HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 17401 of 2011

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the order passed by the first respondent in File No.D/2133 of 2009 dated 26.10.2009, as illegal, arbitrary and violation of fundamental rules; and consequently set-aside the said order.

The facts which led to filing of the present Writ Petition are as under:

The petitioner herein filed two applications for registration of death of Mohd. Yousuf Khan and Mohd. Abdul Salam Khan, who according to him have died on 02.06.1963 and on 08.08.1961 respectively at Edi Bazar, Hyderabad. After conducting an enquiry, proceedings vide D.Dis.No. D/3781 of 2009 dated 29.01.2009 and D.Dis.No.D/3780 of 2009 dated 02.02.2009 came to be issued by the Special Executive Magistrate, Hyderabad. Assailing the said proceedings, one G.Manohar Lal (2nd respondent herein) who is the petitioner therein, made an application under Section 13(3) of the Registration of Births and Deaths Act, 1969 (for short "the Act") alleging fraud, on the ground that the petitioner therein is not related to the deceased persons and that they were very much alive beyond the alleged dates of death. It is the case of the petitioner therein that his mother by name Shivamani Bai purchased a building bearing No.09.03.278 to 280 situated at Subhash road, Secunderabad from Md. Ghouse Khan through a registered document No.329 of 1964 dated 18.02.1964 and Doc.No.2127 of 1969 dated 08.12.1969 respectively and that his mother gave a portion of property on rent to the said Mohd. Ghouse Khan S/o.Ismail Khan through a rental agreement dated 15.08.1977. After the death of his mother, the petitioner therein became the sole successor to the property and that due to some differences between himself and the tenant, a suit in O.S.No.318 of 2008 was filed for eviction and recovery of rent. During the pendency of the said suit the writ petitioner herein and Mohd. Ghouse Khan created a fabricated sale deed No.2168 of 2008 dated 14.10.2008 with a fraudulent intention to knock away the property covered by O.S.No.318 of 2008. It is his case that the petitioner herein is not related to Mohd. Yousuf Khan and Mohd. Abdul Salam Khan but by posing himself as their nephew, filed application along with bogus documents, obtained proceedings from the first respondent and later used them in O.S.No.318 of 2008 for his wrongful gain. It is the case of the petitioner therein that Mohd. Yousuf Khan actually died on 15.06.1982 and Mohd. Abdul Salam Khan died on 15.12.1976 and both were cremated at Edgah grave yard, Chilakalaguda, Secunderabad. He relied upon the death certificate issued by the Municipal Corporation of Hyderabad in respect of the death of Mohd. Yousuf Khan with Regn. No. 421 dated 15.06.1982. Therefore, the petitioner therein prayed to cancel the proceedings No.D.Dis.No.D/3781 of 2009 dated 19.01.2009 as it was obtained by playing fraud and filing incorrect and false documents. After perusing the documents filed therewith, the first respondent issued notice to the respondent i.e., the petitioner herein calling upon him to show cause as to why the death proceedings No.D.Dis.D/3781/2009 dt:29.01.2009 and death certificate issued by the G.H.M.C., Circle No.4 with Regn.No.24 dt:31.01.2009 should not be cancelled. After conducting full-fledged trial, the application made by the respondent herein was allowed canceling the proceeding No.D/3781/2009 dt:29.01.2009 pertaining to the death of Mohd. Yousuf Khan and consequently directed the Registrar of Birth and Deaths, G.H.M.C., Circle NO.04, Hyderabad to cancel the death certificate of Mohd. Yousuf Khan. Challenging the said order, the present Writ Petition is filed.

The main ground urged by the learned counsel for the petitioner is that respondent No.1 has no jurisdiction to recall the order even on the ground of fraud. According to him, under Section 15 of the Act it is only the Registrar who has to enquire into the matter pursuant to an application made with material and then recommend the same to the Chief Registrar for cancellation of the entry. It is urged that under Rule 11 (6) of the Andhra Pradesh Registration of Births and Deaths Rules, 1999 (for short “the Rules”), if it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorized by the Chief Registrar by general or special order in this behalf under Section 25 and on hearing from him, take necessary action in the matter. In view of Section 15 of the Act and Rule 11 (6) of the Rules, the counsel for the petitioner submits that the authority who passed the order has no jurisdiction to recall or review his own order.

On the other hand, the learned counsel for the respondents would submit that since the order passed by the first respondent was obtained by fraud, an application for recall of the order can be made before the same authority. Since fraud vitiates entire proceedings, application for review of the order can be made before any authority at any stage of the proceedings including before the Court or Tribunal or an authority who passed the order. He submits that since the allegations of fraud are established beyond doubt, the order under challenge warrants no interference.

As seen from the facts referred to above, an application for registration of deaths came to be filed beyond one year of the death of the said person. Under Section 13 (3) of the Act any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

Two questions delve for consideration before this Court 1) Whether the said authority has power to review the order passed by him though the Act contemplates different procedure for cancellation of the entries; and (2) Whether really there was any fraud played by the writ petitioner herein in obtaining the death certificate of Mohammed Yousuf Khan.

A perusal of the order dated 29.01.2009, would show that there is an endorsement on the said order stating that in case at a later stage it is brought to the notice that the said order has been issued based on production of incorrect or false documents, the parents/applicant are alone responsible for the consequences thereof and the order is cancelled automatically apart from being liable for prosecution under Section 200 IPC.

Pursuant to an order passed on 29.01.2009, the Registrar made necessary entries in the books and issued the death certificate. As the said certificate came to be obtained by producing fraudulent and incorrect information, an application came to be filed before the same authority, who issued the order dated 29.01.2009 seeking cancellation of the same on the ground of fraud.

