

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.1575 OF 2022**

**IN**

**SUTT NO.396 OF 2006**

The State of Maharashtra, ]  
Through the Collector, Mumbai Suburban District, Mumbai ] .. Applicant

***In the matter between***

Adarsh Water Parks and Resort Pvt. Ltd. ] .. Plaintiff

***Vs.***

1. Abdul Rashid Abdul Rehman Yusuf (*Deleted*) ]  
2. Farooq Abdul Rashid Yusuf ]  
3. Nishta Developers Pvt. Ltd. ]  
Through its Director-Rajesh H. Zaveri ]  
4. Rajheer Megaprojects Pvt. Ltd. ]  
Through its Director-Rajesh H. Zaveri ]  
5. Rajesh H. Zaveri ]  
6. Adil Y. Patel ] .. Defendants

***And***

1. Union of India, Ministry of Defence, New Delhi ]  
2. Union of India, Ministry of Railway, New Delhi ]  
3. Union of India, through Deputy Salt Commissioner, New Delhi ]  
4. Municipal Corporation of Greater Mumbai ]  
5. Jolly Anil India Ltd. ] .. Respondents

Mr. Himanshu Takke, AGP for the Applicant-State of Maharashtra.

Mr. Hemang Raythattha, with Ms. Shalaka Chamboowala, i/by RMG Law Associates, for the Plaintiff – Adarsh Water Parks & Resort Pvt. Ltd.

Ms. Ekta Dalvi for Defendant No.2–Farooq Abdul Rashid Yusuf.

Mr. Rishikesh Soni, i/by Mr. Vishal Acharya, for Defendant No.3–Nishta Developers Pvt. Ltd.

Defendant No.6– Adil Y. Patel is present in person.

Mr. Anil C. Singh, ASG, with Mr. Aditya Thakkar, Ms. Savita Ganoo, Mr. D.P. Singh, Ms. Smita Thakur and Mr. Pranav Thakur, for Respondent Nos.1 to 3–Union of India.

Mr. Burhan Bukhari, with Ms. Yamuna Parekh and Ms. Pooja Yadav, i/by Mr. Sunil Sonawane, for Respondent No.4–MCGM.

Mr. Navroz Seervai, Sr. Advocate, with Mr. Chetan Kapadia, Ms. Nupur Jalan and Ms. Vidhisha Rohira, i/by Dastur Kalambi & Associates, for Respondent No.5–Jolly Anil India Ltd.

**CORAM : A. K. MENON, J.**

**DATE : 15<sup>TH</sup> JUNE, 2022.**

**ORAL ORDER :**

1. By this interim application, the applicant-State of Maharashtra seeks quashing and setting aside of a Consent Decree dated 28<sup>th</sup> October 2020, which came to be passed in terms of the Consent Terms dated 26<sup>th</sup> October 2020. The applicant-State therefore seeks relief inter alia recalling the order and setting aside the decree since there has been suppression of material facts before the court and the court was also misled into passing the order. It relates to a large area of land inter alia covered by Survey Nos.1 to 279 at Village Kanjur, Taluka Kurla, Mumbai Suburban District, as set out in the schedule of the property annexed at Exhibit-10 to the IA. It also seeks certain reliefs pending the disposal of the IA, however the IA has been taken up for final disposal since it was assigned to this court by an order of the Hon'ble the Chief Justice on the administrative side dated 22<sup>nd</sup> March 2022.

2. I have today heard the parties at length. It would be appropriate to first set out a brief description of the parties. The applicant, as aforesaid, is the State of Maharashtra. The plaintiff is a private limited company – Adarsh Water Parks and Resort Pvt. Ltd. The defendants are six in number. Defendants 1 and 2 were the original defendants in the Suit and were believed to be Executors of a Will dated 20<sup>th</sup> August 1960 of late Sir Mohammed Yusuf Khot. Defendant no.1 has since expired. The 3<sup>rd</sup> defendant – a private limited company – was directed to be impleaded as a party-defendant by an order dated 3<sup>rd</sup> April 2009, but it appears that no amendment was carried out. Thereafter, by an order dated 2<sup>nd</sup> November 2020, the said amendment was allowed to be carried out. Therefore, defendant no.3 came to be added as a party-defendant. The cause-title of the plaint shows that there are three other defendants. The defendant no.4-RM Projects Pvt. Ltd. and defendants 5 and 6 both individuals who have been impleaded as party-defendants by virtue of the order passed on 28<sup>th</sup> October 2020. The respondents in the array of parties in this IA are the Ministry of Defence, Ministry of Railway and the Deputy Salt Commissioner, all represented by Union of India, and the Municipal Corporation of Greater Mumbai. The last respondent is one Jolly Anil India Ltd.

3. This Interim Application is filed by the Collector, Mumbai Suburban District, who is said to be holding charge of the land in question and by duly authorizing the Sub-Divisional Officer in that respect. I may observe that there is no contest on the aspect of the authority of the applicant to file this application. The respondents being the Ministry of Defence, Ministry of Railway and Deputy Salt Commissioner, all represented through Union of India, and the Municipal Corporation of Greater

Mumbai were impleaded since they also owned land within village Kanjur. Respondent no.5-Jolly Anil India Ltd. was impleaded since they have also filed an interim application bearing no.3028 of 2021 in respect of the land at village Kanjur, which is apparently granted on lease to the 5<sup>th</sup> respondent by the State Government.

4. The present IA is filed on 8<sup>th</sup> March 2022. Mr. Takke states that, for the reasons set out in paragraph 11 of the IA including the fact that due to the pandemic driven restricted working and in view of the orders of the Supreme Court extending period of limitation for filing of all proceedings, this application has been filed. However, considering the nature of the reliefs sought and the cause for which the applicant-State has approached this court alleging fraud being played without the knowledge of the State Government or the other parties such as Union of India and its departments and the MCGM. All defendants and respondents are said to have been served. Defendants 4 and 5 have not appeared today though defendant no.5 has filed his affidavit-in-reply. Defendant no.5 appears to be the director of defendant nos.3 and 4 as well.

5. The learned AGP has pointed out that pursuant to enactment of the Salsette Estates (Land Revenue Exemption, Abolition) Act, 1951, hereinafter referred to as ***“the Salsette Act”***, the State is entitled to, in its own rights, the large plots of land. The IA has set out the fact that the Salsette Act inter alia provides for waste land which is not the property of the then estate holder to vest in the State. In the year 1953, a Suit came to be filed in this court, being Suit No.481 of 1953, by one Mohammed Yusuf Khot (***“the said Khor”***) against the erstwhile State of Bombay, seeking declaration that

the plaintiff therein was the owner of the land at village Kanjur in Tal. Salsette on the basis of certain documentation referred to therein. The applicant-State claims to be the owner of a total area which is described in paragraphs 8(iii), 8(iv), 8(vi), 8(ix) and 8(x). The aforesaid suit was thereafter disposed when consent terms came to be filed on 19<sup>th</sup> June 1963. The vesting of land in the Government under the Salsette Act was identified in these consent terms and part of the land was said to be vesting in the said Mohammed Yusuf Khot – plaintiff in Suit No.481 of 1953 (*"Suit 481"*). In relation to certain parts of the land described in Exhibit-C of the Consent Terms dated 19<sup>th</sup> June 1963, an enquiry was to be held under Section 37(2) of the Bombay Land Revenue Code, 1879 – then in force.

6. This IA has been urged by Mr. Takke, learned AGP on the strength of the averments to the effect that by order dated 28<sup>th</sup> October 2020, the land owned by the applicant-State is sought to be conveyed, sold and transferred by an agreement between the plaintiff and the defendants as aforesaid, as recorded in the consent terms, without joining the State of Maharashtra as a party and without the consent of the State Government without disclosing the State's interest in the land to the court. The learned AGP has submitted that the land is a very large tract of land comprised in village Kanjur. The suit was effectively disposed in terms of the consent terms purporting to sell, assign and convey the land as set out in the consent terms while allegedly handing over possession to the defendant no.4. The Consent Terms are to operate as a decree. The applicant was never informed by the parties to the suit that a consent order is proposed to be obtained disposing the suit although the contents of the consent terms directly affects the rights of the applicant and the Union of India in

relation to the land at village Kanjur. Mr. Takke submits that the consent decree was obtained by fraud played by the parties to the suit upon the court.

