

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10219 OF 2004

Rajhans R. Vhatkar through Legal Heirs]
Smt. Kempava R. Vhatkar through Legal]
Heirs :

1. Dilip Balkrishna Vhatkar,]
Age 65 years, Occ. Retired]
2. Dattatray Balkrishna Vhatkar,]
Age 61 years, Occ. Business]
3. Changdeo Balkrishna Vhatkar,]
Age 54 years, Occ. Service.]
4. Sukhdev Balkrishna Vhatkar,]
Age 51 years, Occ. Business,]

All are r/at Block No. B/5, 632/16/22A, B-]
Ward, Jawahar Nagar Hsg. Society, Jawahar]
Nagar, Kolhapur 416 012]

Through its Power of Attorney Holder]
Mr.Vaman Shripati Shinde]..

Petitioners

Versus

1. Shri Rajaram Shivaji Pol,]
(Since deceased) through legal heirs :]
(i) Shri Suresh Rajaram Pol, aged about 45]
years, Occupation : Service,]
(ii) Shri Chandrakant Rajaram Pol, Indian]
Inhabitant, Occupation : Business,]
(iii) Smt. Putlabai Rajaram Pol, Age about 60]
years, Occupation : Housewife, (since]
deceased) through legal heirs, respondent]
Nos.1, 2 and 4]
(iv) Smt. Baby Rajaram Pol, Indian inhabitant,]
aged about 24 years, Occupation Housewife]

- All residing at Hupari, Tal. Hatkanagale, Dist.]
Kolhapur.]
2. Smt. Ratnabai Ramchandra Vatkar,]
R/o. Halloli, Tal. Hatkanagale, Dist. Kolhapur.].. Respondents

**WITH
WRIT PETITION NO. 2456 OF 2012**

- Smt. Kempava R. Vhatkar deleted]
since deceased Rajhans R. Vhatkar through]
Legal heirs]
1. Dilip Balkrishna Vhatkar,]
Age 65 years, Occ. Retired]
2. Dattatray Balkrishna Vhatkar,]
Age 61 years, Occ. Business]
3. Changdeo Balkrishna Vhatkar,]
Age 54 years, Occ. Service.]
4. Sukhdev Balkrishna Vhatkar,]
Age 51 years, Occ. Business,]
- All are r/at Block No. B/5, 632/16/22A, B-]
Ward, Jawahar Nagar Hsg. Society, Jawahar]
Nagar, Kolhapur 416 012]
- Through its Power of Attorney Holder]
Mr.Vaman Shripati Shinde].. Petitioners

Versus

1. Suresh Rajaram Pol,]
]]
2. Chandrakant Rajaram Pol]
]]
- Both : Adults, Occupation – Agriculture]
Residing at Hupari, Tal. Hatkanagale, Dist.].. Respondents
Kolhapur.]

Shri.S.S.Redekar, for Petitioner in Writ Petition No.10219 of 2004.

Mr.P.G.Karande, for Petitioner in Writ Petition No.2456 of 2012.

Mr. Bhushan Walimbe for respondent Nos.1 (i) to (iv) in Writ Petition No.10219/2004 and for respondent Nos.1 & 2 in Writ Petition No.2456/2012.

CORAM : N.J. JAMADAR, J.
Reserved for Judgment on : 3rd April 2019
Judgment Pronounced on : 26th July 2019

JUDGMENT :

1. These petitions under Article 227 of the Constitution of India were heard together and can be conveniently disposed of by a common judgment as both the petitions have their genesis in the jural relationship between the deceased petitioner and respondent as landlord and tenant.

