

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1698 of 2017

1. Samanti Kumari Wife of Anil Kumar Singh
2. Mua Kuer Wife of late Ramcheh Singh
3. Radheshyam Singh Son of late Satya Narayan Singh
4. Shyam Bihari Singh
5. Anil Singh @ Anil Kumar Singh
6. Ram Lal Singh
7. Sunil Kumar @ Sanjay Singh Sl nos. 4 to 7 are the Sons of late Ram Chela Singh above all are resident of Village P.O. - Amaon, P.S. Karamchat, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Kaimur at Bhabua.
3. The District Public Redressal Officer, kaimur at Bhabua.
4. The Additional District Magistrate, Kaimur at Bhabua.
5. The Sub Divisional Officer, Kaimur at Bhabua.
6. The Circle Officer, Rampur, District- Kaimur at Bhabua.
7. The Chandrama Singh Son of Maharaj Singh
8. Baijnath Singh Son of late Kailash Singh
9. Jitendra Singh Son of Nagina Singh
10. Hanuman Singh Son of Roop Narain Singh
11. Surendra Singh Son of late Radhima Singh
12. Ashok Kumar Singh Son of Baijnath Singh
13. Satyendra Singh Son of Bhushan Singh
14. Bechan Singh Son of Girija Singh
15. Nagendra Singh Son of Ram Ashish Singh
16. Rajbansh Singh Son of late Yadunandan Singh
17. Dadan Singh Son of late Gaya Singh
18. Rajbali Singh Son of late Haricharan Singh
19. Rama Shankar Sah Son of Yamuna Sah
20. Ram Narain Singh Son of late Ram Sagar Singh
21. Dharmendra Singh Son of Sheo Pujan Singh
22. Radheshyam Singh Son of late Narain Singh
23. Sudarshan Singh Son of late Bansropan Singh
24. Jitendra Singh Son of late Bharat Singh Sl nos 7 to 24 all are the Residents



of Village P.O- Amaon, P.S. Karamchat, District- Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Radha Mohan Pandey
For the Respondent/s : Mr.ramesh Kumar Srivastava, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

5 28-02-2019 Nothing obtained by fraud can be sustained, as has been held repeatedly by the Supreme court in catena of decisions. In case of *Ram Chandra Singh vs. Savitri Devi* reported in **(2003) 8 SCC 319**, the Supreme court observed that fraud and justice never dwell together and fraud vitiates every solemn act. Fraud, the Supreme court said in case of *Ram Chandra Singh* (supra), is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter. Fraud, the Supreme Court reiterated, is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine.

2. The above noted well accepted principle needs to be kept in mind at the outset while considering the claim of the petitioners in the present writ application bearing in mind the background in which the impugned order dated 18.11.2016 has



been passed by the Collector-cum-District Magistrate, Kaimur at Bhabua in Miscellaneous (Land Settlement Cancellation) Case No. 01 of 2016-17, whereby settlement of a piece of land in favour of the petitioners in Settlement Case No. 49 of 1988-89 has been cancelled. The very opening sentence of the impugned order indicates that the settlees had got the land in question, settled in their favour on the basis that they were landless persons though they possessed ancestral land to the extent of 9.26 acres. This fact is not being disputed even in the present writ application that the petitioners' family possessed land admeasuring 9.26 acres. It is the case of the petitioners, however, that after partition in the family they would have been entitled individually to less than 2 acres of land each and, therefore, there is no illegality in the settlement made in the year 1988. This is also not in dispute that the land which was settled in favour of the petitioners was a Government land as recorded in the records of right, shown to be in forcible possession of the petitioners' ancestors.

3. Petitioner No.1 appears to be the wife of petitioner No.5, who is son of late Ram Chela Singh. Petitioner No.2 is wife of Ram Chela Singh. Radhe Shyam Singh (petitioner No.3), Ram Chela Singh and Ram Lakhan Singh had made an



application before the Circle Officer for settlement of the said land by issuance of *Basgit Parcha* appertaining to Khata No. 261, Keshra No. 1802, area 26 decimal, which is evident from Annexure-P2 to the writ application. The Circle Officer appears to have recorded in his proceeding on 02.07.1988 that the applicants were landless. He described the area of land in dispute as 0.07 decimal. From the order dated 28.07.1988 of the Circle Officer, it appears that the reports of Halka Karamchari and Circle Inspector were available before him and in the said reports also the applicants were shown to be landless. According to the said order, the petitioners were found to be in forcible possession over the disputed land which is admittedly Government land. The Circle Officer, accordingly, recommended settlement of 5 decimal of land with the petitioners. It transpires that before the Sub-Divisional Officer also it was represented, in the recommendation of the Circle Officer that they were landless persons and in forcible possession of land in question. It was also represented that they had erected their house over the land in question. On a proposal made to the Sub-Divisional Officer, the Sub-Divisional Officer directed for issuance of *parcha*. This is the background in which the land came to be settled in favour of Ram Chela singh, son of



Ram Lakhan Singh and Radhe Shyam singh, son of Satya Narayan Singh each, having area 2 and half decimal.