7. My attention has been invited to the Consent Decree dated 19<sup>th</sup> June 1963, in Suit 481 a copy of which is annexed at Exhibit-2 to the IA. Exhibit-A to the consent decree is a tabulated form setting out various plots with their description and survey numbers. Exhibit-B sets out leasing of appropriated lands. Exhibit-C sets out the properties forming subject matter of the aforesaid consent terms with old survey numbers, new survey numbers and total area. It is the case of the learned AGP that vesting of the land was decided pursuant to the enquiry and the entitlement of the parties was as set out in the tabulated form in paragraph 8 of the IA. The grievance of the applicant is that the lands belonging to the State are now being described as part of the suit property and are sought to be conveyed under the Consent Terms dated 26<sup>th</sup> October 2020. Admittedly, the consent terms reflect the fact that certain lands are being claimed by the government; yet, the government was not informed of the fact that the suit relates to lands vesting in the State and that the parties to the suit proposed to file these consent terms. The State was not impleaded in the suit. My attention is also invited to the fact that an appeal came to be filed by the said Khot before the Sub-Divisional Officer, Mumbai Suburban, against an order passed by the Tahasildar on 8<sup>th</sup> May 1969 in relation to Old Survey No.169 (New Survey No.279), which covered an area of 1,627 acres and 8 gunthas. The appeal came to be dismissed on 14<sup>th</sup> October 1969. The estate holder the said Khot then filed an Appeal before the Additional Collector, Mumbai Suburban District. A similar issue was also then pending before the Divisional Commissioner in one Revision Application filed by

one Mr. Ramji Koli. That Revision was heard and was dismissed by the Divisional Commissioner on 1<sup>st</sup> June 1971. Thereafter a second revision came to be filed by the estate holder before the Revenue Minister under Section 257 of the Maharashtra Land Revenue Code. The appeal came to be heard and decided on 15<sup>th</sup> April 1974 by the Revenue Minister. While noticing that a Suit, being Suit No.690 of 1972, filed by aforesaid Ramji Koli challenging orders passed by the Tahasildar, the Sub-Divisional Officer and the Divisional Commissioner and the revision application was pending in the High Court, the Revenue Minister observed that no decision would be taken by the government on the revision then before him and that any party wishing to seek relief may intervene in the High Court suit. It is that suit which subsequently came to be dismissed by a judgment dated 30<sup>th</sup> August 1983.

8. My attention has been invited to Exhibit-10 to the IA, which sets out particulars viz. the names of the occupants of numerous plots of land of an area of 686 H 54 R. These lands are claimed by the State Government; whereas lands of an area of 92 H 36 R are said to be belonging to / occupied by the Central Government through the Central Railway, Defence Department and the Salt Department, including a small portion of land belonging to the Deputy Collector (P & V), Central Excise, Mumbai-1. In addition, Mr. Takke points out that Mumbai Mahanagarpalika also has interest in part of those lands described in the table and admeasuring approximately 13 H 26 R. It is contended that all of these lands are now sought to be conveyed by virtue of the consent terms and the consent decree that has been passed by this court on 28<sup>th</sup> October 2020.

9. Mr. Takke has taken me through a copy of the plaint in Suit No.396 of 2006, in which the plaintiff had sought specific performance of an agreement dated 16<sup>th</sup> August 2005 read with powers of attorney dated 6<sup>th</sup> September 2005 and 15<sup>th</sup> November 2005 and, in the alternative, seeking a decree directing the defendants, who were then two in numbers, to sell, transfer, convey and assign the lands described in Exhibit-B to the plaintiff. Alternatively, damages were sought in a sum of Rs.100,20,00,000/-. Exhibit-B reveals that in the First Schedule, the property described as “entire plot” is said to contain pieces and parcels of plots of land in Village – Kanjur, Revenue Village – Kanjur, Taluka – Kurla comprising New Survey Nos.1 to 279. A copy of Exhibit-B annexed to the plaint is a typed copy. It provides for signature of the owner described as Abdul Rashid Abdul Rehman Yusuf and claiming to be Executor and Trustee under the Will. However, I find that the copy annexed does not disclose whether it was signed in fact. No original has been filed or produced in court. The common seal of Adarsh Water Parks and Resorts Pvt. Ltd. is said to have been affixed in the execution clause; however the copy annexed to the plaint does not disclose the name of the Director(s) in whose presence the common seal was allegedly affixed or the date when the relevant meeting of the Board of Directors was held. It does not even disclose that the Agreement was actually executed. The receipt clause indicates payment of Rs.11,00,000/-. The signature of the owner does not appear on the copy. Even witnesses do not appear to have signed.

10. The learned AGP for the applicant-State of Maharashtra has relied upon several judgments as set out below.

- (i) *Datta Ramji Koli and Ors. Vs. Abdul Rashid A.B. Yusuf and Ors.*<sup>1</sup>
- (ii) *Ram Chandra Singh Vs. Savitri Devi and Ors.*<sup>2</sup>
- (iii) *Horace Kevin Gonsalves Vs. Prabha Ganpat Borkar (Miss) and Anr.*<sup>3</sup>
- (iv) *Shilpa Dhanraj Kale Vs. Divisional Commissioner, Amravati and Ors.*<sup>4</sup>
- (v) *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Ors.*<sup>5</sup>
- (vi) *Shakuntala & Anr. Vs. Kamal Singh*<sup>6</sup>
- (vii) *Banwari Lal Vs. Chando Devi (Smt.) (Through LRs) and Anr.*<sup>7</sup>
- (viii) *S.V. Chandra Pandian and Ors. Vs. S.V. Sivalinga Nadar and Ors.*<sup>8</sup>
- (ix) *Himi (Smt.) D/o. Lachhmu (Smt.) and Anr. Vs. Hira Devi (Smt.) Widow of Budhu Ram and Ors.*<sup>9</sup>
- (x) *Hamza Haji Vs. State of Kerala and Anr.*<sup>10</sup>

11. The learned Additional Solicitor General, who appears for respondents 1, 2 and 3 viz. Ministry of Defence, Ministry of Railway and Deputy Salt Commissioner, all represented through Union of India, has relied upon three affidavits filed on behalf of the aforesaid respondents. The learned ASG submits that the consent terms and the

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1 *OOCJ Suit No.690 of 1972 – Oral Judgment dt. 30<sup>th</sup> August 1983.*

2 *(2003) 8 SCC 319*

3 *2015 (6) Mh.LJ. 208*

4 *2015 (6) Mh.LJ. 245*

5 *(2005) 7 SCC 605*

6 *2014 SCC OnLine Raj 792*

7 *(1993) 1 SCC 581*

8 *(1993) 1 SCC 589*

9 *(1996) 10 SCC 642*

10 *(2006) 7 SCC 416*

order passed thereon is a fraud played upon the court. The lands pertaining to the Union of India and as described in the said affidavits are sought to be conveyed by virtue of the consent terms without disclosing interest of the Union of India and its departments.

12. My attention is invited by learned ASG to the affidavit filed on behalf of respondent no.1-Ministry of Defence by one Pooja P. Palicha, the Defence Estates Officer, Mumbai Circle, Mumbai, which sets out that the 1<sup>st</sup> respondent is the owner of 251.344 acres of land in village Kanjur, Hariyali and Tirandaj, which lands were requisitioned under the Requisitioned Land (Continuance of Power) Act of 1947. The acquisition was said to be duly published in Government Gazette (Part I) dated 14<sup>th</sup> October 1948 and duly gazetted thereafter in September 1948. It has been acquired for the Naval Dockyard Housing Scheme and now part of the Naval Civil Housing Colony. The land is owned and in the possession of the 1<sup>st</sup> respondent. Reliance is also placed on the extract of the Military Land Register and a copy of the map showing location of the land acquired within village Kanjur. My attention has also been drawn to the Record of Rights maintained by the State Government, which inter alia reflects holding of the land by the 1<sup>st</sup> respondent, so also copy of the Gazette of 30<sup>th</sup> September 1948, notifying acquisition of the aforesaid land, which have been placed on record. My attention is also invited to the copy of a plan disclosing location of the housing colony. It is therefore submitted by the learned ASG that it is a clear case of suppression of material facts from the court and the court has been misled into believing that the parties were entitled to present the consent terms and obtain orders thereon. It is contended that the plaint does not even disclose ownership of these

lands vesting in the 2<sup>nd</sup> defendant. Not only that, the parties were well aware of the claims of the government to certain parts of the land inasmuch as in clause 1(C) of the consent terms, reference is made to *“considerable portion of the properties forming part of the suit property are either leased out or encroached by slum dwellers or purportedly acquired by the government”* (Emphasis supplied). The fact that a huge property owned by the government was involved is thus vaguely referred to in the consent terms probably in anticipation the suppression being discovered.