2. Though the litigation has a chequered history of almost 45 years, with more than a dozen proceedings, the background facts, necessary for the determination of these petitions, can be summarized as under :-

Late Rajhans R. Vhatkar, the deceased petitioner (hereinafter referred to as landlord) was the original holder of the agricultural land bearing Survey No.RS 18/A-1, admeasuring 4 Acre and 12 Guntha, situated at Hatkanagale, District Kolhapur (hereinafter referred to as 'the suit land'). Late Rajaram Bhivaji Pol, the deceased respondent (hereinafter referred to as tenant) claimed to be a tenant thereof. Alleging obstruction to his peaceful possession and cultivation of the suit land, the tenant instituted a suit bearing No.R.C.S. 353 of 1976 for perpetual injunction against the landlord. In the said suit, an issue of

tenancy came to be framed and in accordance with the provisions contained in Section 85(A) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act, 1948'), the Civil Court referred the said issue to the Agricultural Land Tribunal (ALT) for determination. It was registered as Tenancy Case No.6 of 1978. ALT-Tahasildar, Hatkanagale, by judgment and order dated 12th October 1978, returned a finding that Rajaram was in possession of the suit land as a tenant thereof and was also in actual possession thereof on the date of the institution of the suit. The landlord preferred Tenancy Appeal No.17 of 1979 against the aforesaid determination by Tahasildar & ALT. By judgment and order dated 28th July 1983, in Tenancy Appeal No.17 of 1979, the Sub-divisional Collector, Karvir Division, Kolhapur was persuaded to allow the appeal and set aside the order passed by the ALT. The name of the respondent-Rajaram was directed to be deleted from column No. 7A of the 7/12 extract of the suit land.

3. Being aggrieved by the judgment and order of the appellate authority, the respondents approached the Maharashtra Revenue Tribunal (MRT) by invoking its revisional jurisdiction. The MRT, by judgment and order dated 21st April 1984, in Revision No. TRA-KP-221/1983, was persuaded to set aside the order passed by the appellate

authority and restore the order passed by Tahsildar & ALT holding the respondent to be a tenant of the suit land.

4. The landlord challenged the aforesaid order of MRT in Writ Petition No. 3485 of 1984, before this Court. By judgment and order dated 10th December 1993, this Court dismissed the writ petition and concurred with the findings recorded by the MRT that late Rajaram was the tenant of the suit land. The Special Leave Petition preferred by the landlord bearing No.SLP (Civil) No.21941 of 1994 came to be dismissed by the Supreme Court on 3rd January 1995.

5. As the finding of the authority under the Act, 1948 regarding the tenancy attained finality, Regular Civil Suit No.353 of 1976 came to be decreed by the Civil Court, by judgment and decree dated 16th August 1997. It seems that the said decree of perpetual injunction was not subjected to further appeal.

6. The trigger for second round of litigation between the parties was provided by a communication dated 6th April 1996, by the Sub-divisional Officer, Ichalkaranji declining to delete the name of the tenant from the record of rights of the suit land. The landlord had sought correction in

the record of rights on the premise that the landlord Rajhans was under the guardianship of his natural mother Smt.Ratnabai, who was appointed by the District Judge, Kolhapur on 9th January 1954. The late Ratnabai was not legally empowered and competent to lease out the minor's property without the specific permission of the District Court. Since the tenant Rajaram claimed to have been inducted in the suit land in the year 1966-67 by the late Smt. Ratnabai, the alleged tenancy was non-est in the eye of law.

7. As the Sub-divisional Officer, Ichalkaranji declined to entertain the application to delete the name of Rajaram as a tenant of the suit land, the landlord assailed the said order by filing revision application under Section 257 of the Maharashtra Land Revenue Code, 1966 ('the Code'). The Additional Collector, Kolhapur, by judgment and order dated 8th July 1997, was persuaded to dismiss the Revision Application No.9 of 1996 holding, *inter-alia*, that the question of tenancy of the respondent-Rajaram has attained finality and the authorities under the Code were not competent to enquire into the question as to whether the tenancy was created in contravention of the provisions of the Guardians and Wards Act, 1890.

8. Being aggrieved by and dissatisfied with the aforesaid order of the Additional Collector, Kolhapur, the landlord has invoked the writ jurisdiction of this Court in Writ Petition No.10219 of 2004, *inter-alia*, praying for a declaration that the respondent-Rajaram has not acquired any legal right to possess the suit land as a tenant thereof.