It is well established principles of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. About three centuries earlier Chief Justice Edward Coke proclaimed “Fraud avoids all judicial acts, ecclesiastical or temporal”. Therefore, any judgment, decree or order has obtained by playing fraud on the Court, Tribunal or authority is a nullity and non est in the eye of the law. It has been held by the Apex Court in many a judgments that the same can be challenged in any Court at any time, in appeal, revision or writ or even in collateral proceedings.

In ***A.V.Papayya Sastry and others v. Govt. of A.P. and others*** the Apex Court held as under:

> “26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.
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> 27. In S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. The Apex Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. 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, 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.

32. In United India Insurance Co. Ltd. v. Rajendra Singh & Ors., by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.

33. (16). Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

In ***Md. Qhairunnisa Begum v. Shaik Kusheed Begum*** a Division Bench of this Court while dealing with the aspect of fraud held that fraud vitiates every proceeding and merely because of lapse of time is no ground to reject the claim of authorities to revise such fraudulent orders.

In ***National Insurance Company Limited, Chandigarh v. Nicolletta Rohtagi*** the Apex Court held that the effect of obtaining compensation by fraud by the claimant vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

From the judgments referred to above, it is clear that if any order is obtained from any Court, Tribunal or Authority by practicing fraud or by furnishing incorrect information, the same can be recalled at any stage not only by the authority who passed the order but also in any Court in appeal, Revision, writ or in any other collateral proceedings.

In the instant case, the original order dated 29.01.2009 came to be passed by the first respondent/Special Executive Magistrate, Hyderabad, whose authority to pass order was not challenged. The said order contains an endorsement to the effect that if at a later stage it is brought to the notice that the order was passed based on production of incorrect or false documents, the applicant alone is responsible for the consequences thereof and the same would automatically stand cancelled apart from prosecution for the offence punishable under Section 200 IPC. Since the findings of the first respondent/Special Executive Magistrate is to the effect that the said order was obtained by way of fraud and having regard to the endorsement made, it cannot be said that the authority who passed the order has no jurisdiction to entertain the application.

Coming to the question of fraud, the first respondent/ Special Executive Magistrate after hearing both the parties and after giving them an opportunity to produce evidence held that there was fraud. This Court while hearing the matter under Article 226 of the Constitution of India would not normally go into factual aspects leading to fraud. But having regard to the circumstances of the case, it may be necessary to go into certain basic facts of the case to see as to the existence of fraud. On 16.06.2009 a show-cause notice was issued to the petitioner herein stating as to why the 1) death proceeding No.D.Dis.D/3781/2009 dated 29.01.2009 issued by the first respondent and (2) death certificate issued by the G.H.M.C. Circle No.4 with Regn. No.24 dated 31.01.2009, should not be cancelled. The petitioner, who was a respondent therein, appeared before the first respondent/Special Executive Magistrate on 20.07.2009 and filed his counter on 05.09.2009. Thereafter he took several adjournments on one pretext or the other. Ultimately, the case was posted for chief examination of the applicant on 19.09.2009 and thereafter it was adjourned to 03.10.2009. In spite of giving number of opportunities to the petitioner herein, no documentary evidence was adduced to disprove the theory of fraud. Hence, the Court proceeded to record the statement of the applicant and after perusing the counter, the first respondent/Special Executive Magistrate, Hyderabad dealt with the matter.

It is the case of the petitioner herein that the allegation of the death of Mohd. Yousuf Khan and Mohd. Abdul Salam Khan on 15.06.1982 and on 15.12.1976 respectively and that they were cremated in a grave yard at Chilkalguda, Secunderabad are false and created for the purpose of the petition. According to him, the matter relating to lease of the property to Mohd. Ghouse Khan and the petitioner herein creating a fabricated sale deed No. 2168/2008 dated 14.10.2008 are to be decided before the civil Court and the same cannot be attacked in these proceedings.

The argument of the second respondent herein is that Mohd. Yousuf Khan died on 15.06.1982 and his body was cremated in a grave yard at Chilkalguda, Secunderabad. In support of the same he placed on record 1) a letter dated 03.07.2009 issued by the Principal, St. Fatricks High School, Secunderabad stating that Md. Yousuf Khan S/o. Mohd. Ghouse Khan was an employee of the said school and retired on 05.06.1969, (2) the Electoral Roll of the Assembly Constituency No.209 for the year 1977, Secunderabad, indicate that Mohd. Yousuf Khan, R/o. H.No.11-4-670, Chilkalguda, Secunderabad was alive during the year 1977, (3) the two certificates issued by the Jame Masjid, Edgah and Grave Yard, Chilkalguda, Secunderabad, show that Mohd. Yousuf Kham died on 15.06.1982 and cremated in the grave yard; (4) the sworn statement of the Secretary of the Grave Yard was recorded by the Special Executive Magistrate Court to prove the above fact on 19.10.2009, (5) the death certificate issued by the Registrar of Births and Deaths, Circle No.18, G.H.M.C., Secunderabad Division with Registration No.421, dated 15.06.1982 show that Mohd. Yousuf Khan died on 15.06.1982 at his house bearing No.11-4-670, Chilkalguda, Secunderabad. Though an additional affidavit is filed by the petitioner herein but the authenticity of the documents referred to above is not challenged.

A perusal of the letter issued by the Principal St. Partrik's High School, Secunderabad, certified copy of the electoral roll, sworn statement of the Secretary of the Grave Yard and death certificates issued by the Registrar of Births and Deaths, makes it clear that the proceedings No.D/3781/2009 dated 29.01.2009 was obtained by producing false documents and incorrect information. Hence, it cannot be said that the order under challenge is without Jurisdiction and contrary to the record.

For the aforesaid reasons this Court is of the view that the order under challenge warrants no interference and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

04.09.2015

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