13. The learned ASG has also relied upon an affidavit filed on behalf of the 2<sup>nd</sup> respondent—Ministry of Railway of one Mohammed Afaque, Divisional Engineer (Land Management), Divisional Railway Manager (Works), Central Railway, Mumbai dated 26<sup>th</sup> May 2022, in which the railways have claimed that they were owners of 20.0204 H, equivalent to about 2,00,204.40 sq.mtrs., of land in village Kanjur bearing the relevant survey numbers as disclosed in the affidavit. The affidavit sets out the fact that parties have played a fraud upon the court as well apart from the fraud played upon the respondents. It is contended that the railways have acquired these lands. Extract of the Revenue Record maintained by the State is enclosed at Exhibit-A to the affidavit. A plan of the property, which is claimed by the railways, is also relied upon at Exhibit-B. The learned ASG submits that not only was the Central Railway's land is sought to be usurped by the parties to the suit, even respondent no.3, which is the Salt Commissioner, has not been spared.

14. Inviting my attention to the affidavit of one C. Raghu, Deputy Salt Commissioner, dated 4<sup>th</sup> May 2022, it is contended that the Salt Commissioner was

entitled to 1,521 acres of land approximately, comprised in Survey No.275 (pt), Old Survey Nos.169 and 167 (New Survey No.275 (pt.)), in three different plots initially admeasuring 52 acres, since reduced to 42 acres after transfer of plots to the different departments, and land admeasuring 1,464 acres and 25 gunthas and an additional 15 acres and 34 gunthas, all of which are within village Kanjur. Notifications dated 22<sup>nd</sup> December 1906, 22<sup>nd</sup> December 1917 and 15<sup>th</sup> January 1920 are all relied upon in support of the claims to these lands. Copies of these notifications have been annexed to the affidavit and copies thereof have also been provided for the convenience of the parties in the court. The learned ASG has therefore contended that all these lands were sought to be incorporated as part of the suit land and are sought to be alienated and conveyed by virtue of these consent terms. Collectively, as between the Ministry of Defence, Ministry of Railways and the Salt Commissioner, a large area of land duly notified, owned and in the possession of these departments is sought to be conveyed under these consent terms while suppressing it from the court.

15. Admittedly, these departments of the Union of India were not parties to the suit at any stage. It is therefore contended that the aforesaid respondents became aware of the order of this court and the effect thereof only upon being served with the present IA. It is also contended that there are disputes inter se between the applicant-State of Maharashtra and the respondent-Union of India inter alia in relation to the plots of land, which are admeasuring 1,464 acres in Survey No.275 (pt.) in village Kanjur, and in that respect, three writ petitions are pending in this court, two of which are filed by the Union of India being Writ Petition (Lodging) Nos.3523 of 2020 and 5983 of 2020. The learned ASG has invited my attention to the copy of an order dated 16<sup>th</sup>

December 2020 passed by the Division Bench in those writ petitions (Writ Petition (Lodging) Nos.3523 of 2020, 5983 of 2020 and 7877 of 2020), which clearly records extent of the land that was then subject matter of dispute between the State of Maharashtra and the Union of India. Interim protection has been granted restraining the Collector, Mumbai Suburban District, from transferring possession of 102 acres of land at village Kanjur forming part of Survey No.275 to the 11<sup>th</sup> respondent in the petitions, namely. Mumbai Metropolitan Region Development Authority (MMRDA).

16. On behalf of the Union of India, Mr. Anil Singh, the learned ASG, has invited my attention to a tabulated statement of various properties that have been sought to be incorporated in the consent terms and sought to be disposed thereby. Inviting my attention to the decision of the Supreme Court in the case of *Budhia Swain and Ors. Vs. Gopinath Deb and Ors.*<sup>11</sup>, the learned ASG submits that a court can recall an order if the proceedings culminating in the order suffer from fraud in obtaining such judgment. He has also invited my attention and placed reliance on the decision of the Supreme Court in *A.V. Papayya Sastry and Anr. Vs. Government of A.P. and Ors.*<sup>12</sup> and *Meghmala and Ors. Vs. G. Narasimha Reddy and Ors.*<sup>13</sup>. The learned ASG therefore supports the contention of the applicant State to the extent that the decree is required to be set aside and the order to be recalled / set aside for having perpetrated a fraud inter alia upon the court.

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11 (1999) 4 SCC 396

12 (2007) 4 SCC 221

13 (2010) 8 SCC 383

17. On behalf of the respondent no.4-MCGM, Mr. Bukhari has also come out in support of the application. It is contended that even MCGM lands are not spared. My attention is invited to an affidavit dated 10<sup>th</sup> June 2022 affirmed by one P.U. Vaidya, Executive Engineer, Development Plan Department, MCGM, in which Mr. Bukhari invites my attention to the fact that lands admeasuring 11.55 H under diverse survey numbers and of different dimensions, as set out in paragraph 3 of the affidavit, are all owned by the MCGM. The MCGM had taken advance possession of the land, as set out in the said affidavit, including notifying the property on a chart showing area of the land as well as the property cards and the possession receipts. My attention is invited to Exhibit-A to the affidavit, which sets out extent of the land by admeasurement and the relevant survey numbers and CTS numbers. The Property Card extracted from the website of the State of Maharashtra, bearing URL <https://bhulekh.mahabhumi.gov.in/Konkan/PropertyCard.aspx>, is also enclosed, which contains a watermark declaring that it is not for “legal purpose” but this appears since it is downloaded from the state’s website and is not a certified copy. Thus, lands have been described in each of these extracts from the Records of Rights. All of these are collated in Exhibit-A to the affidavit with specific reference to survey numbers, CTS numbers, as aforesaid. Mr. Bukhari therefore submitted that the extent of the fraud is such that land belongs not only to the State and Union of India, but MCGM is also sought to be conveyed without even impleading them or notifying them of the fact that the lands of the MCGM forms subject matter of the suit. On this basis, it is contended that the order dated 28<sup>th</sup> October 2020 is liable to be recalled, the consent decree be set aside with consequences to follow. Mr. Bukhari, in support of his case,

has relied upon the decision of the Supreme Court in *Ajanta LLP Vs. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Co. Ltd. and Anr.*<sup>14</sup>

18. Opposition to the present application is mounted by the plaintiff and the defendants. Mr. Soni on behalf of the defendant no.3 has led the arguments. Mr. Soni submitted that this court can neither recall nor set aside the order considering the provisions of Order XXIII of the Code of Civil Procedure, 1908 or exercise inherent powers of this court under Section 151 since, according to Mr. Soni, there is no fraud played upon the court at all. He submits that the consent terms are perfectly valid. They are entered into between the parties to the suit. They were executed, signed by the Advocates and were presented in the court. The court has accepted the same and passed appropriate orders in terms of the consent terms at the request of the parties. There is no question of any fraud been played upon the court and as such, it is his contention that following the observations of the Supreme Court in the decision of *Ram Prakash Agarwal and Anr. Vs. Gopi Krishan (Dead, Through LRs) and Ors.*<sup>15</sup>, *along with connected matter*, there is no fraud played upon the court and unless there is any fraud played upon the court, there is no occasion to exercise any jurisdiction and grant any relief. He therefore submits that the application has no merit on that ground.

