

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1430 OF 2009

- 1] Indus Co-operative Housing Society Limited,
having its office at 37, Sindhu Nagar Society,
Jaripatka, Nagpur.
- 2] Satyawar s/o Sahdeoram Bhojwani,
Aged 60 years, Occupation : Civil Contractor,
R/o 37, Sindhu Nagar Society, Jaripatka,
Nagpur-14. **..APPELLANTS**
(Orig.plaintiffs)

-vs-

- 1] The Nagpur Improvement Trust,
A body corporate, having perpetual succession and
common seal, Nagpur.
- 2] Laxmikant s/o Ganpatrao Gandli,
Itkelwar, Aged 65 years.
- 3] Rajnikant s/o Ganpatrao Gandli,
Itkelwar, Aged 56 years.
- 4] Suryakant s/o Ganpatrao Gandli,
Itkelwar, Aged 54 years.
- 5] Chandrakant s/o Ganpatrao Gandli,
Itkelwar, Aged 54 years.
- Respondents No. 2 to 5 are
R/o. Gandliwada, Itwari Telephone Exchange,
Mangalwari, Nagpur. **...RESPONDENTS**
(Orig. defendants)

Shri C.S.Kaptan, Senior Advocate with Shri P.K.Mohta, Advocate for
appellants.

Shri R.O.Chhabra, Advocate for respondent no.1.

None for the respondent nos. 2 to 5.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI JJ.

DATED : 07.01.2021

Judgment : (Per A.S.Chandurkar, J.)

This appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred by the original plaintiffs who are aggrieved by the judgment dated 05.05.2009 in Special Civil Suit No.333/1999 passed by the 4th Joint Civil Judge, Senior Division, Nagpur dismissing the suit for recovery of an amount of Rs.15,00,00,000/- (Rs. Fifteen Crores) as damages.

2. Facts relevant and as pleaded in the plaint are that the dispute between the parties centres around Plot no.57 admeasuring 4942 square feet which was part of Central Avenue Scheme. On 31.10.1956 the said plot was allotted to the respondent nos. 2 to 5-defendant nos. 2 to 5 on lease. Various conditions were imposed while making such allotment which included specifying the time limit for commencement and completion of construction thereon. The defendant nos. 2 to 5 did not abide by the conditions as imposed as a result of which on 06.10.1964 a show cause notice was issued by the Nagpur Improvement Trust-respondent no.1/defendant no.1. Thereafter on 08.03.1965 the defendant no.1 cancelled the allotment of Plot No.57 that was made in favour of the

defendant nos. 2 to 5. Possession of that plot was taken from them on 23.01.1972. A fresh auction was thereafter conducted on 21.01.1974. In that auction the plaintiff no.2 had bid an amount of Rs.3,12,000/- which came to be accepted and 10% of the bid amount Rs.31,200/- came to be deposited with the defendant no.1. The defendant nos. 2 to 5 being aggrieved by the cancellation of allotment of Plot No.57 approached this Court by filing Special Civil Application No. 102/1974. That Special Civil Application came to be admitted. During pendency of the said proceedings, the defendant nos. 2 to 5 moved Civil Application No. 2233/1980 seeking to amend the said Special Civil Application. Civil Application No.2233/1980 came to be rejected on 30.09.1980 and on the same day, the defendant nos. 2 to 5 were permitted to withdraw Special Civil Application No.102/1974. Thereafter on 01.10.1980 the plaintiff no.2 deposited further amount of Rs.21,200/- with the defendant no.1.

A meeting of the defendant no.1 was held on 27.02.1981 in which it was resolved to re-allot Plot No.57 in favour of the defendant nos. 2 to 5. The plaintiff no.2 being aggrieved filed Writ Petition No. 843/1981 in this Court on 18.03.1981. In that writ petition it was prayed that the auction proceedings and the sale conducted on 21.01.1974 in favour of the plaintiff no.2 be confirmed and it be declared that re-allotment of Plot No.57 in favour of the defendant nos. 2 to 5 was illegal. That writ petition was allowed by the learned Single Judge on 15.12.1981 and the

resolution dated 27.02.1981 passed by the defendant no.1 restoring the plot in favour of the defendant nos. 2 to 5 was held to be illegal. The defendant nos. 2 to 5 then approached the Hon'ble Supreme Court by filing Civil Appeal No.1683/1982. That appeal was allowed on 19.03.1996 and the judgment in Writ Petition No.843/1981 came to be set aside. Review petition filed by the plaintiff no.2 was also dismissed. According to the plaintiff no.2, the defendant no.1 had taken different stands in the proceedings before the Court. Such act on the part of the defendant no.1 was malafide resulting in prejudice being caused to the plaintiffs. This according to the plaintiffs furnished them a cause of action to sue the defendants for recovery of damages to the tune of Rs.15,00,00,000/-(Rs.fifteen crores). The plaintiff no.1 is a co-operative housing society registered in 1986 of which the plaintiff no.2 is the Chief promoter.

