

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

Writ Appeal No.268 of 2018

Between:

Kasani Gnaneshwar

.... Appellant/Petitioner

And

The Joint Collector, Medchal-Malkajgiri Distraict & Ors.

.... Respondents/Respondents

DATE OF JUDGMENT PRONOUNCED: 03.04.2018.

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? -----
2. Whether the copies of judgment may be marked to Law Reports/Journals -yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -yes-

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

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! Counsel for Appellant/Petitioner: Sri G.Madhusudhan Reddy,
Learned Counsel.

^Counsel for respondents: Learned Government Pleader for
Revenue.

< GIST:

> HEAD NOTE:

? Citations:

- 1) (2015) 3 SCC 695 = 2015 (3) ALD 1 (SC)
- 2) 1998 (2) ALT 641
- 3) 2004 (1) Crimes 292 (SC) = (2004) 3 SCC 440
- 4) (2012) 11 SCC 574
- 5) (2015) 1 SCC 466
- 6) (2003) 8 SCC 311
- 7) (2015) 6 SCC 557
- 8) (2009) 12 SCC 378
- 9) (1956) 1 ALL ER 341 = (1956) 1 QB 702
- 10) (2009) 9 SCC 352
- 11) (2010) 8 SCC 467
- 12) (2004) 10 SCC 585
- 13) (1989) 3 SCC 483
- 14) (1969) 2 SCC 187
- 15) (1997) 6 SCC 71
- 16) 1976 (2) SCC 181
- 17) (2007) 11 SCC 363
- 18) (1994) 1 SCC 1
- 19) (2005 (5) ALD 118 (SC) : (2005) 6 SCC 149
- 20) (2008) 12 SCC 306
- 21) (2004 (6) ALD 31 (SC): (2003) 8 SCC 319
- 22) 1886 (90) All.E.R.1
- 23) 1963 Supp. 2 SCR 585
- 24) (1996) 5 SCC 550
- 25) (2005) 7 SCC 605
- 26) (2007) 4 SCC 221
- 27) 2001(6) ALD 582 (FB)
- 28) (1992) 1 SCC 534
- 29) (2002)1 SCC 100
- 30) (2006) 7 SCC 416
- 31) (1980) 1 SCC 52
- 32) (2004) 3 SCC 1
- 33) (2003) 7 SCC 667
- 34) (1995) Supp.(3) SCC 249
- 35) (1993) 3 SCC 326

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.268 of 2018

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.1715 of 2018 dated 29.01.2018.

The appellant herein filed the said Writ Petition seeking a writ of prohibition to declare the action of the Joint Collector, Medchal-Malkajgiri District, in taking up a suo-moto revision against the order of regularisation passed by the Tahsildar, Bachupally Mandal, Medchal-Malkajgiri District, in proceedings dated 06.06.1996 and 17.08.2000, in the absence of a grievance from any of the vendors of the petitioner and after a lapse of 18 years, as arbitrary and illegal; and to restrain the first respondent from proceeding further with adjudication of the suo-moto revision case dated 18.12.2017 concerning land admeasuring Ac.35.00 in Survey Nos.515 and 516, Bachupally Village and Mandal, Medchal-Malkajgiri District. A further direction is sought to the respondents not to interfere with the possession and enjoyment of the petitioner over the subject land.

Facts, to the limited extent necessary, are that the petitioner and 80 others submitted an application seeking regularisation of their agreement of sale dated 28.06.1955 and 04.12.1972 contending that they had purchased the lands, mentioned against their names, situated at Bachupalli Village, Qutbullapur Mandal, Ranga Reddy District from the original owners of the land. These

lands were recorded as Kharij Khata in respect of some survey numbers, and as patta in respect of some others. The 2nd respondent passed an order on 06.06.1996 regularising the unregistered sale deeds, under Section 5-A of the A.P. Record of Rights and Pattadar Passbooks Act, 1971 (hereinafter called the “1971 Act”), in respect of land of an extent of Acs.379.04 guntas situated in Survey Nos.101, 187 to 207, 209, 223, 257, 258, 281 and 282 of Bachupalli Village. These survey numbers originally formed part of Survey No.103. During re-survey, the afore-said survey numbers were allotted, and a supplementary sethwar was issued for these lands.

According to the appellant-writ petitioner, on an application made by the original owners Sri Hashim Ali and others on 31.12.1996, it was noticed that there was excess land of Acs.35.00 guntas, in possession of the purchasers through the original land owners; the excess area was allotted Survey No.515 for an extent of Acs.18.00 and Survey No.516 for an extent of Acs.17.00; the 2nd respondent passed orders regularising the excess area in favour of the appellant-writ petitioner; and consequent to the letter dated 13.07.1998, addressed by the Assistant Director of Survey and Land Records to the Mandal Revenue Officer, Quthbullapur Mandal, and consequent upon the regularisation proceedings dated 17.08.2000, pattadar passbooks and title deeds were issued in favour of the appellant-writ petitioner. The 1st respondent issued notice dated 18.12.2017 calling upon the appellant-writ petitioner to appear before him on 20.01.2018 at 11.00 A.M along with all documentary evidence and records with respect to this extent of Ac.35.00 guntas of land in Survey Nos.515 and 516.