19. It is also the case of Mr. Soni that several decisions, including that of the Supreme Court in the case of *Triloki Nath Singh Vs. Anirudh Singh (Dead) Through*

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14 2022 SCC OnLine SC 148

15 (2013) 11 SCC 296

*Legal Representatives and Ors.*<sup>16</sup>, have observed that the courts cannot impose compromise on unwilling party and that the scheme of Order XXIII of the CPC permits compromise between the parties in order to avoid multiplicity of proceedings. He submitted that this is precisely what the parties have done. He submits that the defendants have acted in accordance with the law. The parties came to a consensual arrangement as regards the suit property and have settled their disputes amicably and accordingly the suit came to be disposed. In disposing the suit, he submits that there is no fraud as between the parties and inter-parties. Even if there is any element of misrepresentation, that cannot be a reason for a stranger to the suit to come forward and seek the order to be recalled or set aside. State Government, it is submitted, is a stranger to the suit. It was not a party to the suit when it was first instituted nor was it impleaded subsequently as a result of the negotiations, which were between the parties to the amended plaint and in terms of the settlements that are recorded in the consent terms. He has therefore submitted that there is no occasion for this court to interfere in this application and seek dismissal of the application. Mr. Soni has invited my attention to several judgments listed below that he has relied upon in support of his plea.

(i) *Ram Prakash Agarwal and Anr. Vs. Gopi Krishan (Dead Through LRs) and Ors., along with connected matter.*<sup>17</sup>

(ii) *Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.*<sup>18</sup>

(iii) *Smt. Suraj Kumari Vs. District Judge, Mirzapur and Ors.*<sup>19</sup>

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16 (2020) 6 SCC 629

17 (2013) 11 SCC 296

18 AIR 1996 SC 2592

19 1990 SCC OnLine All 459

- (iv) *Khalil Haji Bholumiya Salar and Anr. (Applicants) and Zaitunbi w/o. Md. Hanif Karigar (Applicants) and Anr. Vs. Parveen w/o. Sayyeduddin Razak and Ors.*<sup>20</sup>
- (v) *Triloki Nath Singh Vs. Anirudh Singh (Dead) Through Legal Representatives and Ors.*<sup>21</sup>
- (vi) *Chitrlekha Builders & Anr. Vs. G.I.C. Employees Sonal Vihar Co-op. Housing Society Ltd. & Anr.*<sup>22</sup>
- (vii) *Razia Sultana K. Ahmed (Applicant) in the matter between Adarsh Water Parks & Resorts Pvt. Ltd. Vs. Abdul Rashid Abdul Rehman Yusuf & Ors.*<sup>23</sup>
- (viii) *Golecha Housing and Infrastructure Pvt. Ltd., Nagpur Vs. Sanjay s/o. Mohan Rao and Ors.*<sup>24</sup>
- (ix) *R. Janakiammal Vs. S.K. Kumarasamy (Deceased) Through Legal Representatives and Ors., along with connected matters*<sup>25</sup>.
- (x) *K.K. Velusamy Vs. N. Palanisamy*<sup>26</sup>

20. In the case of *K.K. Velusamy Vs. N. Palanisamy*<sup>27</sup>, Mr. Soni submits that, the power under Section 151 will have to be used with circumspection and care and

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20 *2013 (3) Mh.L.J. 182*

21 *(2020) 6 SCC 629*

22 *Civil Appeal No.946 of 2016 – Reported Judgment of the Supreme Court dt. 1<sup>st</sup> March 2021.*

23 *Interim Application (Lodging) No.5113 of 2021 in Suit No.396 of 2006 – Order dt. 26<sup>th</sup> April 2021.*

24 *2018 (1) Mh.L.J. 784*

25 *(2021) 9 SCC 114*

26 *(2011) 11 SCC 275*

27 *(2011) 11 SCC 275*

when it is absolutely necessary and that there is no other provision in the Code governing the matter and when the bonafides of the applicant cannot be doubted, such exercise is required to meet the ends of justice and to prevent abuse of the process of court. It is submitted by Mr. Soni that in the present case, such a situation has not arisen. None of the parties to the suit had any quarrel with the consent terms and its contents. Terms were consensually arrived at pursuant to negotiations. The court was invited to pass an order thereon, which the court has done. In view thereof, he submits that there is no question of any fraud inter-parties. In these circumstances, Mr. Soni submits that the application has no merit and deserves to be rejected. As to how the government is a “stranger” despite the reference to the claims of the government, no explanation is forthcoming.

21. On behalf of the defendant no.2-Farooq Abdul Rashid Yusuf, Mr. Tamboly was permitted to address the court on video conference. Mr. Tamboly has submitted that there is no occasion to consider granting of any relief against the decree. The consent terms were arrived at by mutual consent of the parties. He has invited my attention to the averments of the applicant in paragraph 12 of the IA and submitted that there is no question of any fraud being played on the State Government or on the Hon’ble court. He submits that the State was not a party to the suit at all and in the absence of the State, there is no question of giving them notice. Title disputes are involved and that the State must file a suit, if it so desires. He submits that the application itself reveals that there are title disputes as between State of Maharashtra and Union of India. He has relied upon the affidavit-in-reply filed on behalf of 2<sup>nd</sup> defendant dated 26<sup>th</sup> April 2022, who takes up the same issue of maintainability, as urged by Mr. Soni.

Mr. Tamboly has submitted that in view of the rival claims for title, the applicant – State of Maharashtra is stranger to the consent terms and hence ought not to be heard in this interim application since as between the parties, there is no locus of any fraud or misrepresentation. The State of Maharashtra must therefore file its own suit, if it so desires.

22. Similar contentions is taken up by defendant no.6 by filing an affidavit dated 2<sup>nd</sup> May 2022. The limited opposition taken up by the said defendant is that the application is not maintainable under Order XXIII and/or Section 151 by a stranger and third party for want of locus. Thus, the disputes inter se between the State of Maharashtra and Union of India would also require a separate suit to be filed. Defendant nos.4 and 5 made no oral submissions. Defendant no.2 has filed an affidavit through the Advocate who had been appearing on several earlier dates. They are obviously aware of this application because while perusal of the execution clause of the consent terms, it is observed that one “Zaveri” (presumably defendant no.5) has signed for defendant no.3 as its partner and defendant no.4 as its director and those defendants have actively opposed. On behalf of the plaintiff, reliance is placed on an affidavit of one Vinod Savla, Director of the plaintiff-company, dated 25<sup>th</sup> April 2022. Mr. Raythattha, learned Advocate for the plaintiff has adopted the submissions made on behalf of defendant nos.2 and 3.

23. Having heard learned counsel for the parties at length, I am of the view that opposition to the application has no merit. All the defences and the oppositions to the present IA speak in one voice, opposing maintainability of the application and the fact

that the applicant and the respondents are required to file a separate suit. The record indicates that the consent decree was passed on 28<sup>th</sup> October 2020, during the pandemic. On a query from the court, Mr. Raythattha and Ms. Dalvi states that the suit was circulated for hearing by a praecipe issued by the Advocate for defendant no.2 then on record, who had also filed the written statement on behalf of the defendant no.2 and who had appeared on 28<sup>th</sup> October 2020 through video conference. The copy of the order, which is annexed at Exhibit-15 to the IA, reveals that the plaintiff and all defendants were represented by counsel duly instructed Advocates. It does not record presence of any of the parties. Although there is an attempt to suggest across the bar that parties were present, the record does not indicate that any of the parties were present at the hearing. The order passed on that date reads thus :-

- “1. The draft amendment has been tendered to the court adding certain parties as defendant nos.4, 5 and 6, as reflected in the draft amendment. The draft amendment is taken on record and marked “X” for identification. The amendment to the plaint shall be carried out in terms of the draft handed in, within a period of one week from today. Re-verification is dispensed with.*
- 2. The parties have informed this court that the disputes in the present suit have been settled as reflected in the consent terms dated 26<sup>th</sup> October 2020. These consent terms have been signed on behalf of the plaintiff as well as by defendant nos.2 to 6 respectively. The consent terms have also been signed by their respective advocates. As far as defendant no.1 is concerned, his name has been deleted pursuant to an order passed by this court on 21<sup>st</sup> June 2017 read with an order dated 13<sup>th</sup> August*

*2018. The advocates representing their respective clients have identified the signatures of their respective clients. They have also stated that the consent terms have been understood by the parties.*

- 3. In these circumstances, the consent terms are taken on record and marked "X-1" for identification. The undertakings, if any, in the consent terms are accepted as undertakings given to the court. The above suit is disposed of in terms of the consent terms. Refund of court fees, if any, as per rules.*
- 4. This order shall be digitally signed by the Private Secretary/Personal Assistant of this court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order."*

24. It is seen from the contents of the aforesaid order that a draft amendment was tendered to the court on that very day seeking to add defendants 4, 5 and 6. The draft amendment was taken on record and marked 'X' for identification. The amendment was to be carried out within one week from that date and re-verification was dispensed with. It is on that basis that the plaint on the record of this court has since been amended on 3<sup>rd</sup> November 2020 impleading defendants 4, 5 and 6. The only averment incorporated in the plaint in relation to these defendants 4, 5 and 6 viz. paragraph 2A, is reproduced in paragraph 34.