3. In the written statement filed by the defendant no.1 all allegations as made in the plaint were denied. Reference was made to the earlier litigation between the parties and the fact that by the judgment of the Hon'ble Supreme Court dated 19.03.1996 the controversy in question stood resolved. The allegation of fraud as made by the plaintiffs was specifically denied and it was pleaded that there was no cause of action for claiming damages from the defendant no.1. Absence of any statutory

notice before filing the suit against the defendant no. 1 was also pleaded.

In the written statements filed on behalf of other defendants the case of the plaintiffs was denied. According to them if it was the case of the plaintiffs that the defendants had played fraud in obtaining any order from the Hon'ble Supreme Court the jurisdiction to decide the same was not with the Civil Court. In the light of the findings recorded by the Hon'ble Supreme Court in its judgment dated 19.03.1996 there was no cause of action for the plaintiffs to claim damages from the defendants. All adverse allegations were denied.

4. Before the trial Court the plaintiff no.2 examined himself and placed on record various documents. The defendant no.1 examined its In-charge Recovery Officer. The other defendants did not lead any evidence. The trial Court after considering the entire evidence on record held that the plaintiffs had failed to prove that the defendant no.1 had malafidely rejected the highest bid of the plaintiffs and that the plaintiffs had failed to prove that they had suffered damages due to acts of the defendant no.1. It was further held that the suit was barred by limitation and it was also hit by the provisions of *res judicata*. The trial Court further held that it had no jurisdiction to decide the suit. Accordingly by the impugned judgment the trial Court dismissed the said suit. Being aggrieved, the original plaintiffs are in appeal before this Court.

5. Shri C.S.Kaptan, learned Senior Advocate for the plaintiffs submitted that the trial Court completely misdirected itself by not taking into consideration the entire material on record as a result of which the suit as filed came to be dismissed. Referring to the pleadings of the parties as well as the evidence led by them, he submitted that there was sufficient material on record to indicate that the defendant no.1 had malafidely rejected the highest bid of the plaintiff no.2 as made on 21.01.1974. Merely because the judgment of the learned Single Judge in the writ petition filed by the plaintiffs being Writ Petition No.843/1981 was set aside by the Hon'ble Supreme Court, the same would not be a ground to refuse to grant damages to the plaintiffs. Further the action on the part of the defendant no.1 in reinstating Plot No.57 in favour of the defendant nos. 2 to 5 indicated its arbitrary approach. Being a public body the defendant no.1 was required to act fairly and impartially. On the contrary it was clear that the defendant no.1 had taken different stands in the litigation pertaining to Plot No.57. This was not permissible in law and therefore the plaintiffs were justified in seeking damages for such illegal conduct of the defendant no.1. It was then submitted that the trial Court committed an error in holding that the suit as filed was hit by the provisions of *res judicata* and that the suit was also bad for non-joinder of necessary parties. For raising the plea of *res judicata* it was necessary that the pleadings in the earlier litigation were brought on record by the party