Aggrieved thereby, the petitioner invoked the jurisdiction of this Court.

In the order under appeal, the Learned Single Judge noted that the appellant-writ petitioner and 80 others had submitted an application stating that they had purchased the lands mentioned against their names, situated at Bachupalli village, under agreements of sale dated 28.06.1955 and 04.12.1972 from the original owners, and had sought regularisation thereof; the lands, sought to be regularised, were recorded as 'Kharij Khata' in respect of some survey numbers, and patta in respect of some others; on verification of the records, the Tahsildar had passed an order on 06.06.1996 regularising the unregistered sale deeds under Section 5-A of the Record of Rights and Pattadar Pass Books Act, 1971 in respect of an extent of Ac.379.04 guntas of land situated in Survey Nos.101, 187 to 207, 209, 223, 257, 258, 281 and 282 of Bachupalli village, Qutbullapur Mandal; the said survey numbers, originally, formed part of Survey No.103 and, during re-survey, the new survey numbers 515 and 516 were allotted; after re-survey, and while issuing a supplementary sethwar, it was noticed that there was excess land, of Ac.35.00 guntas, in the possession of the purchasers who had purchased land from the original land owners; the excess area came to light on the application dated 31.12.1996 submitted by the original owners Sri Hashim Ali and others, and consequent to the letter dated 13.07.1998 addressed by the Assistant Director of Survey and Land Records to the Mandal Revenue Officer, Quthbullapur Mandal; this excess area was allotted Sy. No.515 for an extent of Ac.18.00, and Sy. No.516 for an extent of Ac.17.00 cts; the Tahsildar passed orders

regularising the excess area in favour of the appellant-writ petitioner; and, consequent to the regularisation proceedings issued on 17.08.2000, pattadar pass books and title deeds were issued in favour of the appellant-writ petitioner.

The order under appeal further records that the Joint Collector had issued a notice for enquiry, in respect of regularisation of the said extent of Ac.35.00 gts situated in Sy. No.515 and 516 under proceedings dated 17.08.2000, on the ground that, during field visit, he noticed certain irregularities while verifying the said proceedings; he had noticed some extrapolations in the Survey Numbers by including Survey No.103 (old), and utilising challan No.388 dated 14.06.1996 and challan No.433 dated 14.06.1996 for regularisation of lands in Survey Nos.515 and 516 also; from the records, filed along with the Writ Petition, it was noticed that the original claim of the appellant-writ petitioner and 80 others was in relation to an extent of Ac.379.04 guntas, for which regularisation proceedings were issued on 06.06.1996; the original owners had later submitted an application on 31.12.1996 informing that excess land was in their possession and, on survey, it was noticed that there was excess land of Ac.35.00 with respect to old Survey No.103; thereafter a supplementary sethwar was issued with respect to this excess land; it was not known whether the said land was covered by the Agreement of Sale or not; the appellant-writ petitioner had filed an application on 12.11.1999 based on which proceedings were issued by the Tahsildar on 17.08.2000; and the main enquiry of the Joint Collector was being directed against the proceedings dated 17.08.2000.

The Learned Single Judge was of the, *prima facie*, view that the Joint Collector should proceed with the enquiry for the afore-stated reasons; and, in view thereof, was not inclined to interfere with the impugned notice dated 18.12.2007. He left it open to the appellant-writ petitioner to support his case, with respect to regularisation, before the Joint Collector. The Learned Single Judge further observed that the ratio of the decision in **Joint Collector, Ranga Reddy District v. D. Narsing Rao**¹ was not applicable to the facts of the present case, as the Joint Collector had noticed the irregularity during his field inspection; and, *prima facie*, he found some fraud in the transaction. The Learned Single Judge granted liberty to the Joint Collector to conduct an enquiry, and held that the said enquiry could not be interdicted by the Court. The Writ Petition was, accordingly, dismissed. Aggrieved thereby the present appeal.

Sri A. Sudarshan Reddy, Learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that exercise of the power of revision by the first respondent was extremely belated; the petitioner has no access to the records; as the records were in the custody of the revenue officials, the petitioner could not be blamed for the alleged extra-polation; the order of regularisation was passed in the year 2000, more than 17 years ago; such belated exercise of power of revision was arbitrary and illegal; the findings recorded by the Learned Single Judge, that a *prima-facie* case of fraud had been made out, would influence the authorities; from the proceedings of the first respondent, it is evident that he had already formed an opinion; no useful purpose

¹ (2015) 3 SCC 695 = 2015 (3) ALD 1 (SC)

would, therefore, be served in furnishing an explanation; the dispute in the Writ Petition was only with regards payment of a paltry sum, towards stamp duty, of Rs.1,680/-; instead of forcing the appellant-writ petitioner to undergo the ordeal of having an enquiry caused against him, this Court could direct the respondents to collect the stamp duty of Rs.1,680/-, along with reasonable interest thereupon; and the appellant-writ petitioner would make the said payment, without prejudice to his contention that he had not committed any default in seeking regularisation.

