allegedly presiding the said meeting and having

perused the specific findings recorded by the Assistant Registrar in the order dated 14.09.2023, which has not at all been challenged, rather the petitioners have specifically relinquished and waived their right to challenge the said order, as recorded in the order dated 03.10.2023 passed in the present writ petition while reserving the order, this Court is of the considered opinion that the adjudication made by the Assistant Registrar in the order dated 14.09.2023 and the findings recorded in the said order remain intact and have attained finality.

13. The Court also takes note of the fact that while the order impugned dated 17.06.2023 merely issues a tentative list, inviting objections from respective sides, once the petitioner no.2, in individual capacity and as alleged Manager of the petitioner no.1, proceeded to submit objections before the Assistant Registrar and addressed him with full confidence and force on the basis of documents relied upon by him and thereby persuaded the Assistant Registrar to adjudicate the issue, the challenge made to the order dated 17.06.2023 would amount to take vehicle into the reverse gear, though it has moved forward in terms of merger of the order dated 17.06.2023 in the subsequent order dated 14.09.2023. The submission of Shri Gajendra Pratap that the order dated 14.09.2023 is merely a consequential order and need not to be challenged has no force and is discarded considering the nature of both the orders, one before the petitioner no.2 made his submissions and the other

after he produced various documents and addressed the Assistant Registrar.

14. Insofar as reliance placed by learned Senior Counsel for the petitioners on the judgement of **Lachi Ram Yadav & Ors.** (supra) is concerned, after careful reading of the said judgement, I find that ratio laid down is against the petitioners and not in their favour. In the said case, this Court was examining the power of the Assistant Registrar to decide the membership dispute in relation to Section 15 of the Act, 1860 and while dealing with the said provision, it was found that the provision did not clothe the Assistant Registrar with the power to adjudicate dispute regarding membership. An argument was raised in that case before this Court on behalf of the contesting respondents that such adjudication can be made in terms of Section 4 of the Act, 1860, however, this Court observed that the case was on different footings and not with reference to any power exercised under Section 4 of the Act, 1860. In the present case, the order impugned refers to exercise of power under Section 4-B of the Act, 1860 and not Section 15 thereof. Hence, the ratio laid down is against the petitioners and, therefore, the petitioners do not get any benefit out of the said decision.

15. As regards judgment of this Court in the case of **Committee of Management, Anjuman Kherul Almin Allahgranj And Another** (supra) is concerned, it was a case where Deputy Registrar had adjudicated upon validity of rival

elections set up by the parties and under such circumstances, the Division Bench opined that the matter was referable to the Prescribed Authority under Section 25(1) of the Act, 1860. No such dispute has arisen in the present case and, therefore, the said judgement does not help the petitioners.

16. The third decision relied upon by the petitioners in the case of **Board of Trustee of the Shia College** (supra) extensively deals with the power of the Assistant Registrar within the scope of Section 4-B of the Act, 1860 and this Court has clearly observed that the Registrar/Deputy Registrar is conferred with the power to examine the correctness of the list of members of the General Body of the Society on the basis of register of members of the General Body and minutes book thereof, cash book, receipt book of fee and bank passbook of the Society. An interference was made by this Court after having found that the Deputy Registrar had entered into the dispute with respect to rival elections and, therefore, this Court denounced the action. There is nothing in the said judgement which could help the petitioners in the facts and circumstances of the present case where the Assistant Registrar has arrived at the conclusion on the basis of the documents referred to under Section 4-B of the Act, 1860 and has found inclusion of members as a fraudulent act on the part of the petitioners. Hence, this judgement is also of no help to the petitioners.

17. The submission of learned Senior Counsel that the order impugned is without jurisdiction also does not have any force

in view of the law laid down by this Court in the case of **Shailendra Singh And Others v. State of U.P. And Others**, reported in **2017 (6) ADJ 602 (DB)**. Reference to following ‘Paragraph 24’ of the judgement in the case of **Shailendra Singh** (supra) can be made in this regard:-

“24. The powers conferred under the aforesaid sections clearly demonstrate that the Registrar is the principal Executive Officer to exercise his power in respect of the affairs of the Society. Thus, his power under Section 4 cannot be divested only on the ground that under Section 25 he has the authority to refer the dispute pertaining to election and continuance of office bearers and, accordingly, even if some frivolous dispute is raised in respect of the election or continuance of the office-bearers, the same should be mandatorily referred. If there is a dispute of two parallel groups of the society, the Registrar can always examine whether the persons of rival group, who have raised the dispute, are member of the society or not. He can record his prima facie satisfaction in this regard as to who has the authority to convene the meeting and hold elections; persons who have participated are valid members of society; elections have been held as per bye-laws of society and if he is satisfied that the dispute is genuine and it is a dispute inter se between the members of the society, then he can refer the dispute to the Prescribed Authority.”

18. The Court also cannot ignore the findings of fabrication, manipulations and forgery as recorded in the order dated

17.06.2023 and also 14.09.2023 and finds that the Assistant Registrar was fully competent to dislodge the claim of the petitioners as well as respondent no.4-Smt. Lata Singh for the said reasons.