seeking to raise such plea. However this was not done by the defendants and therefore it was not permissible for them to rely upon the principle of *res judicata*. Despite the judgment in Writ Petition No.843/1981 being set aside, there was no legal impediment before the plaintiffs for seeking damages. The plaintiffs had suffered substantial loss because of the arbitrary conduct of the defendant no.1 and hence the prayers made in the suit were liable to be granted. In support of his contentions the learned Senior Advocate placed reliance on the decisions in *Laxmikant and others Vs. Satyawani and others* (1996) 4 SCC 208, *A.V.Papayya Sastry and ors. Vs. Govt. of A.P. and ors.* (2007) 4 SCC 221, *S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs. and others* (1994) 1 SCC 1, *Keepattel Bappu alias Moidunni and other Vs. Mugharikutty's son Kizhakke Valappil Muhammad and anr.* AIR 1993 Kerala 273, *Ramagya Prasad Gupta and ors. Vs. Murli Prasad and ors.* AIR 1974 SC 1320, *Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman Vs. Ponniannan Educational Trust represented by its Chairperson/Managing Trustee* (2012) 8 SCC 706, *Jaspal Kaur Cheema and anr. Vs. Industrial Trade Links and ors.* (2017) 8 SCC 592, *Shripat and ors. Vs. Daulat* 1971 Mh. L.J. 215, *Anasuya and ors. Vs. Putalabai (since dead) by her LRs.* 2016 (3) AKR 807 and *Shivaji Banaji Bhagat (deceased) by LRs. Vs. Maroti Dewaji Pawar (deceased) by LRs.* 2008 (4) AIR Bom R 203 and submitted that

the suit as filed was liable to be decreed in its entirety.

6. Shri R.O.Chhabra, learned counsel for the defendant no.1 opposed the aforesaid submissions. He submitted that the trial Court had not committed any error in dismissing the suit as filed especially in view of the material on record. Referring to the deposition of the plaintiffs witness it was submitted that the basis on which the suit was filed and the cause of action as pleaded to have arisen was totally misconceived. The action of the defendant no.1 in reinstating Plot No.57 in favour of the defendant nos. 2 to 5 had been upheld and there was no element of fraud or misrepresentation in the actions of the defendant no.1 while doing so. The basis on which the plaintiffs were seeking damages was misconceived and in fact there was no cause of action for the plaintiffs to file the aforesaid suit. He therefore submitted that no interference was called for with the impugned judgment of the trial Court.

There was no appearance on behalf of the respondent nos. 2 to 5/defendant nos. 2 to 5.

7. On hearing the learned counsel for the parties and after perusal of the documentary material on record, the following points arise for adjudication :

(i) Whether the finding recorded by the trial Court that the plaintiffs had failed to prove that the rejection of the plaintiffs bid by the

defendant no.1 was malafide ?

(ii) Whether the finding recorded by the trial Court that the plaintiffs had failed to prove that they had suffered damages due to acts on the part of the defendant no.1 deserves to be interfered with ?

(iii) Whether the finding recorded by the trial Court that the suit was hit by the provisions of *res judicata* and that it suffered from mis-joinder of parties deserves to be interfered with ?

(iv) Whether the suit as filed has been rightly held to be barred by limitation ?

(v) Whether the judgment of the trial Court deserves to be interfered with ?

8. At the outset it would be necessary to make a reference to certain undisputed facts available on record. Plot No.57 admeasuring 4942 square feet area was allotted to the defendant nos. 2 to 5 on 31.10.1956 and a lease was executed in their favour. Since certain conditions were imposed on the defendant nos. 2 to 5 while granting the said lease and as these conditions were not fulfilled by the said defendants, a show cause notice was issued by the defendant no.1 on 06.10.1964. Thereafter on 08.03.1965 the allotment of Plot No.57 in favour of the defendant nos. 2 to 5 came to be cancelled. After taking possession of that plot, the defendant no.1 held a public auction and on 21.01.1974 the bid of the plaintiff no.2 which was highest came to be accepted for Rs.3,12,000/-. The plaintiff no.2 deposited 10% of the bid amount. Special Civil Application No.102/1974 was filed by the

defendant nos. 2 to 5 seeking to challenge the cancellation of allotment in their favour and thereafter admitted by this Court. The defendant nos. 2 to 5 in those proceedings moved an amendment application which came to be rejected on 30.09.1980 (Exhibit 83). The said defendants on the same day withdrew Special Civil Application (Exhibit 84). In a meeting of the defendant no.1 held on 27.02.1981 it was decided to reinstate Plot No.57 in favour of the defendant nos. 2 to 5. This decision was challenged by the plaintiff no.2 by filing Writ Petition No. 843/1981 and by the judgment dated 15.12.1981 that writ petition came to be allowed (Exhibit 85). It was held that the lease that was initially granted to the defendant nos. 2 to 5 had been legally terminated and that Plot No.57 was available for allotment which was thereafter allotted to the plaintiff no.2 being the successful bidder. Cognizance of the contrary stands taken by the defendant no.1 was referred to and it was observed that the defendant no.1 was estopped from doing so. The resolution dated 27.02.1981 settling the said plot in favour of the defendant nos. 2 to 5 was held to be illegal and thus set aside. The defendant nos. 2 to 5 then approached the Hon'ble Supreme Court by filing Civil Appeal No.1683/1982 which appeal came to be allowed on 19.03.1996. The plaintiff no.2 then filed review petition before the Hon'ble Supreme Court which is at Exhibit 95 and copy of the judgment in Civil Appeal No.1683/1982 also annexed thereto. This review petition came to be

dismissed and it was thereafter that on 16.03.1999 the present suit came to be filed.