According to the Learned Senior Counsel, at this length of time when more than 17 years had elapsed, the appellant-writ petitioner cannot now be called upon to produce evidence in proof of payment of stamp duty 17 years ago. Learned Senior Counsel would rely on **D. Narsing Rao**¹; and **K. Narayana Reddy v. DRO, Nalgonda**² in this regard.

On the other hand, Learned Government Pleader for Revenue (Telangana) would submit that, in the present case, the first respondent has alleged fraud; fraud vitiates all acts; the rule of delay and laches has no application in cases where the proceedings are vitiated by fraud; all that the first respondent has done is only to call upon the appellant-writ petitioner to show-cause why action should not be taken against him; it is always open to the appellant-writ petitioner to submit his reply thereto, and satisfy the authority that no action should be taken against him; this Court would, ordinarily, not entertain a Writ Petition filed against a show-cause notice, more so where fraud is alleged against the appellant-writ petitioner; the allegation, in the notice,

² 1998 (2) ALT 641

is that the then Tahsildar had colluded with the appellant-writ petitioner in regularising Ac.35.00 guntas of land in Survey Nos.515 and 516; and these factual aspects can only be examined in revision by the Joint Collector, and this Court would not undertake any such examination in proceedings under Article 226 of the Constitution of India. Learned Government Pleader would rely on **The Special Director v. Mohd. Ghulam Ghouse**³; **Badami v. Bhali**⁴; **State of Orissaa v. Fakir Charan Sethi**⁵; **Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education**⁶; **Madhukar Sadbha Shivarkar v. State of Maharashtra**⁷ in this regard.

In his proceedings dated 18.12.2017, the Joint Collector observed that, during his field visit and verification of old file bearing No.A/145/1996 in respect of the land in Survey Nos.515 and 516 admeasuring Ac.18.00 guntas and Ac.17.00 guntas, i.e in a total extent of Ac.35.00 guntas situated at Bachupally Village of erstwhile Quthbullapur Mandal and presently in Bachupally Tahsil, certain irregularities were found in regularising the Form-X claim, made by the appellant-writ petitioner, in the aforesaid survey numbers. According to the Joint Collector, the lacunae observed, in entertaining the Form X application filed by the appellant-writ petitioner by the then Tahsidlar, Quthbullapur, were the following:

- (1) On the application filed by Sri K.Gnaneshwar, (the appellant-writ petitioner), along with (28) others under Form X, the Tahsildar had passed an order, vide Proceedings

³ 2004 (1) Crimes 292 (SC) = (2004) 3 SCC 440

⁴ (2012) 11 SCC 574

⁵ (2015) 1 SCC 466

⁶ (2003) 8 SCC 311

⁷ (2015) 6 SCC 557

No.A/145/1996 Dt.1\06.06.1996, regularizing the unregistered sale transaction in respect of, and in, Sy.No.101 admeasuring Ac.4-16 gts of the appellant-writ petitioner along with other claimants in respect of Sy.Nos.101, 187 to 207, 209, 223, 257, 258, 281 and 282 for an extent of Ac.379-04 gts situated at Bachupally Village, and issued 13 (B) and 13(C).

- (2) The order was passed subsequently vide Proceedings No.A/145/1996 Dt:17.08.2000, and Form 13(B) and 13(C) were issued by the Tahsildar, for effecting necessary changes in the Revenue Records consequent to the creation of new (2) Sy.Nos. i.e. 515 and 516 admeasuring Ac.18.00 gts, Ac.17.00 gts, total extent Ac.35.00 with an extra-polation by including Sy.No.103 (old) in the claim made by the appellant-writ petitioner in Form-X application, and notice under Form 11 and 12, and also in 13(A) notice in respect of the land in Sy.No.101 of Bachupally village.
- (3) the Agreement of Sale Dt.28.06.1955 and Dt:04.12.1972, through which regularisation was done by the then Tahsildar, were also found to be extra-polated by corresponding Sy.No.103(Old).
- (4) Challan Nos.388 Dt.14.06.1996 and No.433 dt.14.06.1996 were remitted for regularisation of Sy.No.101 of an extent Ac.4-16 gts, and the same were considered and 13(b) and 13(C) were issued. Subsequently, the same challan Nos, mentioned above, were once again recorded illegally for regularisation of Sy.Nos.515 and 516 in Form 13(B) and 13(C) during the year 2000 by mentioning the amount as Rs.840/- & Rs.770/- and Rs.70/- totalling to an amount of Rs.1680/-, whereas the same has been found to be paid.