19. It is well settled that fraud vitiates even the most solemn act. *De Grey, C.J., in Rex Vs. Duchess of Kingston* [2 Smith L.C. 687] observed that 'Fraud' is an intrinsic, collateral act, which vitiates the most solemn proceedings of courts of justice. Lord Coke says it avoids all judicial acts ecclesiastical and temporal". In *Kerr on Fraud and Mistake*, it is stated that "in applying this rule, it matters not whether the judgment impugned has been pronounced by an inferior or by the highest Court of judicature in the realm, but in all cases alike it is competent for every Court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud. It is also clear as indicated in *Kinch Vs. Walcott [1929 APPEAL CASES 482]* that it would be in the power of a party to a decree vitiated by fraud to apply directly to the Court which pronounced it to vacate it. According to Kerr, "In order to sustain an action to impeach a judgment, actual fraud must be shown; mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

(See the Seventh Edition, Pages 416-417)

20. In *Corpus Juris Secundum, Volume 49, paragraph 265*, it is acknowledged that, "Courts of record or of general jurisdiction have inherent power to vacate or set aside their own judgements". In paragraph 269, it is further stated, "Fraud or collusion in obtaining judgment is a sufficient ground for opening or vacating it, even after the term at which it was rendered, provided the fraud was extrinsic and collateral to the matter tried and not a matter actually or potentially in issue in the action. It is also stated: "Fraud practiced on the court is always ground for vacating the judgment, as where the court is deceived or misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair".

21. In *American Jurisprudence, 2nd Edition, Volume 46, paragraph 825*, it is stated, "Indeed, the connection of fraud with a judgment constitutes one of the chief causes for interference by a court of equity with the operation of a judgment. The power of courts of equity in granting such relief is inherent, and frequent applications for equitable relief against judgments on this ground were made in equity before the practice of awarding new trials was introduced into the courts of common law. Where fraud is involved, it has been held, in some cases, that a remedy at law by appeal, error, or certiorari does not preclude relief in equity from the judgment. Nor, it has been said, is there any reason why a judgment obtained by fraud

cannot be the subject of a direct attack by an action in equity even though the judgment has been satisfied."

22. The law in India is not different. In ***Paranjpe Vs. Kanade [ILR 6 BOMBAY 148]***, it was held that it is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud. In ***Lakshmi Charan Saha Vs. Nur Ali [ILR 38 Calcutta 936]***, it was held that the jurisdiction of the Court in trying a suit questioning the earlier decision as being vitiated by fraud, was not limited to an investigation merely as to whether the plaintiff was prevented from placing his case properly at the prior trial by the fraud of the defendant. The Court could and must rip up the whole matter for determining whether there had been fraud in the procurement of the decree.

23. It is not necessary to multiply authorities on this question since the matter has come up for consideration before the Apex Court on various occasions. In ***S.P. Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRs & Ors. [(1993) Supp. 3 SCR 422]***, the Apex Court stated that, "*it is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed --- 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.*" The Court went on to observe that the High Court in that case was totally in error when it

stated that there was no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. Their Lordships stated, "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, 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".

24. In *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education & Others [(2003) Supp. 3 SCR 352]*, the Apex Court, after quoting the relevant passage from *Lazarus Estates Ltd. Vs. Beasley [(1956) 1 All ER 341]* and after referring to *S.P. Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by LRs & Ors. (supra)* reiterated that fraud avoids all judicial acts. In *State of A.P. & Anr. Vs. T. Suryachandra Rao [(2005) 6 SCC 149]*, the Supreme Court after referring to the earlier decisions held that suppression of a material document could also amount to a fraud on the Court. It also quoted the observations of Lord Denning in *Lazarus Estates Ltd. Vs. Beasley (supra)* that "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."

25. According to **Story's Equity Jurisprudence, 14th Edn., Volume 1, paragraph 263**: "Fraud indeed, in the sense of a Court of Equity, properly includes 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 and unconscientious advantage is taken of another." In ***Patch Vs. Ward [1867 (3) L.R. Chancery Appeals 203]***, **Sir John Rolt, L.J.** held that: "Fraud must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the Court in ignorance of the real facts of the case, and obtaining that decree by that contrivance."

26. The Supreme Court in ***Bhaurao Dagdu Paralkar Vs. State of Maharashtra & Ors. [2005 (7) SCC 605]*** held that: "*Suppression of a material document would also amount to a fraud on the court. Although, negligence is not fraud, it can be evidence of fraud.*"

27. The aforesaid Authorities have been considered by the Apex Court in the case of ***Hamza Haji v. State of Kerala reported in JT 2006 (8) SC 215.***

28. The Assistant Registrar, though not a court of law, exercises quasi judicial or even administrative powers under Societies Registration Act, 1860, hence the ratio of law referred to here-in-above shall also apply to the proceedings giving rise to the instant writ petition.

29. For the aforesaid reasons, considering the findings recorded in the order dated 17.06.2023 under challenge and order dated 14.09.2023 not challenged, I do not find any good

ground to invite written response from the respondents or to grant any relief to the petitioners.

30. The writ petition has no merit and is, accordingly, **dismissed.**

Order Date:-19.10.2023

Jyotsana

(Kshitij Shailendra, J.)