BEHARI KUNJ SAHKARI AVAS SAMITI

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 1795 of 2000)

JULY 25, 2008

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Displaced Persons (Compensation and Rehabilitation) Act, 1955; Ss. 2(c), 8 and 10(1) & (2)/Displaced Persons (Compensation and Rehabilitation) Rules, 1955; r.92:

Evacuee property – Transfer of – Held: Evacuee property vested in Custodian – Before effecting transfer of such property, prior approval of Custodian-General necessary – Ex-post facto approval of the authority not sufficient – Due process to ensure best price of the property by inviting tender not followed – All previous orders passed by the authority/courts having relevance on the issue have been suppressed – Appellant-transferee is a local person and not a displaced person, therefore, he has no right to get the property transferred in his favour as rightly held by the High Court – Evacuee Property Act.

Words and Phrases:

'Fraud' – Practicing of in the context of Transfer of Evacuee Property.

The property in question originally belonging to one 'A' and on his migration to Pakistan vested in the Custodian under the Administration of Evacuee Property Act. The entire property was given in tenancy to 'H' and 'G' by the Custodian. Later, 'G' has transferred his portion to one 'M'. On his death, the entire property of four bighas one biswa, on which there was a kothi, garden and appurtenant land, was auctioned under the provisions of Dis-

placed Persons (Compensation & Rehabilitation) Act 1955 and it was given to a displaced person, one 'T' and sale certificate thereof was issued in his favour. Against the auction, 'H' made an application under r.92 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 before the authority claiming himself to be a tenant in respect of part of the land in question claiming it to be an agricultural land originally belonging to 'A', the Zamindar and later the custodian; and that only Zamindari rights had vested in the Custodian and only the kothi was auctioned and not the agricultural land. The application was rejected by the authority. In the meantime, the Government of India acquired the property. 'H' filed an appeal before Asstt. Settlement Commissioner, which was rejected by the authority by its order dated 17.10.1960. 'H' filed a revision application under Section 24 of the Act before Chief Settlement Commissioner, which was rejected by the Revisional Authority. Representations filed thereagainst by 'H' was rejected by the Central Government. Writ petition filed by 'H' was dismissed by the High Court. Appeal filed thereagainst by 'H' was dismissed by the High Court. In the meantime, the State of Uttar Pradesh made a representation before the Central Government under Section 54 of the Act against the order of the Custodian dt. 27.4.72 by which Zamindari rights over two bighas ten biswas land were transferred to 'H'. Notices were issued to 'H' and the other persons. Being aggrieved with the notice, heirs of 'H' and others filed a Writ Petition. On 10.11.1982, 'H' made an application before the Custodian, Evacuee Property praying therein for transfer of the land in question in his favour and for execution of sale deed in favour of one 'G' with whom he had made an agreement to sell the said property on certain consideration. The Custodian accepted the prayer, which in turn was also approved by the Chief Custodian General and the property was transferred to 'G'. Aggrieved by the transfer of the property, State of Uttar Pradesh filed a revision

application under Section 27 of the Act, which was rejected by the Revisional Authority. In the meantime, 'G' transferred part of the property in question to the present appellant. Challenging the same, the State of Uttar Pradesh filed writ petitions, which were allowed by the High Court. Hence the present appeal.

Appellant contended that the applications were made under Sections 27 and 54 of the Displaced Persons (Compensation and Rehabilitation) Act in respect of sale of property owned by 'H'; that the sale was approved by the Assistant Custodian; and that in the earlier Special Leave Petition this Court had directed to consider the validity of order dated 11.11.1982 passed by the Assistant Custodian and the consequential order dated 16.11.1982 passed by the Custodian General; and that under the circumstances, the High Court was not justified in saying that there was no jurisdiction to deal with the matter.

State submitted that there was no challenge to the auction and the Sale Certificate in respect of the disputed property till 18.11.1961 and in the writ petition, there was no challenge to the aforesaid auction and sale certificate and the relief claimed related to eviction. Later, the writ petition was dismissed on 6.9.1962; that in the Letters Patent Appeal there was no challenge to the auction and the sale certificate and the Letters Patent Appeal was dismissed on 27.11.1971; that the directions for remand was given because the concerned parties were not heard. On remand, fresh proceedings were initiated and the claim as tenant was accepted in respect of the land in question; that as a matter of fact there was no claim to the Kothi; and that the stand that only the Kothi and not the entire land was auctioned does not appear to be factually correct.