9. In the year 1999, another round of litigation commenced with the landlord preferring an application under Section 32/P(2)/(b) of the Act, 1948 for regaining the possession of the suit land on the premise that the tenant failed to exercise his right to purchase the land within the period stipulated under Section 32-O(1) of the Act, 1948. Whereas, the tenant filed an application under Section 32-O/(1) read with Section 32G of the Act, 1948 for determination of the purchase price of the suit land.

10. By an order dated 23rd February 1999, the Additional Tahasildar and ALT was persuaded to reject the application preferred by the landlord under Section 32-P(2)(b) of the Act, 1948 for regaining the possession of the suit land. The Tahasildar & ALT, Hatkanagale, by judgment and order dated 22nd October 1999 in Application No.32-O-Hupri-2/1999 was persuaded to hold that the tenants-respondents were

entitled to purchase the suit land under Section 32G of the Act, 1948 and determined its purchase price at Rs.4,120/-.

11. True to the litigative spirit, the landlord preferred the appeals bearing No.8 of 1999 and 15 of 1999 against the orders passed on the applications under Section 32(P)(2)(b) and 32O read with Section 32G of the Act, 1948, respectively. The Sub-divisional Officer, Division Hatkanagale dismissed both the appeals by separate judgments and orders dated 6th June 2000. Still unsatiated, the aforesaid orders passed by the Sub-divisional Officer in Tenancy Appeal Nos. 8 of 1999 and 15 of 1999 were assailed before MRT by preferring Revisions bearing Nos.49 of 2000 and 50 of 2000.

12. The learned Member, MRT, by judgment and order dated 16th April 2002, dismissed both the Revision Applications. The landlord assailed the order passed by the MRT in revision application No.49 of 2000 and 50 of 2000 and the orders passed by the Lower Authorities, by preferring Writ Petition Nos.4611 of 2002 and 4612 of 2002. Those writ petitions were also dismissed by this Court by order dated 26th August 2002.

13. A new front of litigation was opened by the landlord by filing Writ Petition No. 6691 of 2003 before this Court. In the said petition, it was alleged that the orders passed by ALT in applications under Section 32 O(1) and 32 P(2)(b) of the Act, 1948 were obtained by fraud played by the tenant by producing copies of the orders allegedly passed by this Court on 19th August 1998 and 8th January 1998 in Civil Application No. 4164 of 1998 in Writ Petition (Stamp) No. 27300 of 1997 when, in fact, no such orders were passed by this Court. The ALT proceeded on the premise that the application under Section 32-O/(1) of the Act, 1948 was within the stipulated period of limitation if computed from the passing of the said orders. Thus, the orders of ALT, the appellate authority and MRT be quashed and set aside.

14. In the said petition, this Court, by an order dated 22nd January 2003, *prima-facie* found that no order was passed by this Court on 19th August 1998 in Writ Petition (Stamp) No. 27300 of 1997 and the authorities below were made to believe that, in fact, there was such an order passed by this Court. Thus, this Court directed to issue notice to the tenant and Advocate Shri R.N. Patil, who represented the tenant before the ALT and submit their explanation. Ultimately, by order dated 30th June 2003, this Court declined to interfere with the orders passed

by the authorities under the Act holding, *inter-alia*, that the second writ petition against the same judgment cannot be entertained, even if the grievance of the petitioner is that the orders passed by this Court have been forged by the other side. The petition was thus allowed to be withdrawn with permission to the landlord to take recourse to appropriate remedy, as may be permissible in law.

15. It seems that in pursuance of the aforesaid liberty, the landlord filed a complaint before the Sub-divisional Officer, Ichalkaranji. The SDO, Ichalkaranji construed it to be an appeal and numbered it as Tenancy Appeal No. 222 of 2004. The SDO was persuaded to hold that since no order was passed by this High Court on 19th August 1998 in Writ Petition (Stamp) No.27300 of 1997, the copy of the order produced before the ALT was the forged one. It was further held that the order passed by the ALT on the basis of such non-existing order, was liable to be quashed and set aside. Accordingly, the order passed by ALT on an application of the tenant under Section 32-O(1) of the Act, 1948 and the certificate issued pursuant thereto under Section 32 M of the Act, 1948 were quashed and set aside, by the judgment and order dated 24th January 2005.