The Joint Collector, thereafter, observed that, in view of the narrated facts and circumstances, it was evident that the appellant-writ petitioner had got regularised an unregistered document under the ROR Act vide proceedings No.A/145/1996 dated 17.08.2000, and had obtained Form 13(B) and 13(C)

fraudulently by playing mischief and in connivance with the then Tahsildar, Quthbullapur Mandal in respect of the land in Survey Nos.515 and 516 admeasuring Ac.18.00 gts and Ac.17.00 gts of land i.e., for a total extent of Ac.35.00 gts situated at Bachupally Village of erstwhile Quthbullapur Mandal, and presently Bachupally Tahsil; as, prima-facie, it was found that fraud had occurred while passing the order under revision by proceedings dated 17.08.2000, and in issuing Form 13(B) and 13(C), suo-moto revision had been taken-up under Section 9 of the 1971 Act against the order of the Tahsildar, Quthbullapur dated 17.08.2000, and the consequential orders i.e. issuance of 13(B) and 13(C) in respect of the land in Survey Nos.515 and 516 admeasuring Ac.18.00 gts and Ac.17.00 gts of land i.e of a total extent of Ac.35.00 gts situated at Bachupally Village of erstwhile Quthbullapur Mandal, and presently in Bachupally Tahsil. The Joint Collector took the matter on record for enquiry on 20.01.2018 at 11.00 A.M, and directed the appellant-writ petitioner to appear before him along with all documentary evidence and records, either in person or through Counsel, and to state why action should not be taken for cancellation of the order under revision issued by the Tahsildar, Quthbullapur Mandal.

Section 5-A of the 1971 Act relates to regularisation of certain alienations or other transfer of lands and, under subsection (1) thereof, notwithstanding anything contained in the 1971 Act, the Transfer of property Act, 1882 and the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or affected, otherwise than by a registered document, the alienee or

the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid. Under sub-section (2), on receipt of such application, the Mandal Revenue Officer shall, after making such enquiry as may be prescribed, require the alienee or the transferee to deposit, in the office of the Mandal Revenue Officer, an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the registering officer on a reference made to him by the Mandal Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed. Under the proviso thereto, the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under Section 5-A(2) unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Area Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. Under Sub-section (4), the Mandal Revenue Officer, on deposit of the amount specified in Section 5-A(2), shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of the certificate; and such certificate shall, notwithstanding anything in the Registration Act, 1908, be evidence of such alienation or transfer as against the alienor or the transferor or any person claiming interest under him.

Rule 22 of the A.P. Rights in Land & Pattadar Pass Books Rules, 1989 relates to regularisation of certain alienations or transfers of land. Under sub-section (5) thereof, the Mandal Revenue Officer shall require the alienee or the transferee, under Section 5-A of the 1971 Act, to deposit, through a challan in the treasury, an amount equal to the registration fees and stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Indian Registration Act, 1908 as fixed by the registering officer on a reference made to him by the Mandal Revenue Officer in Form No.XIII-A, on the basis of the value of the property arrived, within the time fixed by the Mandal Revenue Officer, not exceeding one month from the date of the communication and receipt of the order. Under clause (ii) of Rule 22(5), on deposit of the amounts through a challan in the treasury as under clause (i), the Mandal Revenue Officer shall issue a certificate in Form No.XIII-B as required under Section 5(A)(4) of the Act to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of the certificate.

The allegation of fraud, made by the Joint Collector in the show cause notice dated 18.12.2017, is that the Tahsildar had passed an order, vide proceedings dated 1\06.06.1996, regularizing the unregistered sale transaction in respect of the petitioner's lands in Sy.No.101 admeasuring Ac.4-16 gts, along with other claimants in different survey numbers for an extent of Ac.379-04 gts; subsequently, vide proceedings dated 17.08.2000, the Tahsildar had issued notices in Form XIII(B) and XIII(C) for effecting necessary changes in the Revenue Records consequent to

the creation of two new Sy.Nos.515 and 516, admeasuring Ac.18.00 gts and Ac.17.00 gts respectively, for a total extent of Ac.35.00; this order dated 17.08.2000 was issued on the extra-polation in the appellant-writ petitioner's application seeking regularisation, and in the notices issued in Forms XI, XII and XIII(A) with respect to the subject land by including Sy.No.103 (old); the agreements of sale dated 28.06.1955 and 04.12.1972, which were regularised under Section 5-A of the 1971 Act by the Tahsildar on 17.08.2000, also contained an extra-polation whereby the corresponding Sy. No.103(old) was inserted therein; and two challan Nos.388 and 433 both dated 14.06.1996, through which payments were made for regularisation of the lands of an extent of Ac.4.16 guntas in Sy. No.101, were again illegally used to seek regularisation of lands in Sy.Nos.515 and 516 (which is said to correspond to Sy. No.103 (old), and in Forms XIII(B) and XIII(C), in the year 2000 mentioning the amount paid as Rs.1680/-.