Dismissing the appeal, the Court

HELD:1.1 There was some suppression of factual

A position and fraud appears to have been practiced. After nine years, the application was moved in 1982. It is not in dispute that no opportunity was granted to 'T' before passing of the order on 11.11.1982 by the Assistant Custodian. The certificate of sale shows that one 'G' pur-
B chased the property at a sale by negotiation. Under Section 8 of the Displaced Persons (Compensation & Rehabilitation) Act, the property vests in the Custodian of the particular State. The 'Custodian' is defined in Section 2(c) and Section 10(1) of the Act provides that the job of the
C Custodian is to preserve and maintain the property. The primary object is not to transfer. In case property cannot be preserved then only it can be transferred. Under subsection (2) only for the purpose enumerated in sub section (1) there can be transfer or sale, and no such action
D can be taken without prior or previous approval of the Custodian General. The approval of the Custodian General is to be taken first. This is clear from the expression "Previous Approval", before the order is passed. Post facto approval is not sufficient. This procedure was not followed. Tender process was not adopted which would
E have ensured that the best price was available. (Para – 12) [348-G, 349-A,B,C]

State of A.P. and Anr. v. T. Suryachandra Rao (2005) 6 SCC 149 – relied on.

F 1.2 Stand of the appellant in essence is that after dismissal of the writ petition and three earlier orders, revision under Section 27 of the Act was maintainable. Stand of the State is that there was no jurisdiction to move any particular authority. A new case was tried to be made,
G which was not the case earlier. An appeal was already filed without indicating as to under which provision it was filed. Second appeal against eviction was not maintainable. There was constructive res judicata, and there is no provision to move after 9 years for transfer of the kothi. It
H is significant that all previous orders which have rel-

evance were suppressed. There is substance in what is submitted. (Para – 14) [353-E,F]

1.3 The suit was filed against 'T'. Subsequently there was a compromise between 'T' and 'B'. It is relevant to note that claim of 'B' was that there was an agreement of sale between 'T' and himself; that in the counter affidavit filed by 'T' there is no reference to the alleged agreement with 'B'. He is a local person and not a displaced person. Therefore, he has no right to get the property. There is no distinction between original order and the revisional order. Law is fairly well settled that even if an order is a nullity same has to be challenged. (Para – 15) [353-G, 354-A, B]

State of Punjab and Ors. vs. Gurdev Singh **(1991) 4 SCC 1 – relied on.**

2. The High Court was justified in its view and no interference is called for. (Para – 16)

Case Law Reference

(2005) 6 SCC 149	**Relied on**	**Para – 13**
(1991) 4 SCC 1	**Relied on**	**Para – 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1795 of 2000

From the final Judgment and Order dated 23.4.1998 of the High Court of Judicature at Allahabad in C.M.W.P. No. 16775 of 1985

K. Parasaran, A.S.G., Dr. R.G. Padia, Rajiv Dutta, Pradeep Ranjan Tiwary, Puneet Jain, H.D. Thanvi, Christi Jain, Sarad Singhania, Sushil Kumar Jain, Reena Singh, Kamlendra Mishra, Shashi Kiran, Jyoti Saxena, Vipin K. Saxena, C.K. Sucharita, Arvind Varma, Malika Trivedi, T. Mahipal and B.K. Satija for the appearing Parties.

The Judgment of the Court was delivered by

A **Dr. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by Division Bench of the Allahabad High Court dismissing several writ petitions. Three writ petitions were filed by the State of Uttar Pradesh through Secretary, Revenue Department, Smt. Lalita Chaturvedi and Ors. and by G.C. Mittal.
B These writ petitions were numbered as Civil Misc. Writ Petition Nos.16775 of 1985, 9162 of 1987 and 9386 of 1987 respectively.