16. Being aggrieved, the tenants preferred Revision bearing No. TNC/REV/29/2005/KP before MRT. The learned Member, MRT, by judgment and order dated 24th January 2012, was impelled to allow the revision and set aside the judgment and order passed by the appellate authority in Tenancy Appeal No.222 of 2004 and restore that of the Tahasildar-ALT, Hatkanagale in Tenancy Case No. 32-O-Hupri-2/1997. The learned Member, MRT was of the view that there were serious defects in the procedure followed by the appellate authority in as much as no proper appeal was presented to the appellate authority nor was it in conformity with the rules of the B.T. & A.L. Rules, 1956. MRT also held that without condoning the delay in preferring the appeal, the appellate authority could not have entertained the appeal and set aside the orders passed by the ALT. The landlord has assailed the aforesaid order of MRT by preferring the instant writ petition No. 2456 of 2012.

17. I have heard Shri S.S. Redekar, the learned counsel for the petitioners in Writ Petition No. 10219 of 2004, Shri P.G. Karande, the learned counsel for the petitioners in Writ Petition No. 2456 of 2012 and Shri Bhushan Walimbe, the learned counsel for the respondents, at considerable length. I have carefully perused the material on record as well.

18. The main plank of the submissions canvassed on behalf of the petitioners is that the orders passed by the tenancy authorities under Section 32-O and Section 32P(2)(b) of the Act, 1948, are non-est in the eye of law. The initial orders passed by ALT-Hatkanagle on the applications under Section 32-O and Section 32P of the Act, 1948 having been obtained by practicing fraud upon the said authority do not partake the character of orders, and are null and void. The situation is exacerbated by the fact that the respondents had the audacity to forge the orders passed by this Court by falsely proclaiming that this Court had passed the orders on 19th August 1998 and 8th January 1998 in Civil Application No. 4146 of 1998 in Writ Petition (Stamp) No. 27300 of 1997 when, in fact, no such orders were passed by this Court. In the face of such egregious fraud, the learned Sub-divisional Officer was within his rights to allow Tenancy Appeal No.222 of 2004 and set aside the order passed by ALT in the proceedings under Section 32-O of the Act, 1948, and cancel the certificate issued under Section 32-M thereof, on the strength of the said order. Conversely, the learned Member, MRT committed a grave error in setting aside the order passed by the Sub-divisional Officer without properly appreciating the nature and gravity of the fraud committed by the respondents and its consequence upon the very existence of the order passed by ALT under Section 32-O. The

learned Member, MRT, could not have resorted to the alleged procedural defects in the proceedings before the Sub-divisional Officer when the order passed by ALT was itself a nullity in the face of the fraud, urged the learned counsel for the petitioners.

19. In opposition to this, Shri Walimbe, the learned counsel for the respondents countered the submissions on behalf of the petitioners with tenacity. Shri Walimbe would urge that the petitioners have resorted to litigative ingenuity with a design to deprive the respondents of the legitimate protection available to them under the provisions of Act, 1948. Taking the Court through the history of litigation and multiple rounds thereof, it was urged by the learned counsel for the respondents that the Sub-divisional Officer could not have set at naught the findings recorded by not only MRT but this Court as well, to the effect that the respondents were entitled to purchase the suit land in accordance with the provisions contained in Section 32-O of the Act, 1948. The Sub-divisional Officer, had fallen in error in entertaining the grievance made by the petitioners of the alleged fraud in placing reliance upon the orders passed by this Court, and in treating the said grievance as an appeal. In the process, the Sub-divisional Officer committed several grave procedural irregularities including entertaining the appeal in the

year 2004, against an order passed by ALT on 22nd October 1999, without condoning the delay. The learned Member, MRT was, therefore, justified in interfering with the wholly unsustainable order passed by the Sub-divisional Officer which was clearly contrary to law and riddled with substantial defects in procedure resulting in severe miscarriage of justice.

