



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 27TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MRS JUSTICE K.S.HEMALEKHA
WRIT PETITION NO. 100103 OF 2015 (LR)

BETWEEN:

BAGALKOT CEMENT AND INDUSTRIES LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF COMPANIES ACT, 1956,
AND HAVING ITS REGISTERED OFFICE AT
6TH FLOOR, BLOCK NO.1, STADIUM HOUSE,
VEER NARIMAN ROAD, CHURCHGATE,
MUMBAI-400020, RPTD. BY ITS
AUTHRISED REPRESENTATIVE,
ASSISTANT MANAGER-LEGAL,
MR. ABBAS RAJESAB NIDASHESHI,
AGE: 47 YEARS,
OCC: ASSISTANT MANAGER(LEGAL),
R/O. BAGALKOT.

...PETITIONER

(BY SRI. PRAMOD KUMAR DUBEY, SENIOR ADVOCATE FOR
SRI. S.B.HEBBALLI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS SECRETARY,
REVENUE DEPARTMENT,
M.S.BUILDING, BANGALORE-560001.
2. THE LAND TRIBUNAL
BAGALKOT, REPRESENTED BY
ITS SECRETARY.





3. TAHSILDAR, BAGALKOT
BAGALKOT, BAGALKOT DISTRICT-587101.
4. SUSHILAVVA W/O. HANAMANT MADAR
AGED ABOUT 59 YEARS,
OCC: AGRICULTURE,
R/O. NAVANAGAR,
BAGALKOT, TAL/DIST: BAGALKOT.

...RESPONDENTS

(BY SMT. NANDINI B.SOMAPUR, AGA FOR R1 TO R3;
SRI. JAYAKUMAR S.PATIL, SENIOR ADVOCATE FOR
SRI. JAGADISH PATIL, ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER OF THE LAND TRIBUNAL, BAGALKOT (R-2) IN NO.KLR TSR 361 DATED 30.11.1975 A COPY OF THE IMPUGNED ORDER IS PRODUCED AS PER ANNEXURE-S; CONSEQUENTLY QUASH THE FORM NO.10 ISSUED BY THE RESPONDENT NO.3 IN NO.TNC/SR-30-11-1975 DATED 15.04.1983, A COPY OF WHICH IS PRODUCED HEREIN AS PER ANNEXURE-U; AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21/01/2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S. HEMALEKHA



CAV O R D E R

The petitioner-Bagalkot Cement and Industries Limited has filed the present writ petition seeking to quash:

- i. The order dated 30.11.1975 passed by the Land Tribunal, Bagalkot, granting occupancy rights in favour of respondent Nos.4.
- ii. The consequential issuance of Form No.10 dated 15.04.1983 by the Tahasildar.

Brief facts:

2. The petitioner-company is engaged in manufacturing of cements and claims ownership and possession of lands bearing R.S.Nos.80/3, 81/3, 82/1 and 83/2 of Bagalkot. These lands were originally acquired by the then State of Bombay for the benefit of Bagalkot Cement Co. Ltd., (predecessor of the petitioner-company). Mutation entry in M.E.No.1930 dated 01.11.1954 was effected in favour of the company. RTC extract from 1963-1964 onwards reflect the company's name as owner and the



lands are shown as "Pada" (uncultivable reserved for limestone excavation). By virtue of a scheme of arrangement approved by Board for Industrial and Financial Reconstruction (B.I.F.R.) dated 20.09.2007, the assets including the subject lands stood vested in the present petitioner-company.

3. In 2014, the petitioner received notice from the Tahasildar pursuant to an application by respondent No.4 seeking mutation based on an alleged Land Tribunal order dated 30.11.1975. The petitioner on verification discovered that alleged Form No.7 was filed in the year 1974. Occupancy rights were granted on 30.11.1975 and Form No.10 was issued on 15.04.1983. It is the case of the petitioner that all such documents are fabricated, manipulated and inserted subsequently in the records. The petitioner has also lodged a criminal complaint under Sections 465, 466, 467, 420 and 471 Indian Penal Code (IPC) against respondent No.4.



4. It is stated that the petitioner came to know about the order only in 2014 upon receipt of the notice by Tahasildar, hence delay is attributable to fraud. If obtained by fraud, the order of the Land Tribunal is void *ab initio* and *non est* in the eye of law. By way of amendment, the petitioner also sought to quash Form No.7 dated 26.12.1974 (Annexure-O) on the ground that it was not filed within time and is fabricated.