2. In these three civil writ petitions, the disputed subject matter is Khasra No. 519, village Surjepur, Agra whose total
C area is four bighas one biswa which is recorded as property of Abdul Wahid in revenue record. At the time of division of the country, Abdul Wahid had migrated to Pakistan in 1947-48 and his aforesaid property, (Khasra No. 519, village Surjepur, total area four bighas one biswa) was declared as evacuee prop-
D erty and under Administration of Evacuee Property Ordinance, 1949 (Ordinance No. 1 1949) it vested in the Custodian of Evacuee Properties. Later on the said ordinance was substituted by Administration of Evacuee Property Act, 1950 (in short the 'Act') and then this property was deemed to have vested in
E the Custodian as an Evacuee Property under the said Act. The entire property was given in the tenancy of Harnath Chaturvedi and Gurudatt Chaturvedi by order of Addl. Asstt. Custodian in 1949 for which rent was payable at the rate of Rs.50/- per month by Harnath Chaturvedi with effect from 1.7.1949 and from the
F same date at the rate of Rs.25/- per month was payable by Gurudatt Chaturvedi. The portion which was given in the tenancy of Gurudatt Chaturvedi was later on given to Addl. Asstt. Custodian Shri Mehrotra by Asstt. Custodian, Evacuee Property, Agra on 22.9.1953. Shri Mehrotra died. On 18.8.55, this
G entire property of four bighas one biswa, on which there was a kothi, garden and appurtenant land, was auctioned under the provisions of Displaced Persons (Compensation & Rehabilitation) Act 1955 (in short the 'Displaced Persons Act') and it was given to the displaced person Tuljaram on the highest bid of Rs.61,000/-. Tuljaram made payment of that money by ad-
H

justment of compensation. Accordingly, sale certificate of this property was made in favour of Tuljaram. Against this auction, Harnath Chaturvedi made an application under Rule 92 of the Displaced Persons (Compensation & Rehabilitation) Rules, 1955 (in short 'Displaced Persons Rules') before the Managing Officer, Agra in which he made a claim claiming himself to be a tenant in respect of a part of land of the entire area of four bighas one biswa which, apart from kothi, was land. The contention of Harnath Chaturvedi was that it was an agricultural land upon which he has acquired rights of hereditary tenancy and used to pay rent to the Zamindar and after this property was vested in the Custodian, the rent was being paid to the Custodian. Further Harnath Chaturvedi contended that Abdul Wahid was only a Zamindar of this property and only Zamindari rights had vested in the Custodian and only the kothi was auctioned and not the agricultural land because he continues to be in peaceful possession over the agriculture land. Managing Officer rejected this application by his order dated 27.5.1955. By Government letter dated 4.6.1955 of Government of India, all urban immovable properties within corporation, municipality and notified committee areas, within the State of U.P., were acquired on 15.8.1947 and it was declared that whatever urban immovable property has been declared as "Evacuee Property", it all shall vest in the Central Government. As the disputed subject matter came within the area of Agra municipality, that is why it all vested in the Central Government. Harnath Chaturvedi filed an appeal before Asstt. Settlement Commissioner, U.P. against the order rejecting of his application dt. 27.5.1955 by Managing Officer, Agra. This appeal was rejected by Asstt. Settlement Commissioner by order dated 17.10.1960. Against this rejection order dated 17.10.1960, Harnath Chaturvedi filed a revision application under Section 24 of the Act before Chief Settlement Commissioner. The Deputy Chief Settlement Commissioner, New Delhi, exercising the delegated power of Chief Settlement Commissioner rejected the revision application by his order dated 18.11.1961. Harnath Chaturvedi under Section 33 of the said Act, made a representation to the Central Gov-