25. The court has recorded the fact that the parties had informed the court that disputes have been settled, as reflected in the consent terms, and that the consent terms were signed by the plaintiff and on behalf of the said defendants 2 to 6; the 1<sup>st</sup>

defendant having expired. The consent terms have been signed by the respective Advocates as well. The court took notice of the fact that the name of the defendant no.1 had been deleted pursuant to an earlier order of 21<sup>st</sup>/22<sup>nd</sup> June 2017 read with the order dated 13<sup>th</sup> August 2018. The Advocates for the parties have identified their respective clients. The court had thus no reason to disbelieve the statements of counsel and Advocates as officers of the court especially considering the restricted functioning of courts.

26. I also had occasion to peruse the draft amendment tendered in court. The draft amendment marked 'X' for identification on 28<sup>th</sup> October 2020 is part of the record. It is not signed by any of the parties or their Advocates. Since it is not disputed that defendant no.2 has circulated the praecipe, at the hearing today, I have called upon the Advocate for defendant no.2 to provide a copy of the praecipe seeking circulation of the matter and also as to how the draft amendment was tendered. On a query from the court, Ms. Dalvi appearing on behalf of the 2<sup>nd</sup> defendant fairly states that she is not aware as to how the draft amendment was tendered. I have today called upon the Advocate for the plaintiff to confirm the mode in which the draft amendment was tendered to court on 28<sup>th</sup> October 2020.

27. A copy of the praecipe has meanwhile been produced before me by the learned Advocate for the plaintiff and that praecipe indicates that it is signed by Advocate for the plaintiff and defendants 2, 3, 4, 5 and 6. On behalf of the 2<sup>nd</sup> defendant, Ms. Dalvi submits that this praecipe was not signed by her but was probably signed by earlier Advocate on record, in whose place and stead she has now entered appearance. The

record indicates that as on 28<sup>th</sup> October 2020, the Advocate on record for defendant no.2 was Mr. Jitendra J. Shah. The vakalatnama of the present Advocate Ms. Dalvi on behalf of the 2<sup>nd</sup> defendant is on record since she entered appearance only on 18<sup>th</sup> December 2021, but the vakalatnama is dated "September 2021". The body of the vakalatnama contains no date, however it contains an endorsement of no objection by one Jitendra J. Shah, Advocate. The docket of the vakalatnama indicates that the date of the vakalatnama is 17<sup>th</sup> September 2021, which is almost one year after the consent terms were tendered in court and an order was passed. The vakalatnama was under objections, which were complied and a filing order obtained on 18<sup>th</sup> December 2021. On behalf of the plaintiff though, the vakalatnama had been entered by the present Advocates on 14<sup>th</sup> February 2020 prior to the consent terms being filed.

28. The record of the court indicates that the registry received an e-mail on Monday, the 26<sup>th</sup> October 2020 at 05:10 p.m. from the e-mail id of an Advocate and the subject shown as "Praecipe for circulation in Suit No.396 of 2006". It was marked to the e-mail of the relevant court with a copy to one more e-mail address. The e-mail refers to the short title of the suit and sought circulation of the matter before the concerned court "*on ..... day of October, 2020 for filing consent terms*". The e-mail also contains a request "to take on record the consent terms duly signed by the plaintiff and defendants in the aforesaid matter". It further stated as follows :-

*"This joint praecipe is filed by all the Advocates for the parties. ....  
Yours truly, ....  
Advocates for all the parties. ....  
C.C. to all concerned."*

29. The praecipe is on the letterhead of the Advocate Jitendra J. Shah, who had entered appearance for defendant no.2, and it is signed by the Advocates for the plaintiff, defendants 2, 3, 4, 5 and 6.

30. On Wednesday, the 28<sup>th</sup> October 2020, at 01:13 p.m., a further e-mail is seen to be addressed from the same e-mail address to the designated e-mail id of the court. It is addressed by the then Advocate for defendant no.5, forwarding therewith a note of appearance in the matter. The contents of the e-mail are as follows :-

*"Be please to take on record the note of appearance in the caption matter which is on sr.no.7. ....*

*Yours truly, ....*

*Adv. Jayesh Patel for Defendant No.5."*

31. The note of appearance was attached at 01:14 p.m. On the same day, a note of appearance is seen to be received by e-mail from the Advocate for defendant no.2. Thus, two Advocates have shown to be appearing for defendant no.2 on that date. On the same day, defendant no.3 has also caused note of appearance to be filed vide e-mail at 01:20 p.m.

32. It is in this manner that the matter was brought before the court and the court had no reason to suspect nature of the settlement being entered into since all parties had apparently signed the consent terms. The parties to the consent terms were represented by the respective Advocates, who made a statement that the matter has been settled, which statement accepted by the court. Considering the fact that nothing on record indicates that the parties were present, it is a normal practice in this court

that when parties sign consent terms, their presence is recorded. The Associate verifies their authority. In the instant case, as I have already pointed out, the plaintiff's signatories were three in number; one person Mumtaz K. is named as Director of the plaintiff. Their identities are verified and their authority to execute the consent terms is also required to be provided. None of that was physically possible since parties were not permitted to attend court. This cast an immense responsibility upon the Advocates on record for the parties to ensure that their clients, who executed the consent terms, were duly empowered. Being on a virtual platform, it was the duty of the parties to ensure proper compliance. It is obvious from the notes of appearance that none of the parties were present and the court was made to believe that it was a bonafide settlement.

33. It appears that the hard-copy of the draft amendment has subsequently been tendered in court. It is on the record of this court so also the original consent terms, marked as X-1 for identification, are before this court. In paragraph 1(C) of the consent terms, as we have noticed, there is a clear admission that the parties were aware that a considerable portion of the property forming part of the suit property, in the language of the parties, was *"purportedly acquired by the government"*. There is no indication whether this refers to the State Government or to the Central Government. It is also noticed that the consent terms also incorporate extensive powers akin found in a power of attorney granted in the matters of development of immovable properties. The powers granted run from page nos.469 to 480 to the IA. All of these powers are granted in relation to the suit property. The consent terms thus seek to record a compromise as between the plaintiff, defendant no.2 - the

original party to the suit, defendant no.3, subsequently added in 2009 but incorporated by amendment only in 2020, and three new parties–defendant nos.4, 5 and 6, who have come on record only on 28<sup>th</sup> October 2020 by virtue of the order of this court.