20. Evidently, the edifice of the submissions canvassed on behalf of the petitioners is rested on the alleged fraud practiced by the respondents. Those submissions are required to be considered in the backdrop of the challenge to the order passed by the learned Member, MRT in Revision Application No. 29 of 2005 dated 23rd January 2012, which has been assailed in Writ Petition No. 2456 of 2012.

WRIT PETITION NO. 10219 OF 2004

21. So far as Writ Petition No. 10219 of 2004, it would be suffice to note that the endeavour of the petitioners to challenge the order passed by the Additional Collector, Kolhapur in Revision Application No.9 of 1996 and the order passed by the Sub-divisional Magistrate, Ichalkaranji dated 6th April 1996, whereby the Sub-divisional Magistrate declined to entertain the application to delete the name of Rajaram as a tenant to the suit land, by invoking the writ jurisdiction of this Court, does not

deserve to be countenanced for reasons more than one. Firstly, indisputably, the finding that Rajaram was the tenant of the suit land had attained finality with the dismissal of the Special Leave Petition on 3rd January 1995. Secondly, the authorities under the Land Revenue Code, in the backdrop of the said determination, could not, and rightly did not, embark upon an enquiry as to whether the respondent-Rajaram was lawfully inducted as a tenant in the suit land by Ratnabai, the mother of deceased Rajhans. Thirdly, the petitioners could not have agitated the said issue before the tenancy authority, much less Revenue Authority, in view of the orders passed by this Court in Writ Petition No.4611 of 2002 on 26th August 2002, wherein it was observed, in clear and explicit terms, that when the parties were litigating on a reference made by the Civil Court, the point of validity of the lease was not raised and thus by the principle of constructive *res-judicata*, the petitioners would not be entitled to raise that point. In this view of the matter, the Writ Petition No. 10219 of 2004 fails.

WRIT PETITION NO. 2456 OF 2012

22. Before adverting to deal with the core challenge based on fraud, it may be apposite to note the nature of the proceedings under Section 32-O of the Act, 1948 and the manner in which ALT has approached the

question of entitlement of the tenant to purchase the suit land. The relevant part of Section 32-O of the Act, 1948 reads as under :-

“32-O. Right of tenant whose tenancy is created after tillers' day to purchase land.- (1) *In respect of any tenancy created after the tillers' day [by a landlord (not being a serving member of the armed forces)] notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.*

[Deleted]

[(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) [* *] shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.]*

23. From a plain reading of the aforesaid provision, it becomes clear that a tenant, whose tenancy is created after tillers' day by a landlord, who is not a serving member of armed forces, is entitled to purchase the land cultivated by him as a tenant thereof. This right of the tenant to purchase the land is conditioned by stipulations as to time and extent of holding. The tenant is enjoined to purchase the land within one year from the commencement of the tenancy. The tenant can purchase the land only to the extent as would raise his holding to the ceiling area. The manner of exercise of the right to purchase is provided by sub-section (1-A). The tenant has to give an intimation of his desire to purchase the land to the landlord as well as the tribunal in the prescribed manner within the period stipulated by sub-section (1).

24. Unlike the provisions of Section 32 which envisages automatic statutory transfer of ownership in favour of a tenant, who holds the land on the tillers' day, Section 32-O envisages the exercise of the choice by the tenant to acquire ownership of the land cultivated by him by giving a statutory intimation. Textually, the period of one year prescribed under Section 32-O(1) of the Act, 1948 is to be computed from the date of the commencement of the tenancy. Having regard to the object of the provisions of the Act, 1948, the aforesaid stipulation of time to exercise the right to purchase the land by a tenant has been given a contextual and purposive interpretation. It has been consistently held that the period of limitation of one year will not start to run until the final adjudication of the issue of tenancy, where the said issue is put in contest. In the case of *Laxman Dhondi Zurale, since deceased by his legal heirs and Anr. Vs. Yashodabai Sripatrao Shinde* ¹, after referring to the previous pronouncements, it was observed that until landlord accepts the statutory tenancy or until the contention denying the tenancy is finally and conclusively overruled, the period of one year provided for sending intimation under Section 32-O of the Act will not commence. This position was reiterated by a learned Single Judge of this Court in the case of *Jagannath Vithu Jadhav (since deceased) through L.Rs. Smt. Shalan Jagannath Jadhav & Ors. Vs. State of Maharashtra*

1 2005(1) Bom. C.R. 273

and Ors.². This proposition has a significant bearing on the controversy at hand as the consideration of the order passed by ALT would reveal.