On these allegations, the Joint Collector recorded his, *prima facie*, opinion that the appellant-writ petitioner had got an unregistered document regularised under the 1971 Act, and had obtained Form XIII(B) and XIII(C) fraudulently in connivance with the then Tahsildar in respect of land of an extent of Ac.35.00 in Sy. Nos.515 and 516 of Bachupally village; and a fraud had occurred on the Tahsildar passing the order dated 17.08.2000, and in issuing Form XIII(B) and XIII(C). It is to enquire into these allegations of fraud that an enquiry was sought to be caused, and the date of enquiry was fixed as 20.01.2018. It is well settled that, on the slightest of doubt or even *prima facie* proof of fraud, the matter must be thoroughly investigated to arrive at the truth.

(State of Orissa v. Harapriya Bisoi⁸; Fakir Charan Sethi⁵).

Fraud unravels everything. Once fraud is proved it vitiates judgments, contracts and all transactions. **(Ram Preeti Yadav⁶; Lazarus Estates Ltd. v. Beasley⁹).**

The show cause notice, proposing to revise the order of the Tahsildar dated 17.08.2000, was issued more than seventeen years thereafter vide proceedings 18.12.2017. It is no doubt true that the power of revision should be exercised within a reasonable time as the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power, within a reasonable time, is inherent therein **(Santosh Kumar Shivgonda Patil v. Balasaheb Tukaram Shevale¹⁰; D. Narsing Rao¹)**, and the legislature cannot be intended to have left the orders passed under the Act open to variation for an indefinite period as it would have the effect of rendering the title of the holders/allottee(s) permanently precarious, and in a state of perpetual uncertainty. The Court should construe the statutory provision in such a manner which makes the provisions workable, advancing the purpose and object of enactment of the statute. **(Sulochana Chandrakant Galande. v. Pune Municipal Transport¹¹).** Unreasonable delay in exercise of the revisional power would tend to undo things which have attained finality. It depends on the facts and circumstances of each case as to what is

⁸ (2009) 12 SCC 378

⁹ (1956) 1 ALL ER 341 = (1956) 1 QB 702

¹⁰ (2009) 9 SCC 352

¹¹ (2010) 8 SCC 467

the reasonable time within which the power of suo motu action can be exercised. (**State of H.P v. Rajkumar Brijender Singh**¹²).

Delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will result in avoidable and endless uncertainty in human affairs, which is not the policy of law. The intervening delay may have led to creation of third party rights that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law must run closely with the rule of life. (**D. Narsing Rao**¹). What would be a reasonable period would depend upon the facts of each case, (**Government of India v. Citedal Fine Pharmaceuticals**¹³; **State of Gujarat v. Patil Raghav Natha**¹⁴; **Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim**¹⁵; **S.B. Gurbaksh Singh v. Union of India**¹⁶; **K. Narayana Reddy**²), the nature of the statute, the rights and liabilities thereunder and other relevant factors. (**State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd.**¹⁷).

While belated exercise of the power of revision is impermissible, the question which necessitates examination in the present case is whether such an exercise of the power would necessitate interference, in proceedings under Article 226 of the Constitution of India, in cases of fraud. 'Fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another, to gain by another's loss. (**S.P.**

¹² (2004) 10 SCC 585

¹³ (1989) 3 SCC 483

¹⁴ (1969) 2 SCC 187

¹⁵ (1997) 6 SCC 71

¹⁶ 1976 (2) SCC 181

¹⁷ (2007) 11 SCC 363

Chengalvaraya Naidu v. Jagannath¹⁸; **State of A.P. v. T. Suryachandra Rao**¹⁹; and **Behari Kunj Sahkari Avas Samiti v. State of U.P.**²⁰). ‘Fraud’ has been defined as an act of trickery or deceit. In *Webster’s Third New International Dictionary*, ‘fraud’ in equity has been defined 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 *Black’s Law Dictionary*, ‘fraud’ is defined as an intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to 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, is one 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 the *Halsbury’s Laws of England*, a representation is deemed to be false if it was, at the material date, false in substance and in fact.

From the dictionary meaning or even otherwise, fraud arises out of the deliberate active role of the representor 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 a fact with knowledge that it was false. “Fraud” is proved when it is shown that a false

¹⁸ (1994) 1 SCC 1

¹⁹ (2005 (5) ALD 118 (SC) : (2005) 6 SCC 149

²⁰ (2008) 12 SCC 306

representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless of whether it be true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud. (**Ram Chandra Singh v. Savithri Devi**²¹; **T. Suryachandra Rao**¹⁹; **Behari Kunj Sahkari Avas Samiti**²⁰; **Derry v. Peek**²²).

The expression 'fraud' involves two elements, deceit and injury to the person deceived. A benefit or advantage to the deceiver will almost always cause 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. (**Vimla (Dr.) v. Delhi Admn**²³; **Indian Bank v. Satyam Fibres (India) (P) Ltd**²⁴; **T.S uryachandra Rao**¹⁹; **Behari Kunj Sahkari Avas Samiti**²⁰ and **Bhaurao Dagdu Paralkar v. State of Maharashtra**²⁵). In fraud one gains at the loss of another. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. (**A.V. Papayya Sastry v. Govt. of A.P.**²⁶).