A ernment against the said rejection order of Deputy Chief Settlement Commissioner, which too was rejected by the Central Government. Harnath Chaturvedi filed a Writ Petition No. 251/62 before the High Court against the rejection of his representation by Managing Officer and against the rejection of his ap-
B peal and revision application. The High Court dismissed this Civil Writ Petition on 6.9.62. Against the rejection of Civil Writ Petition by the High Court, Harnath Chaturvedi filed a Special Appeal No.1002 year 1962 in the High Court. This Special Appeal was dismissed by the High Court by order dt. 24.11.1974.
C During the period of pendency of application under Section 27 of the Act before the Asstt. Custodian General and in the revision application he made a claim on the basis of being a tenant and prayed for the review of the order of vesting as Evacuee Property. In the revision application, Harnath Chaturvedi claimed
D himself as a tenant only over land measuring two bighas ten biswas out of total land of four bighas one biswa and alleged Abdul Wahid to be his Zamindar. Asstt. Custodian, General Uttar Pradesh and Bihar. Lucknow disposed off the said revision application by his order dt. 30.10.1969/ 5.11.1969 and remanded the matter to the Asstt. Custodian for disposal of the claim of
E Harnath Chaturvedi after hearing him. The Asstt. Custodian, by his order dt. 25.2.72 accepted the claim of the tenancy of Harnath Chaturvedi over two bighas ten biswas and the tenancy of Harnath Chaturvedi was accepted over land two bighas ten biswas deeming it to be a separate part out of the total land of
F four bighas one biswa. After this order, Harnath Chaturvedi prayed for transfer of Zamindari rights in his favour over this two bighas ten biswas area to the Asstt. Custodian and, which prayer was accepted and after accepting rupees eight hundred, Zamindari rights were also transferred to Harnath Chaturvedi
G on 27.4.1972.

3. Harnath Chaturvedi preferred an appeal on 22.1.1973 before Chief Custodian General under Section 22 of the Act in which he prayed that the auction dt. 18.8.1955 in favour of Tuljaram and the sale certificate issued on 14.7.1961 in respect
H

of the disputed subject matter, be cancelled. This appeal was accepted by Authorised Settlement Commissioner, Lucknow and the auction and sale certificate in favour of Tuljaram were cancelled. Tuljaram made an application before the Settlement Commissioner, Government of India, New Delhi on 30.6.76 against this order dt. 11.1.1973 which was rejected on 20.1.1977. Against this rejection order dt. 20.1.1977, Tuljaram filed a revision application under Section 24 of the Act before the Deputy Chief Settlement Commissioner, New Delhi on 8.2.1977. This revision application was rejected by Deputy Custodian General Evacuee Property by his order dt. 17.5.1976. Against this rejection order dt. 17.5.1976 Tuljaram filed a Civil Writ Petition No. 920 of 1977 in the Delhi High Court which on the prayer of Tuljaram, was rejected on 4.1.1983. Tuljaram prayed for recalling this rejection order, which prayer too was rejected by the Delhi High Court by its order dt. 22.2.1984.

4. The State of Uttar Pradesh made a representation before the Central Government under Section 54 of the Act against the order of the Custodian dt. 27.4.72 by which Zamindari rights over two bighas ten biswas were sold to Harnath Chaturvedi for rupees eight hundred and against the order dt. 17.5.1976 of the Deputy Custodian General by which the revision application of Tuljaram was rejected. Upon this representation, notices were issued to Harnath Chaturvedi and the other persons who were brought on the land by him. Being aggrieved with the said notice, heirs of Harnath Chaturvedi and the persons who were brought by him, filed Writ Petition No. 9162/1987 (Lalita Chaturvedi and others V/s The Union Of India and another) and Writ Petition No.9386 of 1987 (Gulab Chand Mittal V/s Union Of India and others).

5. On 10.11.1982, Harnath Chaturvedi made an application before the Custodian Evacuee Property, Uttar Pradesh in respect of property No. 183/195, which is the part comprising of kothi and garden of the total disputed subject matter and which is situated over one bigha eleven biswas and is known

A as Bagh Farzana, praying therein that the said land be transferred to him and also prayed that the sale deed of this land be executed in favour of Gulab Chand Mittal with whom Harnath Chaturvedi had made an agreement to sell for an amount of rupees twenty lacs. On 11.11.82, Authorised Custodian ac-
B cepted the prayer of Harnath Chaturvedi and proposed the transfer to Harnath Chaturvedi for rupees sixty one thousand i.e. the amount for auction was accepted in favour of Tuljaram on 18.8.1955. Asstt. Custodian General, duly authorized by Chief Custodian General, approved the said proposal on the same
C day on 11.11.1982 and for an amount of rupees sixty one thousand, land measuring one bigha eleven biswas alongwith kothi and garden, was transferred to Gulab Chand Mittal. Thereafter, Tuljaram made a prayer before the Custodian General under Section 27 of the Act. On 31.1.1985 State of Uttar Pradesh filed
D a revision application under Section 27 of the Act. On 11.10.1985 the said revision application was rejected. During this period on 8.3.1984, Gulab Chand Mittal transferred kothi and appurtenant land i.e. one bigha eleven biswas to Bihari Kunj Sahkari Awas Samiti, the present appellant for an amount of rupees twenty lacs.
E