25. In the tenancy proceedings bearing No. 32-O-Hupri-2/1997, instituted by the tenant for purchase of the suit land, the ALT had framed a specific issue (No.3), namely, '*Whether the tenant has exercised the right to purchase the suit land within the period stipulated in Section 32-O(1) of the Act, 1948?*' The ALT was persuaded to answer the said issue in the affirmative by recording that the intimation given by the tenant under Section 32-O(1)-(A) on 15th March 1999 was within one year of the final adjudication of the dispute, raised by the landlord regarding the status of the tenant, by an order passed by this Court in Civil Application No. 4164 of 1998 in Writ Petition (Stamp) No. 27300 of 1997 (Writ Petition No. 10219 of 2004), on 19th August 1998. In the view of ALT, the limitation to purchase the suit land commenced from 19th August 1998 when this Court finally rejected the challenge to the tenancy raised by the landlord. Evidently, the order passed by this Court, the alleged copy of which was tendered before the ALT, was the basis of the said determination. As the issue of tenancy had already been settled in view of the finality attached to the proceedings between the parties, the ALT was persuaded to allow the application holding it to be within

2 2013(2) Mh.L.J. 285

the period of limitation and fixed the purchase price of the suit land at Rs.4,120/-.

26. As indicated above, it transpired that no such order dated 19th August 1998 in Civil Application No. 4164 of 1998 in Writ Petition (Stamp) No. 27300 of 1997 was ever passed by this Court. In all fairness to the learned counsel for the respondents, it must be noted that the respondents do not profess to canvass a submission that this Court had passed an order on 19th August 1998, a copy of which was tendered before the ALT. The fact that a copy of such an order was tendered before the ALT is borne out not only by the order passed by ALT but also the affidavit of Shri R.N. Patil, Advocate, who represented the tenants before the ALT. Shri R.N. Patil, Advocate affirmed that when he entered appearance on behalf of the tenants, in the said proceedings before ALT, there was already on record a document (page 43) purported to be a typed copy of an order passed by this court on 19th August 1998 in Writ Petition (Stamp) No. 27300 of 1997. Indubitably, the ALT was made to believe and base his finding on a copy of the order purported to be passed by this Court, which was never passed.

27. The submission of fraud practiced upon the ALT is required to be appreciated in the backdrop of the aforesaid facts. The Sub-divisional

Officer, before whom the landlord made a grievance about the order in Tenancy Appeal No. 32-O-Hupri-2/1999 having been obtained by fraud, was impelled to hold that since there was no such order passed by this Court, the order passed by the ALT was vitiated. In the revision before the MRT, the landlord raised a specific contention of the order passed by the ALT being vitiated by fraud and even placed reliance on the judgment of the Supreme court in the case of *S.P. Chengalvaraya Naidu (Dead) By L.Rs. Vs. Jagannath (Dead) by L.Rs. & Ors.*³. The learned Member, MRT brushed aside this submission by observing that neither any fraud was committed by the tenants on the lower authority, nor MRT was a proper forum to deal with the submissions based on fraud, and, thus, the challenge was negatived. Instead, the MRT proceeded on the premise that no proper appeal was presented by the tenants; the Sub-divisional had no jurisdiction to set aside the earlier orders; passed in the Tenancy Appeal No. 15 of 1999 (wherein the very same order under Section 32-O in Tenancy Case No.2 of 1999 was assailed), and revision thereagainst. The MRT, thus, held that there could be no second challenge to the order passed by ALT before the authorities under the Act, 1948 and, therefore, the order passed by the Sub-divisional Officer in Appeal No. 222 of 2004 was without jurisdiction and bad in law.