Fraud is a conduct which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former. Misrepresentation itself amounts to fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully 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

²¹ (2004 (6) ALD 31 (SC): (2003) 8 SCC 319

²² 1886 (90) All.E.R.1

²³ 1963 Supp. 2 SCR 585

²⁴ (1996) 5 SCC 550

²⁵ (2005) 7 SCC 605

²⁶ (2007) 4 SCC 221

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 others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be saved by the application of any equitable doctrine including estoppel and res judicata. (**Ram Chandra Singh**²¹; **T. Suryachandra Rao**¹⁹; **Behari Kunj Sahkari Avas Samiti**²⁰; **Ram Preeti Yadav**⁶; **A.P. Scheduled Tribes Employees Association v. Aditya Pratap Bhanj Dev**²⁷).

A representation is fraudulent not only when the person making it knows it to be false, but also when he ought to have known, or must be taken to have known, that it was false. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so. (**Kerr on Fraud and Mistake; Ram Chandra Singh**²¹). Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. (**Badami**⁴; **Shrisht Dhawan v. Shaw Bros**²⁸; **Roshan Deen v. Preeti Lal**²⁹; **Ram Preeti Yadav**⁶; and **Ram Chandra Singh**²¹). Fraud and justice never dwell together. (**Ramchandra Singh**²¹; **T. Suryachandra Rao**¹⁹; and **Behari Kunj Sahkari Avas Samiti**²⁰). Fraud avoids all judicial acts, ecclesiastical or temporal. A judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eye of the law. Such a judgment/decree—by the first court or by the highest court—should be treated as a nullity by every court, whether

²⁷ 2001(6) ALD 582 (FB)

²⁸ (1992) 1 SCC 534

²⁹ (2002)1 SCC 100

superior or inferior. It can be challenged in any court even in collateral proceedings. (**S.P. Chengalvaraya Naidu**¹⁸; **Badami**⁴; **Ram Preeti Yadav**⁶).

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. Fraud 'vitiates all transactions known to the law of however high a degree of solemnity'. (**T. Suryachandra Rao**¹⁹; **Lazarus Estates Ltd.**⁹; **Badami**⁴). No court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact that it is being used as an instrument of fraud. The basic principle is that a party who secures the judgment by taking recourse to fraud should not be enabled to enjoy the fruits thereof. (**Badami**⁴; **Hamza Haji v. State of Kerala**³⁰). A person whose case is based on falsehood has no right to approach the Court. (**Badami**⁴). A judgment obtained by fraud or collusion may be treated as a nullity'. Sanction procured by fraud or collusion, cannot withstand invalidity because, otherwise, high public policy will be given as hostage to successful collusion. (**S.B. Noronah v. Prem Kumari Khanna**³¹; **Halsbury's Laws of England, Vol. 16, 4th Edn., para 1553; Badami**⁴).

Even in proceedings other than judicial, an order obtained by fraud and misrepresentation, and/or a determination as a result of fraud, cannot be allowed to stand. Fraud unravels everything, and no person can keep an advantage or benefit or privilege obtained by fraud. In public law, fraud on public authorities is a special species of fraud which, without anything

³⁰ (2006) 7 SCC 416

³¹ (1980) 1 SCC 52

further, must deny the person the benefits obtained by fraud. Whether intentional or not, whether malafide or bonafide, public law does not permit a person to retain the advantage obtained by fraud. (**Aditya Pratap Bhanj Dev**²⁷). The colour of fraud in public law or administrative law arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to procure an order from an authority or tribunal. In public law the duty is not to deceive. (**Shrisht Dhawan**²⁸; **Roshan Deen**²⁹; **Ram Preeti Yadav**⁶; **Ram Chandra Singh**²¹; **Ashok Leyland Ltd. v. State of T.N**³²; **T. Suryachandra Rao**¹⁹ and **Behari Kunj Sahkari Avas Samiti**²⁰).

Let us now take note of the judgments cited across the bar on the belated exercise of revisional jurisdiction even in cases where fraud is alleged. In **Ibrahimpattam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy**³³, the Supreme Court held that, in the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud, and as suo-motu power should be exercised within a reasonable period from the date of discovery of fraud, the Court would be justified in not examining the question of fraud alleged to have been committed.

In **D. Narsing Rao**¹, on which reliance is placed on behalf of the appellants, the petitioners therein claimed that the Jagirdar of Gopanpally village in Ranga Reddy district had given Pattas to different persons who were in possession of the lands; after abolition of the Jagirs, these lands were reflected as Pattas in the Khasra Pahani for the year 1954-55; these Pattedars had alienated

³² (2004) 3 SCC 1

³³ (2003) 7 SCC 667

the lands to the petitioners under registered sale deeds, and they were in possession thereof; on inquiry, they came to know that the Government had reserved and allotted a total extent of 477 acres in Survey Nos.36 and 37 of Gopanpally village for house sites to Government employees by G.O.Ms. No.850 dated 24.9.1991, without mentioning the sub-division nos. of the survey numbers; and the Patta lands of the petitioners were also sought to be included within the reserved area.