9. It would be necessary to refer to certain averments as made by the plaintiffs in the plaint of the present suit. In paragraph 13 of the plaint, it has been pleaded as under :-

“Thus, serious fraud was committed by the defendants in getting their name in the meeting of 28.11.1980 and in getting their name selected/allotted in relation to plot no.57”.

“With the help of these dates, the plaintiff would once again revert to the fact that the plaintiff has been dealt with by the Nagpur Improvement Trust, Nagpur, in a most cruel fashion, deprived the plaintiff of its legitimate right, acted contrary to Article 14 and made discrimination and all these factors together has furnished a cause of action to the plaintiff to sue the Nagpur Improvement Trust, Nagpur, for damages in the sum of Rs.15,00,00,000/-”.

“As submitted and at the fault of repetition, the plaintiff is fully aware that judgment of His Lordship Justice P.G.Palshikar dated 15.12.1981 was upset by the Hon’ble Supreme Court of India. Still the said judgment of the Hon’ble Supreme Court of India does not stand in the way of the plaintiff. On the contrary, the Nagpur Improvement Trust, Nagpur, also misled and misrepresented before the Apex Court which, in turn, resulted in the said Judgment dated 29.03.1996 /19.03.1996 which but for such statement would not have seen the light of the day. The suit in question for damages is thus perfectly accordingly to law and does not suffer from any vice on infirmity.”

Thereafter in paragraph 14, it has been pleaded as under :

“With great respect and with folded hands, the plaintiff submits that statement of N.I.T. before the Hon’ble Supreme Court of India about 17 plots and out of them 16 plots were reinstated was and is false”.

“It would thus be clear that all the 16 plots from and out of 17 plots were not reinstated. The N.I.T., Nagpur, misled the Hon’ble Supreme Court of India and also acted mala fidely while making such misrepresentation”.

In paragraph 15, the plaintiffs have pleaded thus :

“The plaintiff submits that the falsity of the statement of N.I.T. before the Hon’ble Supreme Court of India of relation to 17 plots is concerned, it stands demonstrated from what is stated above that it was not true and correct”.

In paragraph 16 it has been stated as under :

“With respect, the Hon’ble Supreme Court of India was misled by the Nagpur Improvement Trust who had taken two different stand before the Hon’ble High Court in two writ petitions pertaining to the same plot. Without mincing the words and without much ado, the plaintiff humbly submits that amongst very many factors to file the present suit is the different stand taken by the N.I.T., Nagpur before the Hon’ble High Court in two writ petitions in relation to the same plot and the intervention of the Minister only to favour the respondents 2 to 5 and the meeting of Chairman with the Minister and drafting the agenda in a manner which would enable the respondents 2 to 5 who have lost their battle before a Court of law to raise their heads once again when they had lost the matter in the Writ Petition No.102/74, decided on 30.09.1980. At the fault of repetition, the plaintiff submits that all this has furnished them necessary cause of action and the suit being filed is perfectly according to law. It is not open to the public bodies to

take different stands at different times and moreover, the N.I.T., Nagpur, is a creature of statute”.

The cause of action for filing the suit has been narrated in paragraph 25 which reads thus :

“That, the plaintiff submits that cause of action arose, to begin with, on 21.1.1974 when plot no.57 was put for auction and it was closed at the second bid of Rs.3,12,000/- of the plaintiff. It further arose on or about 27.2.1981 when malafidely Nagpur Improvement Trust, Nagpur, tried to reject the highest bid of the plaintiffs. It further arose when Writ Petition No.843/1981 was filed i.e. on 18.03.1981. It also arose on 15.12.1981 when Writ Petition No.843/1981 was allowed by the Hon’ble High Court, Nagpur Bench, Nagpur. It further arose on 19.03.1996 when the Supreme Court allowed the appeal of defendants 2 to 4. It also arose later on in the year 1997 when plot no.57 was transferred to defendants 2 to 4 at Nagpur within the territorial and pecuniary jurisdiction of this Hon’ble Court. Cause of action is a continuing and recurring one and continues till such time the plaintiffs are redressed”.