3 (1994)1 SCC 1

28. Whether the aforesaid approach of MRT is justifiable? For an answer to this question, it is imperative to note the vitiating effects of fraud on the proceedings before judicial or statutory authorities. Indisputably, reliance was placed before, and by, the ALT on a document which purported to be an order passed by this Court on 19th August 1998. It cannot be gainsaid that fraud was practiced upon ALT. The consequences which emanate from such fraud are well recognized. The integrity of the judicial or statutory proceedings is rested on solemnity attached to the statement made before the authorities. If an outcome is driven by making the authority to believe upon a state of affairs, which is false to the knowledge of the person making such assertion, the very integrity and sanctity of the adjudication or disposition, is completely eroded. Fraud vitiates every act, irrespective of the formal seal of approval of the judicial or statutory authority.

29. A judgment or order obtained by fraud is non-est in the eye of law. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***S.P. Chengalvaraya Naidu (Dead) By L.Rs.*** (Supra) wherein the first paragraph puts the vitiating effects of fraud on a judicial proceedings in terse words, which reads as under :-

“Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment

or decree obtained by playing fraud on the court is a nullity and honest 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."

30. It is pertinent to note that the said case arose out of suppression of a vital fact; *suppressio veri*, on the strength of which a judgment or order was obtained. The Supreme Court has observed that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. 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.

31. In *A.V. Papayya Sastry & Ors. Vs. Govt. of A.P. & Ors.*⁴, a case under Urban Land (Ceiling and Regulation) Act, 1976, the Supreme Court dealt with a situation wherein fraud was alleged to have been practiced by making the authorities to believe that advance possession of the land was given by the landowner to the Port Trust authorities, which was not a correct statement. When the said fact was realized, the Andhra Pradesh High Court recalled the earlier order, even though the Special Leave Petition filed against the earlier order was dismissed.

⁴ (2007) 4 SCC 221

While referring to a large number of authorities on the consequences which emanate from fraud, on the sanctity of the judicial proceedings, the Court expounded the position in the following words :-

“21 Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed :

"Fraud avoids all judicial acts, ecclesiastical or temporal".

22 It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.”

(emphasis supplied)

32. The Supreme Court has held in no uncertain terms that an order obtained by practicing fraud on the Court or Authority is a nullity and non-est. The stature of the forum which passed such order, vitiated by fraud, is of no consequence. It has to be treated as nullity by every Court or authority, superior or inferior in hierarchy. Its validity can be questioned and challenged before any Court. The nature of the proceedings in which it can be attacked is not material. It can be challenged in Appeal, Revision, Writ or even in collateral proceedings. The procedural limitations do not override the fundamental object of maintaining the integrity and sanctity of judicial or statutory disposition.

Lastly, its validity can be challenged at any time. An order which is non-existent in the eye of law cannot be clothed with authority by sheer lapse of time. The aspect of law of limitation, viewed through this prism, also becomes insignificant.

33. Reverting to the facts of the case, it appears that the learned Member, MRT was not alive to the consequences of fraud. The learned Member fell into error in setting aside the order passed by the Sub-divisional Officer, by taking recourse to the procedural defects. Once, it becomes crystal clear that this court had not passed any order on 19th August 1997, the very substratum of the findings of ALT gets dismantled. In spite of a clear case of fraud, and that too by placing on record a document purported to be a copy of the order passed by this Court, MRT could not have brushed aside the challenge by observing that there was no fraud nor it was a forum to agitate the same. In the light of the aforesaid observations of the Supreme Court, it becomes evident that the learned Member, MRT completely misdirected himself in placing reliance on the factors which were of no relevance when the order was based on the fraud practiced upon ALT.