34. At the hearing of this IA, I have called upon the plaintiff and the defendants to indicate whether the original or even a copy of the signed and executed agreement dated 16<sup>th</sup> August 2005 is available, to which the attorneys state that it is not presently available with them. Be that as it may, the description on the property, as set out in the application by the State, matches with that of the copy in the plaint. The impugned consent terms, to which my attention has been invited, are dated 26<sup>th</sup> October 2020, as evident from the execution clause. The consent terms record that the parties have settled the matter. The parties to the consent terms were not only the plaintiffs and the original two defendants but also the newly added defendant no.3 and defendants 4, 5 and 6, added pursuant to the order dated 28<sup>th</sup> October 2020. The addition of the new defendants I find is based on the very order dated 28<sup>th</sup> October 2020 disposing the suit. The amendment is seen to have been carried out in the plaint on 3<sup>rd</sup> November 2020. However, apart from adding defendants 4, 5 and 6, there is a solitary averment concerning these defendants and that is to be found in paragraph 2A of the plaint. The averment supporting impleadment of defendants 4, 5 and 6 reads thus :–

*“Defendant Nos.4, 5 & 6 have been joined as proper and necessary party as they are concerned with the suit property described in Exhibit-A to the plaint.”*

35. Defendants 4, 5 and 6 have been joined as proper and necessary parties as they are concerned with the suit property described in Exhibit-A to the plaint. There is no other averment in the entire plaint disclosing what the interest of these parties was. Indeed, there is no written statement by these parties. The only written statement appearing on record is that of defendant no.2 dated 11<sup>th</sup> June 2015. Interestingly, I find that, as part of the record of this court in the suit, there is an affidavit filed dated 11<sup>th</sup> January 2016, executed and affirmed by one Dinesh Zaverchand Shah, Director of the plaintiff - Adarsh Water Parks seeking to withdraw the suit qua certain properties described in paragraph 2 of the said affidavit, but forming part of Village Kanjur, Taluka Kurla and stating that the plaintiff will continue to prosecute the suit in respect of rest of the properties. The affidavit is seen to be supported by a copy of the Board Resolution held on 18<sup>th</sup> December 2015 signed by the director of the plaintiff. A reconstructed copy of another affidavit of the same director is also on record by this court on 6<sup>th</sup> June 2016, and the record indicates that the file was reconstructed on 11<sup>th</sup> January 2016. It is filed on the record of this court on 13<sup>th</sup> June 2016. There is no mention of withdrawal of suit pertaining to part of the suit lands and which is said to have been excluded from the scope of the plaint in the consent terms.

36. The record indicates that there is an affidavit of the plaintiff signed by one Dinesh Z. Shah, Director of the plaintiff, seeking to withdraw the suit in relation to the plot of land bearing CTS No.893, admeasuring 374.4 sq.mtrs., CTS No.893/1, admeasuring 14.2 sq.mtrs. and CTS No.894, admeasuring 456.7 sq.mts. of village Kanjur, Taluka Kurla situated at Bhandup (West), Mumbai – 400 078 and the plot of

land bearing CTS No.797/B, Survey No.248, Hissa No.2, admeasuring 4,576.70 sq.mtrs. of village Kanjur, Taluka Kurla situated at Bhandup (West), Mumbai – 400 078. The court, on 22<sup>nd</sup> March 2016, allowed the plaintiff to withdraw the suit in relation to the aforesaid two plots. Yet, the consent terms are silent on this aspect but merely refer to the suit property described in Annexure-A to the consent terms. Annexure-A to the consent terms are the consent terms arrived at in arbitration, which refer to the entire land bearing Old Survey Nos.1 to 279. The portions in respect of which the suit is withdrawn has not been brought to the attention of the court in the consent terms filed on 28<sup>th</sup> October 2020. What is sought to be done is to obtain the court's imprimatur on the powers granted vide power of attorney itself inasmuch as the decree is obtained empowering the grantee of the powers under the consent terms.

37. I also find that the plaintiff had in fact given up rights to certain portions of the land as part of a second application for withdrawal of the suit. That original application is also to be found on record as on date, although for some reason an order of reconstruction had been passed. An order of reconstruction would entail that the plaintiff had pursued that course of action and the record indicates that the application was dealt with on 12<sup>th</sup> January 2016 and an order allowing the said application came to be passed on 22<sup>nd</sup> March 2016.

38. The record also indicates that on or about 16<sup>th</sup> May 2014, the Vacation Judge was moved to file consent terms, which were then taken on record in Chamber Summons No.276 of 2014 in the above suit. It records that the applicants, who are

seem to be some individuals, undertook to pay Rs.42 lakhs to the plaintiff in relation to a part of the suit property admeasuring 645 sq.mtrs., forming part of CTS 260 and 260/1 to 260/8, admeasuring 736 sq.mtrs., and five other plots of land. An order of status-quo dated 19<sup>th</sup> June 2008, which had been in operation was vacated qua the said plots. These consent terms were also made an order of the court on 16<sup>th</sup> May 2014. Although the chamber summons sought to implead the applicants therein as party-defendants, they were not added as parties in this suit on account of the consent terms arrived at and the chamber summons was disposed in terms of the consent terms without impleading the applicants. On receiving full payment, the plaintiff undertook to make the applicants or persons nominated by the applicants to hold absolute title. Moreover, also intriguing is that the reconstructed affidavit dated 11<sup>th</sup> January 2016, by which the plaintiff-company sought to withdraw the suit in relation to particular plots.

39. Furthermore, considering the affidavits seeking withdrawal of the suits qua some parcels of land I find that the descriptions of plots in the reconstructed affidavit dated 11<sup>th</sup> January 2016 is different from the plots listed in the affidavit dated 21<sup>st</sup> March 2016. As I have pointed out, an order has already been passed on the affidavit dated 21<sup>st</sup> March 2016 on the 22<sup>nd</sup> March 2016; whereas in the case of the reconstructed affidavit when an application was made by the plaintiff to withdraw the suit in relation to the part of the property mentioned therein, defendant no.2 opposed the application. It was then observed that the two pending chamber summonses were yet to be disposed. But, it gets murkier since I also find that on 14<sup>th</sup> December 2018, at the hearing of a Notice of motion bearing No.2233 of 2018 in the

above suit, this court (per G.S.Patel J) observed that while the 2<sup>nd</sup> defendant was seeking relief, the court had found something unusual that had transpired. The plaintiff was suddenly unrepresented, whereas on previous occasions, i.e. on 13<sup>th</sup> August 2018, the plaintiff was extremely well-represented. The court observed that the dispute pertain to a very large portion of land in North East Mumbai and the entire village of Kanjur. The parties had been heard on the question of marking of documents and there were serious allegations in or about forgery and fabrication of title documents. Counsel then appearing for the 2<sup>nd</sup> defendant had contended that he had gained greater understanding of the true extent of forgery and fabrication and manipulation of the documents. The court found to be surprised that the plaintiff was no longer represented by any Advocates. Only one director of the plaintiff was present in court, who stated that his Advocates had returned the papers a few days earlier. The plaintiff was granted some time. Meanwhile, the Prothonotary and Senior Master was directed not to part with documents and compilations in his custody.

40. The order of status-quo came in for consideration and the court found that the defendant no.2 had contended that the plaintiff continue to transact with portions of the property despite an order of status-quo. Justice Patel directed that no portion of the suit land shall be transacted by any party until the next date and all third parties have put to notice that they have not to transact any documents where the plaintiff is shown as the vendor. The Collector, Tahsildar, Talathi and Superintendent of Land Records were directed not to take on record any documents purporting transfer of any of the suit property. The court directed that the plaintiffs were restrained until further orders from making any further transfers. The defendants by then were

already under a restraint orders and that was to continue. The Motion was then adjourned to January 2019. The matter then appeared before the same court on 23<sup>rd</sup> January 2019, when counsel appearing sought time to enable the Advocates who had then come on record for the plaintiff to take proper instructions and prepare. In July 2019, the matter was removed from the board of the learned Judge before whom the matter was listed could not take up the matter. The motion thus remained pending as of July 2019. All of this was suppressed from the court when Consent terms were circulated.