The petitioners filed W.P. No.21719 of 1997 before the High Court. Thereafter respondent No.1, at the instance of Respondent No.2, issued notice dated 19.12.2003 to the petitioners and others claiming that, on verification of the records i.e. the Faisal Patti for the year 1953-54 in respect of land bearing Survey Nos.36 and 37 of Gopanpally village, it came to light that no "Ain Izafa" (i.e. implementation of changes) had taken place in respect of the said land; entries in the Khasra Pahani had been incorporated by the then Patwari without any orders from the competent authority; and an enquiry under Section 9 of the Andhra Pradesh Rights in Land to Pattadar Passbooks Act, 1971, was scheduled for hearing on 27.12.2003.

The writ petitioners challenged the said notice filing W.P. No.26987 of 2003, and a learned Single Judge of the High Court allowed the Writ Petition by order dated 30.8.2004, and set aside the impugned show cause notice. On the very same basis the first respondent issued notice dated 31.12.2004 proposing to cause an enquiry under Section 166B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F, fixing the date of hearing as 5.2.2005. The petitioners challenged the same in W.P.No.1731 of

2005; and W.P.Nos.21719 of 1997 and 1731 of 2005 were heard together. The Writ Petitions were resisted by the Government stating that, in the Khasra Pahani for the year 1954-55, the subject lands were entered fraudulently by the Patwari; these subdivisions were not approved by the Nizam Jamabandi in the Faisal Patti during 1954-55; the subject lands were classified, from the time of Jagir abolition, as Chinna Kancha (grazing land); the unauthorised entries in Khasara Pahani, made by the then Patwari, were detected by the Revenue Authorities; and, hence, an enquiry was ordered.

A Learned Single Judge of this Court, by a common order dated 15.09.2009 set aside G.O.Ms.No.850 dated 24.09.1991 in so far as the subject lands were concerned. He also set aside the notice dated 31.12.2004. The appeals, preferred thereagainst, were dismissed by the Division Bench.

It is in this context that the Supreme Court, in **D. Narsing Rao**¹, held that, while the entry sought to be corrected was described as fraudulent, the notice impugned before the High Court did not state when the alleged fraud was discovered by the State; a specific statement, in that regard, was essential for it was a jurisdictional fact which ought to have been clearly asserted in the notice issued to the respondents; the attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud was therefore futile; at any rate, when the Government allotted the subject land as house sites for Government employees in the year 1991, it must be presumed to have known about the record, and the revenue entries concerning the parcel of land made in the

ordinary course of official business; as the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years; no explanation had been offered even for this delay assuming that the same ought to be counted only from the year 1991; and judged from any angle the notice, seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed.

The law declared by the Supreme Court, in **D. Narsingh Rao**¹, is that the power of revision should be exercised soon after detection and discovery of fraud; and failure on the part of the authorities concerned, to exercise such powers within a reasonable time after the fraud is discovered, may justify such action being interdicted by this Court.

On the other hand, in **State of Orissa v. Brundaban Sharma**³⁴ the Supreme Court held that exercise of the power of revision, 27 years after the date of alleged grant of patta, was legal and valid as its authenticity and correctness was shrouded with suspicious features. In **Madhukar Sadbha Shivarkar**⁷, the Supreme Court held that a plea of fraud was urged on behalf of the State Government and the de facto complainant owners; it is at the instance of the de-facto complainant land owners that orders were passed by the State Government on the alleged ground of fraud played by the declarants upon the Tahsildar, and the appellate authorities, to obtain illegal orders in order to come out from the clutches of the land ceiling provisions of the Act by creating revenue records; these fraudulent acts on their part unravels everything; the question of limitation, under the provisions of the

³⁴ (1995) Supp.(3) SCC 249

Act, for the State Government to exercise its powers did not, therefore, arise; orders obtained unlawfully by the declarants would be a nullity in the eye of the law; and though such orders had attained finality, if it was found, in the enquiry, that they were tainted with fraud, the State Government could interfere therewith.

Where fraud, or suppression of material facts, has come to the knowledge of the higher authorities after a long lapse of time, limitation would start running only from the date of discovery of the fraud or suppression. (**State of Maharashtra v. Rattanlal**³⁵; **D. Narsing Rao**¹). In cases of fraud, the suo-motu power of revision can be exercised within a reasonable time from the date of detection or discovery of fraud depending on the facts and circumstances of each case, in the context of the statute and the nature of the rights of the parties. While exercising such power, several factors need to be kept in mind such as the effect on the rights of third parties over the immovable property due to passage of considerable time, change of hands by subsequent bonafide transfers, the orders attaining finality under the provisions of other Acts etc. (**Ibrahimpatnam Taluk Vyavasaya Coolie Sangham**³³). Even in cases where the orders sought to be revised are fraudulent, the power of revision must be exercised within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity for, otherwise, exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority. (**D. Narsing Rao**¹).