34. The endeavour of the learned counsel of the respondents to salvage the position, again based on the alleged procedural defects in

the order passed by the Sub-divisional Officer, dated 24th January 2005 including impressibility of entertaining the appeal, after the lapse of more than five years from the date of the order passed by ALT, does not merit countenance. Nor the fact that the order passed by ALT was upheld by all the authorities including the appellate authority, revisional authority and this Court in Writ Petition No. 4612 of 2002, infuses any life into the said order and insulates it from the consequences which a fraud entails. The observations of the Supreme Court in the case of **A.V. Papayya Sastry & Ors.** (Supra) in paragraph Nos. 38 and 39 underscore the fact that, even an imprimatur by the Supreme Court, to an order obtained by fraud, does not lend any sanctity to such order. They read as under :-

“38 The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39 The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practicing or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is

the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior.

(emphasis supplied)

35. In view of the aforesaid legal position, the fact that the Sub-divisional Officer set aside the order of ALT (which was obtained by fraud) in a proceedings which was not properly constituted is of little significance. It would have been a different matter had ALT held that the application under Section 32-O was within the period of limitation with reference to another factor. The very edifice of the order of ALT was the order allegedly passed by this Court on 19th August 1998, which was not the case. Once this substratum of the order of ALT goes, the order falls through completely. It would be simply impermissible, in derogation of the first principles of law and a travesty of justice to allow said order to stand despite the fact that it was obtained by falsely proclaiming that an order was passed by this Court. Neither the time lag nor the intervening proceedings preclude this Court from setting aside the order obtained by fraud.

36. I am mindful of the fact that the litigation has a long and chequered history. The finding about the tenancy of the respondents has

attained finality. The setting aside of the order passed by the Tahsildar & ALT under Section 32-O of the Act, 1948 will inevitably reopen the question of entitlement of the tenant to purchase the suit land. The issue would, however, be restricted to the determination as to whether the tenant exercised the right to purchase the land within the statutory period prescribed in Section 32-O(1) of the Act, 1948. It would be, therefore, necessary to direct Tahasildar-ALT, Hatkanagale to determine the said question afresh after providing an opportunity of hearing to the concerned parties. I am of the considered opinion that it would be imperative to pass certain orders so as to obviate further complications till the time the ALT decides the application under Section 32-O of the Act, 1948.

37. For the foregoing reasons, I pass the following order :-

WRIT PETITION NO. 10219 OF 2004

- (i) The writ petition stands dismissed. No costs.
- (ii) Rule stands discharged.

WRIT PETITION NO. 2456 OF 2012

The writ petition stands allowed in the following terms :

- (i) The order passed by MRT in Revision No. 29 of 2005 dated 23rd January 2012 stands quashed and set aside.
- (ii) The order passed by the Tahasildar & ALT, Hatkanagale in Tenancy Case No. 32(O)/Hupri/2/1999, dated 22nd October 1999 stands quashed and set aside.
- (iii) The said proceedings No.32(O)/Hupri/2/1999 stands restored to the file of Tahasildar & ALT, Hatkanagale.
- (iv) The Tahasildar & ALT, Hatkanagale shall decide the said application under Section 32-O after providing an opportunity of hearing to all the concerned parties and in accordance with law as expeditiously as possible and preferably within a period of four months from the date of the communication of this order.
- (v) The certificate granted under Section 32-M of the Act, 1948 in pursuance of the said order shall remain suspended during the pendency of the said proceedings.

In the event ALT holds that the tenants are entitled to purchase the land under Section 32-O(1), the certificate would stand revived. However, if the ALT holds against the tenants,

then the said certificate would stand cancelled from the date of issue and all the consequences in law would follow.

(vi) It is hereby made clear that the petitioners-landlords are not entitled to question the status of the respondents as tenants of the suit land and they shall not cause obstruction to the possession and cultivation of the suit land by the respondents, in any manner.

(vii) It is made further clear that this Court has not considered the merits of the matter as regards the entitlement of the tenants-respondents to purchase the suit land under Section 32-O of the Act, 1948 and it may be not understood to have expressed any opinion on merits of the matter one way or the other.

(viii) In the circumstances, there shall be no order as to costs.

(ix) Rule made absolute in aforesaid terms.

(N. J. JAMADAR, J.)