41. The consent terms record that defendant no.2 has “handed over the suit property” to the defendant no.4 on signing of the consent terms. This is to be found in clause 1(O) of the consent terms. Thus, the properties claimed by the State Government and by the aforesaid Departments of the Union of India are sought to be “handed over” to defendant no.4. The amendment in the plaint contains no reference to any semblance of right that the defendant no.4 has or how such rights have been acquired. The amendment, as aforesaid, merely sets out that defendants 4, 5 and 6 have been joined as they are *“concerned with the suit property”*. Although this court is not presently considering the merits of the claims of the respective parties, including in certain arbitration proceedings as between the plaintiff and defendant no.6, the consent terms is attached as annexure to Exhibit-14 to the IA. What is bizarre is that on behalf of the plaintiff, the consent terms are signed by one director and two ex-directors. Names of these ex-directors, who have executed these consent terms, also appear on record. One of the annexures to the consent terms is a photocopy of what is said to be a certified extract of a resolution. The photocopy of

the resolution does not contain any mention of the ex-directors' involvement, however these ex-directors' signatures have surprisingly also been identified by the Advocates. On what basis they have affixed their signatures to the original consent terms is not explained even today. Indeed, the record does not indicate presence of any of these parties executing the consent terms. Those were the days of the pandemic when the courts were functioning with limited staff. Access to justice was provided through available means including the technology of video conference. The court, which granted circulation and heard the matter, did not have advantage of the parties appearing before it. Considering all of the above, I am of the view that the parties to the consent terms have clearly played huge fraud upon the court itself. The court was deprived of the benefit of knowing that the State Government, Defence Department, Salt Department the Railways and the MCGM had ownership rights in large area of land comprised in the suit property, which were "handed over" to defendant no.4, and making any further enquiry into the matter. The court was persuaded to accept statements made by the Advocates appearing for the parties, who cause the consent terms to be signed and tendered to court. The consent terms suppressed various factual aspects that have now been brought before the court by virtue of the affidavits filed by the applicant-State of Maharashtra and the respondent-Union of India through Ministry of Railways, Ministry of Defence and Deputy Salt Commissioner. The opposition is not on any factual basis at all but merely on the argument that there is no fraud played upon the court. I disagree.

42. The manner in which the order was obtained smacks of suppression of true and vital facts, which, if disclosed, would have led the court to reject the application.

The plaint itself suppresses the true facts. Despite making reference to possibility of claims to large extent of land by the government, the consent terms do not disclose the nature of such intent. No attempt has been made to implead the government despite the fact that defendants 4 5 and 6 were impleaded on the very same day when the consent terms were tendered and order obtained; thus, suppressing from the court the true nature of the claim, if any, the government had. At the same time, defendants 4, 5 and 6 are said to be “concerned” with the land.

43. In the course of his submissions, the learned AGP has invited my attention to an Oral Judgment dated 30<sup>th</sup> August 1983 passed by this court in Suit No.690 of 1972 filed by one Datta Ramji Koli and others Vs. Abdul Rashid A.B. Yusuf and others, in which the plaintiffs, who are the sons and daughter of one Ramji Koli, had filed the suit for setting aside orders dated 8<sup>th</sup> May 1969, 14<sup>th</sup> October 1969 and 1<sup>st</sup> June 1971 passed by the Tahsildar, Deputy Collector and the Commissioner respectively. The suit also sought a declaration that the plaintiffs and the defendant no.12 were owners of certain lands under Old Survey No.169 situate at Kanjur. The total extent of the land, it is seen from the said oral judgment, was about 1,668 acres 24 gunthas. The facts reveal that there was a Sale Deed dated 20<sup>th</sup> August 1862 between the plaintiffs’ great grand-father one Nama Koli and one Dumin Soja Tandel, under which the plaintiffs claimed ownership of the said Survey No.169 admeasuring 1,668 acres and 24 gunthas before the Tahsildar. They were also claimed for some mortgagees in respect of this land. At the hearing of that suit, the plaintiffs give up the claim against all 15 defendants save and except for the 3<sup>rd</sup> defendant which is the State of Maharashtra. Some of these defendants against whom claims were given up,

including defendants 12, 13 and 15, were related to the plaintiffs. One was a limited company. In view thereof, the suit against all defendants, except defendants 3, 12, 13 and 15, was dismissed for want of prosecution. After a trial, the court found that the challenge to the order of the Tahsildar failed and as a result, the challenge to the subsequent orders of the Deputy Collector and the Commissioner would also fail. As a result, the suit against the State of Maharashtra came to be dismissed and the only conclusion that resulted was that the lands in question were said to be waste lands vesting in the State Government. This is one crucial factual aspect that the parties in the present suit have suppressed. None of these facts were before the court when the consent decree was passed and, admittedly, the consent decree covers this area of land under Old Survey No.169.

44. In *A.V. Papayya Sastry and Ors. Vs. Govt. of A.P. and Ors.*<sup>28</sup>, the court had observed that any judgment or order obtained by fraud cannot be said to be a judgment or order in law. Inviting my attention to the observations of the court, Mr. Singh submitted that fraud and justice never dwell together and that fraud is an act of deliberate deception with design to secure an unfair or undeserved benefit by taking undue advantage of another. Useful reference can also be made to the decision in *S.P. Chengalvaraya Naidu Vs. Jagannath*<sup>29</sup>, in which the Supreme Court had occasion to consider the doctrine of fraud in detail and the effect of a judgment obtained by fraud. The Supreme Court found that the High Court judgment, which had negated a trial court finding that a decree was obtained by playing fraud on the

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28 (2007) 4 SCC 221

29 (1994) 1 SCC 1

court and was a nullity, was set aside. Setting aside the judgment of the High Court, the Supreme Court observed as follows :-

*“A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side, then he would be guilty of playing fraud on the court as well as on the opposite party.”*

45. The court further observed as follows :-

*“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.”*

46. Useful reference can also be made to the observations of the Supreme Court in the case of *Indian Bank Vs. Satyam Fibres (India) (P) Ltd.*<sup>30</sup>, which has been relied upon by Mr. Soni as well on behalf of defendant no.3. Yet again, in *Meghmala and Ors. Vs. G. Narasimha Reddy and Ors.*<sup>31</sup>, the Supreme Court reiterated the settled proposition of law. When a party gets an order by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of law and fraud, as observed in *A.V. Papayya Sastry (Supra)*, quoting Chief Justice Edward Coke “Fraud avoids judicial acts ecclesiastical and temporal”. *Meghmala* also made reference to the ratio in numerous judgments which entail that dishonesty should not be permitted to bear the fruit and benefit to the persons who

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30 (1996) 5 SCC 550

31 (2010) 8 SCC 383

played fraud or misrepresented facts to the court. The court ought not to perpetuate such a fraud. In the event I do not interfere in the present application and grant reliefs, in my view, it would amount to perpetuating the fraud, which is clearly impermissible. *Meghmala*, in paragraph 36, observes as under :-

*“36. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality, the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact / document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non-est.”*

47. In view of these judicial pronouncements, which have consistently held that fraud upon the court must meet with remedial orders and reversing of such orders, I have no hesitation in holding that in the instant case, perpetration of a fraud upon the court has been established beyond doubt. Mr. Soni had pressed into service various decisions that have been cited above, many of which support the applicant inasmuch as the courts have held that if it is a fraud played upon the court, then the court could invoke its powers under Section 151 of the Code and intervene. Mr. Soni's efforts were to prevail upon the court to hold that the fraud if at all inter-parties and any fraud inter-parties would not enable the court to interfere cannot succeed. He has canvassed the proposition that since parties had no quarrel with the consent terms and the consent decree, there was no question of this court interfering under. I am unable to agree.

48. Relying on the aforesaid decisions, Mr. Soni has sought to impress upon the court that the distinction between the fraud inter-parties and the fraud upon the court, if appreciated in the facts of the present case, one would find that there was no case of fraud alleged by any of the parties to the consent decree and hence there is no question of any fraud being played upon the court by any of the parties. He therefore invited me to hold that no interference is called for in the application filed by the State. Mr. Soni submitted that if at all the State wish to press its claims, it must file a separate suit. Notwithstanding the large number of cases sought to be cited before me to oppose the application, I am clearly of the view that if I come to the conclusion that that are elements of fraud played upon the court, the order dated 28<sup>th</sup> October 2020 will be rendered unsustainable and in my view, considering the line of decisions which are cited by the learned AGP, the Additional Solicitor General and several of the decisions cited by Mr. Soni on behalf of defendant no.3, it becomes clear that this court is fully empowered to set aside the decree once I come to the conclusion that a fraud has been played upon the court.