10. Since the basis for seeking damages is on account of reinstatement of Plot No.57 in favour of the defendant nos. 2 to 5 despite the fact that the plaintiff no.2 was the highest bidder in the auction dated 21.01.1974, it would be necessary to refer to certain observations made by this Court in Writ Petition No.843/1981 (Exhibit 85). By the judgment dated 15.12.1981 it was held that the lease in favour of the defendant nos. 2 to 5 was determined by the defendant nos. 1 and in view thereof Plot No.57 was put to auction on 21.01.1974. The contention of the defendant

nos. 2 to 5 that the termination of the lease was illegal and therefore no land was available for auction was not accepted. This Court further observed that since the termination of the lease had been challenged by the defendant nos. 2 to 5 in Special Civil Application No. 102/1974, those proceedings should not have been withdrawn by them. A finding was thus recorded that the termination of the lease was legal and Plot No.57 was available for allotment. It was then held that the highest bid of the plaintiff no.2 ought to have been accepted by the defendant no.1 especially in view of Rule 4(3) of the Nagpur Improvement Trust Land Disposal Rules, 1955 (for short, the Rules of 1955). Reference was also made to the different stands taken by the defendant no.1 in Special Civil Application No.102/1974 and the subsequent Writ Petition bearing No.843/1981. For all these reasons the resolution passed by the defendant no.1 on 27.02.1981 settling Plot No.57 in favour of the defendant nos. 2 to 5 was set aside and the defendant no.1 was directed to perform its statutory obligation of transferring the said plot to the plaintiff no.2 who was the highest bidder. The said writ petition was accordingly allowed.

11. As stated above, this judgment in Writ Petition No.843/1981 was challenged before the Hon'ble Supreme Court and that judgment is since reported in *(1996) 4 SCC 208 Laxmikant and others Vs. Satyawan and ors.* The Hon'ble Supreme Court held that the facts indicated that

there was no completed contract between the defendant no.1 and the plaintiff no.2 which could be enforced in Court. The public auction had not culminated to its logical end because the third round of bid had not been conducted. Under Rule 4 (3) of the Rules of 1955 and its proviso, it was clear that inspite of the higher offer being made, the land could be withdrawn from auction. It was thus held that under the conditions of the auction no right accrued in favour of the highest bidder-plaintiff no.2 till the letter of confirmation was issued to him. It was also held that as no right had accrued in favour of the plaintiff no.2 either on the basis of Rule 4(3) of the Rules of 1955 or under the conditions of which the sale had been notified for the purposes of auction, the resolution dated 27.02.1981 passed by the defendant no.1 of reinstating the plot in favour of the defendant nos. 2 to 5 was not liable to be quashed. Accordingly the judgment in Writ Petition No.843/1981 came to be set aside.

12. Not content with this adjudication the plaintiff no.2 filed a review application (Exhibit 95) and it would be appropriate to reproduce relevant grounds of review :

“I. That this is a fit and proper case to kindly consider the effect of rejection of the amendment sought in Writ Petition No.102 of 1974. Further the petitioners/appellants then withdrew the challenge levelled by them in that writ petition. It is humbly submitted that the effect will be to disentitle them of any relief either of getting the reinstatement of the plot, the cancellation stands and further they cannot challenge the

auction.

II) That the Improvement Trust has not recorded any reasons for rejecting the highest bid. Rule 4(3) of the Rules of 1955 requires such reasons to be recorded as contemplated in the proviso to it. In the scheme of the statute the highest bidder stands mandatorily to get the transfer of the plot put to auction.

III) That where the Minister has intervened and where the Improve Trust has resiled from its stand in Writ Petition No. 102 of 1974; it needs to be kindly considered these two aspects in the interests of justice. It will be seen that the Trust was bent upon acting arbitrarily; and on this account the writ jurisdiction needed to be exercised.