³⁵ (1993) 3 SCC 326

As held by the Supreme Court, in **D. Narasinga Rao**, the power of revision should be exercised soon after detection and discovery of fraud. In the show-cause notice, impunged in the Writ Petition, the Joint Collector has stated that, during field visit, he noticed certain irregularities; while verifying the proceedings he had noticed some extra-polations in the survey numbers by including Survey No.103 (old); and Challan Nos.388 and 433 dated 14.06.1996 were utilised, for regularisation of lands in Survey No.515 and 516 also, though they related to the amounts remitted for regularisation of Ac.4.16 gts of land in Sy. No.101. Judicial notice can be taken of the fact that Joint Collectors, like all other government officials, are subjected to regular and periodic transfers; and, since these alleged instances of fraud are said to have come to light during the field inspection of the Joint Collector who issued the show-cause notice dated 18.12.2017, it does appear that the power of suo-motu revision has been exercised by the Joint Collector soon after he detected and discovered these alleged instances of fraud. It cannot, therefore, be said that exercise of the power of revision, by the Joint Collector, is so inordinate and belated as to necessitate its being set aside in proceedings under Article 226 of the Constitution of India.

In the present case, serious allegation of fraud are levelled, by the Joint Collector, against the appellant-writ petitioner. We may not be understood to have held that the Joint Collector's *prima facie* view, of fraud having been committed by the appellant-writ petitioner, is justified. We are only of the opinion that these allegations of fraud necessitate examination and it would be wholly inappropriate for us, in proceedings under Article 226 of the

Constitution of India, to interdict a show cause notice, seeking to revise the order of the Tahsidlar dated 17.08.2000, as fraud is not only alleged, but details of these allegations of fraud are also furnished in the show cause notice.

The mere fact that the show cause notice refers to the allegations of fraud does not mean that the Joint Collector has already made up his mind, and the proposed enquiry is a mere ritual and an empty formality. In order to exercise the power of revision seventeen years after the order dated 17.08.2000 was passed by the Tahsildar, the Joint Collector was required to record reasons which, *prima facie*, justified exercise of such revisional powers. Bald allegation of fraud would not have sufficed for exercise of the power of revision, and it is only if details thereof had been furnished in the show-cause notice, and these allegations of fraud are later established in the enquiry, would belated exercise of revisional powers be justified. The Joint Collector had, necessarily, to furnish these details in the show cause notice, and the mere fact that he did so would not necessitate the conclusion that he had already made up his mind on the guilt of the appellant-writ petitioner.

It must also be borne in mind that the proceedings under challenge in the Writ Petition is merely a show-cause notice, and unless the High Court is satisfied that the show cause notice was totally non-est in the eye of law, for absolute want of jurisdiction of the authority to even investigate into facts, such Writ Petitions should not be entertained for the mere asking and as a matter of routine. The petitioner should, invariably, be directed to respond to the show cause notice and take all stands highlighted in the

Writ Petition. Whether the show cause notice was founded on any legal premise is a jurisdictional issue which can be urged by the recipient of the notice, and such issues can be adjudicated by the authority issuing the very notice initially, before the aggrieved can approach the Court. (**Mohd. Ghulam Ghouse**³).

It would be wholly inappropriate for us therefore, in a Writ Petition filed challenging a mere show cause notice, to examine the submissions put forth on behalf of the appellants on merits, or undertake an enquiry as to whether the petitioner had access to the revenue records in the custody of revenue officials; whether he can be held responsible for the alleged inter-polations therein; and whether these allegations are confined only to non-payment of stamp duty and nothing more. Nor would we be justified in expressing any opinion on the submission of the Learned Government Pleader for Revenue that, since the allegation in the show-cause notice is that the then Tahsildar had colluded with the petitioner, it matters little whether or not the appellant-writ petitioner had access to the revenue records in the custody of the then Tahsildar. Suffice it to observe that, as the appellant-writ petitioner has merely been asked to show-cause, it is always open to him to raise all such contentions, in his reply to the show-cause notice, as are available to him in law.

In the order under appeal the Learned Single Judge has opined that, prima-facie, the Joint Collector found some fraud in the transaction, and he should therefore be permitted to proceed with the enquiry. In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order of the Learned Single Judge suffers from a patent illegality. We find no

such infirmity in the order under appeal. Suffice it, therefore, to direct the Joint Collector, after the appellant furnishes his reply to the show cause notice within three weeks from today, to pass an order strictly in accordance with law taking into consideration the objections put forth by the appellant-writ petitioner, in their reply to the show cause notice, uninfluenced either by any observations in the order under appeal or in the order now passed by us.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions, if any pending, shall also stand dismissed. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 03.04.2018

Note: L.R. copy to be marked.
B/o
MRKR/CS