4. It is evident from the application made on behalf of the petitioners before the Circle Officer, Rampur, Kaimur at Bhabua for settlement of the land in question, that on the ground that they were landless and had erected their house over the land in question, they wanted *Basgit Parcha* to be issued in their favour.

5. The Collector has recorded in the impugned order dated 18.11.2016 that by concealing correct facts, in connivance with the *Halka Karamchari* and the Circle Inspector, the petitioners got a false report submitted for the purpose of settlement of the land in question in his favour and got the land settled. The Collector has noted that the family of the applicants for settlement of land possessed more than 9.25 acres of land. The Collector has further found the story of a house having been erected over the land in question, to be incorrect. Accordingly, while cancelling the settlement, the Collector has ordered for initiating disciplinary action against the then Halka Karamchari, Circle Inspector and Circle Officer for the misconduct getting settled a public land in favour of the family of the petitioners, in collusive manner, illegally.



6. Mr. Radha Mohan Pandey, learned counsel appearing on behalf of the petitioners has submitted that the impugned order of the Collector is beyond jurisdiction and has argued that since the petitioners have remained in possession over the land in question, for several decades, their title, acquired by virtue of their continuous possession and settlement of land done in 1988 cannot be disturbed. He has argued that in respect of the land in question, a title suit is pending in the civil court in which a written statement has been filed on behalf of the State of Bihar in which also the settlement made by the Sub-Divisional Officer in favour of Ram Chela Singh and Radhe Shyam Singh has been supported. It, however, appears from the impugned order dated 18.11.2016 itself that the Government Pleader has been requested to take steps for amendment in the written statement, in the said civil suit.

7. Whether the conduct of the petitioners, their predecessors-in-interest, in collusion with revenue authorities, leading to settlement of the land in dispute constitutes fraud or not is a question which needs to be addressed by this Court.

8. In case of *Venture Global Engg. LLC Vs. Tech Mahindra Limited and another* reported in (2018) 1 SCC 656, the Supreme Court has dealt succinctly as to what constitutes



fraud. The Supreme court in the said case has quoted with approval a decision of House of Lords in *Derry v. Peek*, LR 14 AC 337 (HL), wherein it had been held that a fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth, or recklessly, whether it be true or false. Paragraphs 79 to 83 of the said decision in case of *Venture Global Engg LLC* (supra), may also be usefully quoted herein below to answer the above noted question, which reads as under:-

“79. The author has said that, Courts of Equity have from a very early period had jurisdiction to set aside awards on the ground of fraud, except where it is excluded by the statute. So also, if the award was obtained by fraud or concealment of material circumstances on the part of one of the parties so as to mislead the arbitrator or if either party be guilty of fraudulent concealment of matters which he ought to have declared, or if he wilfully mislead or deceive the arbitrator, such award may be set aside. (See Kerr on Fraud and Mistake, 7th Edn., pp.425-25).

80. The author said that, if a man makes a representation in point of fact, whether by suppressing the truth or suggesting what is false, however, innocent



his motive may have been, he is equally responsible in a civil proceeding as if he had while committing these acts done so with a view to injure others or to benefit himself. It matters not that there was no intention to cheat or injure the person to whom the statement was made. (See Kerr on Fraud and Mistake, 7th Edn., p.7).

81. This rule of law is applicable not only between the two individuals entering into any contract but is also applicable between an individual and a company and also between the two companies. (See Kerr on Fraud and Mistake, 7th Edn., p. 99.).

82. The author said that this principle is also not limited to cases where an express and distinct representation by words has been made, but it applies equally to cases where a man by his silence causes another to believe in the existence of a certain state of things, or so conducts himself as to induce a reasonable man to take the representation to be true, and to believe that it was meant that he should act upon it, and the other accordingly acts upon it and so alters his previous position. (See Kerr on Fraud and Mistake, 7th Edn., p. 110.).

83. The author said that where there is a duty or obligation to speak, and a



man in breach of that duty or obligation holds his tongue and does not speak and does not say the thing which he was bound to say, if that be done with the intention of inducing the other party to act upon the belief that the reason why he did not speak was because he had nothing to say, there is a fraud. (See Kerr on Fraud and Mistake, 7th Edn., p.110.).”

9. It is easily culled out from the pronouncement of Supreme Court as noted above, that an intentional misrepresentation of fact without belief in its truth constitutes fraud. A fraudulent misrepresentation coupled with collusion and conspiracy of the Government officials will have to be viewed seriously and any transaction arising out of such fraudulent misrepresentation or deceit would certainly render a transaction *void ab initio*.

10. After having noted that the said Ram Chela Singh and Radhe Shyam Singh had apparently, in connivance with the Halka Karamchari, Circle Inspector and Circle Officer had got prepared report to the effect that they were landless persons, which fact is admittedly incorrect and false, the impugned order of the Collector dated 18.11.2016, cannot be interfered with. In my opinion, any interference with the



impugned order shall amount to perpetuating illegality based on fraud and misrepresentation of the settlees.

11. This application is, accordingly, dismissed.

12. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

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