IV. That the legal effect of setting aside any auction as in the instant case would be to put the plot back with the Improvement Trust. It may either choose to re-auction it or defer the decision. However, there cannot be a reinstatement particularly in favour of the appellants who have defaulted twice and whose plot was cancelled twice and who could not succeed in their writ petition. There is no such power vested with the Improvement Trust to straightway grant reinstatement.

V. That the Improvement Trust has taken a stand on affidavit in the said Writ Petition No.102 of 1974 that the auction was over and that secondly it had finally decided not to reinstate the allotment to the present petitioners. Taking an arbitrary decision to the contrary made the impugned resolution liable to be struck down. It is humbly prayed that these aspects merit reconsideration.”

13. We now turn to the evidence led by the parties and especially the deposition of the plaintiff no.2 who was examined on behalf of the plaintiffs. During the course of cross-examination the said witness stated thus :

“I had filed Writ Petition No.843/1981 with respect to the plot no.57. I prayed in the said writ petition that position

be restored in my favour as N.I.T. has played fraud on me. Defendant No.1 in collusion with defendant nos. 2 to 5 and Minister fraud on me. I had disclosed all these facts in my writ petition. I have not made Minister as a party to the present suit. Government had executed all the orders through N.I.T. i.e. defendant no.1 hence I have made Minister as a party to the present suit. All the contention raised by me in the plaint and also statement made by me in my affidavit were written in my writ petition. It was ordered in the writ petition that plot be restored to me with payment of cost by defendant no.1 to me. Time was granted to defendant no.1 for challenging the said order before Apex Court. Defendants had challenged the said order in the Apex Court, order of High Court was set aside by the Apex Court. Supreme Court had given the judgment in favour of defendant nos. 2 to 5 in respect of plot no.57. I am not accepting the decision given by the Supreme Court. I have not made any complaint with respect to the fraud against the defendants in police station. Witness volunteers that he has filed present suit. I

I have filed copy of Review Petition dated 30.04.1996. It is at Exhibit 95. Facts which were placed before Supreme Court at that time are pleaded by me in the present suit. It is true that I had narrated all these facts in my Review Petition. The said Review Petition was dismissed by the Hon'ble Supreme Court."

14. From the aforesaid material on record it becomes clear that firstly the legality of resolution dated 27.02.1981 on the basis of which Plot No.57 was allotted to the defendant nos. 2 to 5 was questioned in Writ Petition No.843/1981. After this Court set aside the said resolution, the said decision was challenged by the defendant nos. 2 to 5 in Civil Appeal No.1683/1982. All findings recorded by this Court in favour of the plaintiff no.2 in Writ Petition No.843/1981 were reversed and it was held in clear terms that no right was created in favour of the plaintiff no.2 since

there was no final allotment of the Plot No.57 in his favour. The resolution dated 27.02.1981 was restored by the Hon'ble Supreme Court. Reference was also made to the provisions of Rule 4(3) of the Rules of 1955. From the grounds raised in the review petition it is also clear that the alleged contrary stand taken by the defendant no.1 as well as the aspect of cancellation of the allotment made in favour of the defendant nos. 2 to 5 was sought to be re-agitated. However, with the rejection of the review petition the findings recorded by the Hon'ble Supreme Court in Civil Appeal No.1683/1982 attained finality. It was thus not permissible for the plaintiffs and especially the plaintiff no.2 to re-agitate these very issues which were contested up to the Hon'ble Supreme Court. The aspects of application of the principle of constructive *res-judicata* as well as issue estoppel would therefore come into play in these facts. In that backdrop, the decisions relied upon by the learned Senior Advocate for the appellants do not assist the case of the appellants.

15. On considering the pleadings of the parties, the evidence on record as well as the background of the earlier litigation, we find that there are two reasons for non-suiting the plaintiffs. Firstly in Civil Appeal No.1683/1982 the Hon'ble Supreme Court had recorded a clear finding that even though the plaintiff no.2 had participated in the public auction held on 21.01.1974 and was the highest bidder till the second round of