6. The High Court noted inter alia as follows :

"Since in these writ petitions, order dt. 5.11.1969, dated 25.2.1972 and dated 3.1.1973 have not been challenged and the Hon'ble Supreme Court in its order has not desired
F that the legality and propriety of these orders be considered, therefore this court does not think it proper to consider the questions that have been raised by the learned advocate Shri Saraswat and express its opinion thereon. Thus for this reason, no analysis is being made
G on the judgments produced in the support by Shri Saraswat."

7. The High Court held that orders dated 11.11.1982 and 18.11.1982 appear to be mala fide, against law, arbitrary and invalid and were liable to be cancelled. Therefore, the writ peti-
H

tions (Civil Misc. Writ Petition No.16775 of 1985) filed by the State of Uttar Pradesh was allowed and the order dated 11.11.1982 and the sale certificate dated 18.11.1982 in compliance thereof were directed to be cancelled. In the Writ Petition Nos. 9162 of 1987 and 9386 of 1987, the order passed in the year 1969 by the Central Government in regard to two bighas and ten biswas out of the disputed subject matter of four bighas and one biswa and thereafter order passed in appeal and revision of Harnath Chaturvedi in the years 1972 and 1973 and subsequent orders that have been passed on their basis were the subject matter of dispute.

8. State of Uttar Pradesh had questioned its bonafides and had requested Central Government to conduct an enquiry in terms of Section 54 of the Act upon which the Deputy Secretary, Department of Evacuee Properties of Home Ministry of the Central Government had on 21.2.1986 expressed his views for making an enquiry. According to High Court, against the expression of view for an inquiry, there was no justifiable reason for issuing any direction, order or writ. Therefore, the writ petitions nos. 9162 and 9386 of 1987 were held to be without merit and were dismissed.

9. Learned counsel for the appellant submitted that there could be no vesting unless interest is separated because of the provisions of the Separation Act. The applications were made under Section 27 of the Act and Section 54 of the Disabled Persons Act. Section 27 applications were in respect of sale of Harnath's property. It is to be noted it was contended that the sale was approved by the Assistant Custodian. In the earlier Special Leave Petition this Court had directed to consider the validity of order dated 11.11.1982 and the consequential order dated 16.11.1982. The High Court stated that there is no indication as to under what provisions of law the order was passed. There was no challenge to the order under Section 22 dated 31.1.1993 and the order in the writ petition noted this position. Therefore it is submitted that the High Court was not justified in saying that there was no jurisdiction to deal with the matter.

A 10. At this juncture, it is to be noted that there was no dispute that the Custodian had no authority under the Disabled Persons Act. High Court's view related to the effect of cancellation of the auction and the fact that the property vests in the State of Uttar Pradesh. Reference is also made to the letter by
B the Central Government to the State of Uttar Pradesh.

11. Learned counsel for the State of Uttar Pradesh on the other hand submitted that the entire case of the appellant is based on the order dated 31.1.1973. This Court had held that the order dated 11.11.1982 was not the consequential order
C but was the original order. Although the case is that the claimant is in possession of portion of the kothi No. 183/195, Civil Lines, Agra, the auction certificate was in favour of Tuljaram. The revision was filed by Harnath Chaturvedi under Section 22. Another revision under Section 22 was filed subsequently. The
D claim was regarding Zamindariland Bhumidari rights in respect of property in the heart of the city. There was no challenge to the auction of 1955 and the Sale Certificate till 18.11.1961. In the writ petition, there was no challenge to the aforesaid auction and sale certificate and the relief claimed related to eviction.
E The writ petition filed was dismissed on 6.9.1962. In the Letters Patent Appeal also there was no challenge to the auction and the sale certificate and the Letters Patent Appeal was dismissed on 27.11.1971. The directions for remand was given because the concerned parties were not heard. On remand, fresh pro-
F ceedings were initiated and the claim as tenant was accepted in respect of 2.11 bighas of land. As a matter of fact there was no claim to the Kothi. The stand is that only the Kothi and not the entire land was auctioned. This does not appear to be factually correct.