49. Defendants 4, 5 and 6 have been impleaded for no apparent reason. The only averment in support of their impleadment is that they are "*concerned*" with the suit property. No rights have been attributed to them. No claim to rights has been attributed to them in the plaint. It smacks of a collusive effort to seek a decree from this court, suppressing vital facts from this court, including the fact that part of the suit claim was given up. The fact that there was a decree dated 30<sup>th</sup> August 1983 vesting the waste lands to the extent of 1,668 acres in the State, stressing the fact that the State and the Union had huge tracts of land to their name, structures standing

thereon and full-scale operations of the railways and naval establishments with housing colonies, all forming part of the suit lands, which are sought to be conveyed with only a whisper of a disclosure in the consent terms to the effect that some lands are purportedly owned by the government. This indicates that the parties were aware of the fact that the government had claims to the land. Without disclosing the nature of these claims and probably in an effort to avoid allegations of suppression, a conveniently worded clause in terms of paragraph 1(C), as reproduced above, has been incorporated. That I am afraid cannot let the parties off the hook. They are guilty of suppressing vital and material facts from the court, as stated in the various affidavits filed on behalf of the State Government, the Municipal Corporation, the Department of Railways, Defence Estates and the Salt Commissioner. Huge tracts of land vests in those authorities and these are aspects which the consent terms have conveniently suppressed from the court in an attempt to snatch an order. They succeeded in doing so, in my view, on account of the restricted working conditions during the pandemic. The court has thus persuaded to pass the order based on a misrepresentation that nothing was a miss and that all parties had consented and that they had full authority to do so. The execution of the consent terms on behalf of the plaintiff by ex-directors is but one of the features which stand out in demonstrating that there was a predetermined fraud being played. This is but an audacious attempt at misleading the court which believed the submissions made by Advocates. The court was led to believe that all the parties were duly authorized to sign and that the parties had the rights to do so and deal with the property as contemplated under the consent decree. All along, the facts were suppressed. Assuming that the defendants were led to

believe that the alienation sought to be recorded in the consent terms was accurate, it was for the defendants to have verified the facts including from the Record of Rights and the simplest of searches would have revealed multiple rights in favour of all these parties who have now come before the court, namely, the State Government and the Departments of the Union of India. Had the suit gone to trial, there would have been occasion for the court to consider all of these claims upon perusal of documents. That was effectively prevented by the parties approaching the court to file consent terms. The time when the court was approached is also material, probably taking advantage of the fact that the court will not have full assistance of the Advocates before it and the staff to make detailed enquiries into all the records. The virtual platform has been abused and an order is snatched from the court. In my view, therefore, fraud on the court is established beyond the shadow of doubt and once I come to that conclusion, all oppositions on the basis that the applicant-State of Maharashtra cannot approach the court under Section 151, read with Order XXIII Rule 3 of the Code, fades away.

50. Today, as we see, the interim application filed by the State of Maharashtra through the Collector and by various Departments on behalf of the Union of India, being Ministry of Defence, Central Railway, Salt Commissioner, all disclose factual aspects, on the basis of which they claim ownership of large expanse of land. It was the bounden duty of the parties – plaintiff and defendants, defendant no.2 included, – to have these facts brought before the court. Indeed, any settlement talks could not have proceeded without the parties being aware of these claims. Assuming in their favour, ignorance of these claims, there is no explanation as to why when the consent terms disclosed that there are “purported” claims of the government, no search was

taken of the Record of Rights. A property search could have been initiated in the Land Record's office by these parties. These are no babes in the woods. Parties dealing with development rights would be well aware that extracts of the Land Records would disclose entitlement of parties' claims to lands, which, as the learned ASG has disclosed, contained housing colonies, railway tracks and railway stations and large areas that are in the possession of the departments of the government.

51. There are also separate interim applications filed by two other parties in this suit being Interim Application No.3021 of 2021 and Interim Application No.3028 of 2021. Those matters were heard at length and orders were reserved. Those were hotly contested applications. Considering the contest on similar grounds of non-maintainability, those applications are pending disposal. Those applicants claim rights to smaller portions, claiming through the State of Maharashtra. One of these applications contains a claim to an area of land through the State Government and the second party claims directly from defendant no.2. Interim Application No.3021 of 2021, is filed by one Apex Constructions, claims rights to certain properties forming part of the lands sought to be now conveyed directly from defendant no.2. It is apposite to mention that both of these applicants had filed chamber summonses seeking to be impleaded in the suit. One of those chamber summonses, filed by Apex Constructions, being Chamber Summons No.881 of 2014, is said to have been dismissed on 21<sup>st</sup> / 22<sup>nd</sup> June, 2017. The second chamber summons filed by Jolly Anil India Ltd., being Chamber Summons No.1012 of 2014 was pending on the date when the consent decree was passed, namely, 28<sup>th</sup> October 2020. The fact of the chamber summons being pending was also suppressed from the court. Had this brought to the

notice of the court, it has been surely alerted to the fact that there were other claims and interim applications / chamber summons pending. It would have caused the court to make an enquiry into that aspect and the relevance, if any, of those applications before disposing the suit in terms of the consent terms. Given the obvious difficulties on the virtual platform, the court was prevailed upon to accept statements of the Advocates that the matter has been settled as between them. There was a greater responsibility cast on the Advocates appearing on the virtual platform at that stage to have disclosed all facts to the court in order to enable the court to assess correctness of the contents. However, for the reasons that are difficult to fathom at this stage, the court was not apprised of the facts. Suppression of all these facts had led the court to pass an order in question. Thus, undeniably, a fraud of huge proportions has been perpetrated on the court.

52. In these circumstances, I am not in a position to accept any of the submissions of the plaintiff and defendants to the effect that this court is powerless to recall and set aside the order and the consent decree, which is a product of an audacious and blatant fraud committed by the plaintiff and the defendants. The newly added defendants have not disclosed any semblance of right. There is no material on record on the basis of which they could have made claim to any of these properties. The court was persuaded to accept the consent terms on representation of these parties. The records do not indicate presence of any of the parties who had executed the consent terms, as normally it would record the presence of the parties who sign the consent terms. All of these and certain change of Advocates on behalf of the plaintiff and defendant no.2 are also indicative of the fact that there is more than meets the

eye. One must also recall the development of 2016 and 2018 referred to above. I have no doubt in my mind that the fraud was indeed a fraud upon the court itself and in these circumstances, none of the judgments relied upon by the plaintiff and the defendants in support of their plea that the consent decree cannot be assailed by inviting the inherent powers of court, would come to their assistance. In these circumstances, application must succeed. Accordingly, I pass the following order :-

- (i) The order dated 28<sup>th</sup> October 2020 is hereby recalled and set aside.
- (ii) Consent Terms dated 26<sup>th</sup> October 2020, referred to in the aforesaid order dated 28<sup>th</sup> October 2020, are also quashed and set aside.
- (iii) Registry is directed not to issue any further certified copies of these consent terms and/or the order. In the event the registry has issued any certified copy of the order, no party shall act upon it.
- (iv) Registry to file a report on the number of certified copies of the order applied for, names of applicants and if any copies are issued / collected by with the applicants' names.
- (v) Registry shall preserve the entire record of all proceedings the Suit, including the Notice of Motion, Chamber Summons, Interim Application, Consent Terms and the entire log of e-mails received in relation to this suit in safe

custody of the Prothonotary and Senior Master till further orders.

- (vi) Interim Application No.1575 of 2022 is made absolute in the above terms.
- (vii) In view of the above and having set aside the consent decree and the consent terms, Interim Application No.3021 of 2021 filed by M/s. Apex Constructions and Interim Application No.3028 of 2021 filed by Jolly Anil India Ltd. are rendered infructuous and are accordingly disposed.
- (viii) It is made clear that this court has not examined the inter se claims between the State Government and the Union of India or the claims as between M/s. Jolly Anil India, M/s. Apex Constructions and the plaintiff or the defendants and/or the claims of the Municipal Corporation of Greater Bombay. Each of these parties is left to their own remedies through appropriate proceedings that they may wish to adopt.
- (ix) In view of clause 3 of the consent terms, the plaintiff and all defendants are directed to lodge with the Prothonotary and Senior Master the three remaining counterparts of the signed consent terms within one week of uploading the order.
- (x) Suit No.396 of 2006, along with interim applications

therein, is restored to file, to be listed before the appropriate court “for directions” on 22<sup>nd</sup> August 2022.

53. At this stage, Ms. Dalvi and Mr. Soni, learned counsel appearing on behalf of defendant nos.2 and 3, respectively, seeks stay to the operation of the order. The request is declined.

(A.K. MENON, J.)