the bid, the third round of the bid could not be held because of the order of stay. As a result no confirmation letter by the defendant no.1 was issued to the plaintiff no.2 and therefore, no right accrued in his favour. A clear finding has been recorded in paragraph 4 of the said judgment that on the basis of Rule 4(3) of the Rules of 1955 or under the conditions of the auction which had been notified before holding the same no right accrued in favour of the plaintiff no.2. It is thus clear that in the auction held on 21.01.1974 in which the plaintiff no.2 was the highest bidder no legal right was created in his favour. In other words, since inception of the litigation in 1974, the plaintiff was found not having any right in his favour on account of being the highest bidder. As a result whatever transpired thereafter and especially passing of the resolution dated 27.02.1981 by the defendant no.1 reinstating Plot No.57 in favour of the defendant nos. 2 to 5 did not give any cause of action to the plaintiffs to claim damages from the defendant no.1. As noted above, even the review application preferred by the plaintiff no.2 came to be dismissed by the Hon'ble Supreme Court. The pleadings in the plaint referred to hereinbefore clearly indicate the plaintiffs desired to base their claim amongst other aspects on the rejection of their highest bid, 16 plots not being reinstated as per the statement made before the Hon'ble Supreme Court and different stands being taken by the defendant no.1. Once it was held that the public auction held on 21.01.1974 did not clothe the

plaintiff no.2 with any legal right so as to agitate his claim any further, there would be no basis for the plaintiffs to seek damages based on aspects that transpired much later.

16. Secondly, we also find that in the review application preferred by the plaintiff no.2 the grounds with regard to taking of contrary stands, non-entitlement of the defendant nos. 2 to 5 to get back Plot no.57 and effect of Rule 4 (3) of the Rules of 1955 were duly raised therein. On rejection of the review application, it would not be permissible to re-agitate these very grounds again under the garb of alleging that the defendant no.1 as well as the defendant nos. 2 to 5 had played fraud resulting in the plaintiffs being deprived of Plot no.57.

In the plaint except for use of the expressions “misrepresentation” and “fraud” there are no particulars given as are so required to be given under the provisions of Order VI Rule 4 of the Code of Civil Procedure, 1908. The pleadings in the plaint fall short of the legal requirements and even on that count the plaintiffs cannot succeed. We are not oblivious of the legal position that the aspect of estoppel in cause of action would not arise when allegations of fraud and collusion are made. We thus find that right from the inception on 21.01.1974 it has been found that the plaintiff no.2 had no enforceable legal right with regard to Plot no.57 and on account of vague pleadings in relation to

fraud and misrepresentation there is no legal foundation to hold that the plaintiffs are entitled to seek damages from the defendants.

17. On the question of bar by limitation, it is found that in paragraph 25 of the plaint the plaintiffs have stated that the cause of action also arose on 19.03.1996 on which date Civil Appeal No.1683/1982 was allowed. They have further pleaded that in the year 1997 it also arose when Plot no.57 was transferred in favour of the defendant nos. 2 to 5. The suit has been filed within a period of three years therefrom on 16.03.1999. The trial Court without much discussion has proceeded to answer issue no.5 against the plaintiffs by holding that the suit was barred by limitation. We find from the averments in the plaint that part of cause of action is shown to have arisen on 19.03.1996 and also in the year 1997. The suit therefore as filed within three years from 19.03.1996 is within limitation and the finding recorded by the trial Court against issue no.5 is set aside. The suit is held to be within limitation.

18. It is also found that the trial Court while answering issue no.7 has proceeded to hold that the suit was bad for non-joinder of State Government as a necessary party. We find that firstly, the plaintiffs had not sought any relief from the State Government for the purposes of which it was required to be arrayed as a defendant being a necessary party. Though there are averments made against the State Government, at the

highest, it could be treated to be a proper party and not a necessary party. The suit therefore was not liable to be dismissed for non-joinder of the State Government as a necessary party. The finding recorded by the trial Court against issue no.7 is also reversed.

19. In the light of aforesaid discussion, we find that the plaintiffs do not have any legal basis for succeeding in the suit for recovery of damages. In absence of any legal right accruing in favour of the plaintiff no.2. since inception which is on 21.01.1974 and the finding in that regard having attained finality in view of adjudication of Civil Appeal No. 1683/1982 as well as dismissal of the review application it is not necessary to go into the question as to whether rejection of the plaintiff no.2's bid was malafide or whether the plaintiff no.2 suffered damages due to the acts of the defendant no.1. The plaintiffs are not entitled to any relief whatsoever. The points as framed are answered accordingly. For the aforesaid reasons, the conclusion recorded by the trial Court of dismissal of the suit is maintained. Consequently, First Appeal No.1430/2009 stands dismissed leaving the parties to bear their own costs.

JUDGE

JUDGE