G 12. There was some suppression of factual position and fraud appears to have been practiced. After nine years, the application was moved in 1982. It is not in dispute that no opportunity was granted to Tuljaram on 10.11.1982 and before passing of the order on 11.11.1982. The certificate of sale shows
H that G.C. Mittal purchased the property at a sale by negotiation.

Under Section 8, the property vests in the Custodian of the particular State. The 'Custodian' is defined in Section 2(c) and Section 10(1) provides that the job of the Custodian is to preserve and maintain the property. The primary object is not to transfer. In case property cannot be preserved then only it can be transferred. Under sub-section (2) only for the purpose enumerated in sub section (1) there can be transfer or sale, and no such action can be taken without prior or previous approval of the Custodian General. The approval of the Custodian General is to be taken first. This is clear from the expression "Previous Approval", before the order is passed. Post facto approval is not sufficient. This procedure was not followed. Tender process was not adopted which would have ensured that the best price was available. If the order dated 30.1.1985 is a nullity further action is of no consequence.

13. In *State of A.P. and Anr. v. T. Suryachandra Rao* [2005(6) SCC 149] it was observed as follows:

> By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See *Dr. Vimla v. Delhi Administration* (1963 Supp. 2 SCR 585) and *Indian Bank v. Satyam Febres (India) Pvt. Ltd.* (1996 (5) SCC 550).
>
> A "fraud" is an act of deliberate deception with the design

of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu v. Jagannath* (1994 (1) SCC 1).

"Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See *Ram Chandra Singh v. Savitri Devi and Ors.* (2003 (8) SCC 319).

"Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or

omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. *Derry and Ors. v. Peek* (1886-90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja v. Secretary of State for Home Deptt.* (1983) 1 All ER 765, that it is dangerous to introduce

A maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law B will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due C to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by D disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions E provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In F a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive. (See *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers*, (1992 (1) SCC 534).

G This aspect of the matter has been considered by this Court in *Roshan Deen v. Preeti Lal* (2002 (1) SCC 100) *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* (2003 (8) SCC 311), *Ram Chandra Singh's* case (supra), *Ashok Leyland Ltd. v. State* H

of T.N. and Another (2004 (3) SCC 1) and State of A.P. & Anr. v. T. Suryachandra Rao [(2005) 6 SCC 149].

Suppression of a material document would also amount to a fraud on the court. (see *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996 (3) SCC 310) and *S.P. Chengalvaraya Naidu's* case (supra).

"Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in *Ram Preeti Yadav's* case (supra).

In *Lazarus Estate Ltd. v. Beasley* (1956) 1 QB 702, Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same judgment Lord Parker LJ observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity".

14. Stand in essence is that after dismissal of the writ petition and three earlier orders, revision under Section 27 was maintainable. Stand of the State is that there was no jurisdiction to move any particular authority. A new case was tried to be made, which was not the case earlier. An appeal was already filed without indicating as to under which provision it was filed. Second appeal against eviction was not maintainable. There was constructive res judicata, and there is no provision to move after 9 years for transfer of the kothi. It is significant that all previous orders which have relevance were suppressed. There is substance in what is submitted.

15. It is to be noted that suit was filed against Tuljaram. Subsequently there was a compromise between Tuljaram and Bhagwan Das. It is relevant to note that Bhagwan's claim was that there was an agreement of sale between Tuljaram and

A Bhagwan Das. It is to be further noted that in the counter affidavit filed by Tuljraram there is no reference to the alleged agreement with Bhagwan Das. He is a local person and not a displaced person. Therefore, he has no right to get the property. There is no distinction between original order and the revisional
B order. Law is fairly well settled that even if an order is a nullity same has to be challenged. [See: *State of Punjab and Ors. v. Gurdev Singh* (1991(4) SCC 1)].

16. Above being the position, the High Court was justified in its view and no interference is called for.
C

17. Appeal is dismissed accordingly. But there shall be no order as to costs.

S.K.S. Appeal dismissed.