5. Statement of objections are filed by respondent No.4, contending that respondent No.4 was personally cultivating the lands as on 01.03.1974. Land Tribunal has granted occupancy rights on 30.11.1975 and Form No.10 has been issued on 15.04.1983. It is stated that Application for mutation was made on 25.06.1984 and that the petitioner was party to the Tribunal proceedings. It is also stated that the criminal proceedings have been dismissed.

6. Learned Senior Counsel Sri Pramod Kumar Dubey, appearing for the petitioner-company would submit:



- i. The subject lands were acquired by the then Government of Bombay under acquisition proceedings culminating in an award dated 31.08.1954.
- ii. The award amount was deposited in Government Treasury. Upon acquisition, the land vested absolutely free from encumbrances and the petitioner is in possession as an absolute owner of the schedule properties.
- iii. Since vesting has occurred in the year 1954, no agricultural tenancy could legally exist as on 01.03.1974 when the Karnataka Land Reforms Act came into force.
- iv. The existence of tenancy is a jurisdictional fact. In the absence of such tenancy, the Land Tribunal lacked jurisdiction to entertain Form No.7.



- v. The petitioner was not made a party before the Land Tribunal. The recorded land owner was never served notice. No proof of service, acknowledgment or appearance is forthcoming, and occupancy order passed without notice to the recorded owner is void.
- vi. The original Register of applications produced by the State reveals that after the entry dated 28.08.1974 in the name of another applicant, a subsequent entry dated 26.12.1974 appears in "*black ink*", in the name of respondent No.4. Column No.5 landlord's name is left blank, the reference to final order is also written in "*black ink*", while surrounding entries are in "*blue ink*". This demonstrates subsequent insertion and fabrication.



- vii. The original record of rights for 1963-64 shows overwriting in column No.1, inserting the name of respondent No.4. The mode of cultivation is written as "iii". Such overwriting in original revenue records clearly indicates tampering.
- viii. The impugned order is dated 30.11.1975 which falls on Sunday. No roznama, hearing sheet or proceedings are produced. The order has been created.
- ix. The signature of the authority on the Land Tribunal order and on Form-application is forged and overwritten. The affidavit, application, and order are alleged to have been created subsequently. Even the certified copy application is suspected to be fabricated.
- x. Learned Senior counsel relied upon the following decisions:



- a. ***Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education***¹ (*Ram Preeti Yadav*).
- b. ***District Primary School Council, West Bengal Vs. Mritunjoy Das and Others***² (*Mritunjoy Das*).
- c. ***State of Orissa and Another Vs. Mamata Mohanty***³ (*Mamata Mohanty*).
- d. ***Vipin Kumar Vs. Jayadeep and Others***⁴ (*Vipin Kumar*).
- e. ***A. V. Papayya Sastry and Others Vs. Government of A. P. and Others***⁵ (*Papayya Sastry*).
- f. ***Smt. Sudama Devi Vs. Commissioner and Others***⁶ (*Sudama Devi*).

¹ (2003) 8 SCC 311

² (2011) 15 SCC 111

³ (2011) 3 SCC 436

⁴ (2025) 6 SCC 465

⁵ (2007) 4 SCC 221

⁶ (1983) 2 SCC 1



- xi. Learned Senior counsel submits that the fraud vitiates all proceedings and any order obtained by fraud is a nullity and can be challenged at any stage.
- xii. Even if criminal proceedings resulted in acquittal, the same does not validate the impugned order. The standard of proof differs and fraud in civil proceedings need not be proved beyond reasonable doubt.
- xiii. Considering the seriousness of forgery involving public records and possible involvement of officials, an enquiry by an independent agency is warranted. On this ground, it is prayed that the impugned order dated 30.11.1975 and the consequential Form No.10 dated 15.04.1983 be quashed and appropriate direction be issued.



7. *Per contra*, learned Senior Counsel Sri Jayakumar S. Patil appearing for respondent No.4 would contend as follows:

- i. Respondent No.4 was in cultivation prior to and as on 01.03.1974. Form No.7 was filed on 26.12.1974 within time. Evidence was recorded before the Land Tribunal and occupancy rights were granted.
- ii. The State has produced the original register of applications, RTC records and proceedings. Therefore, allegation of fabrications is unfounded.
- iii. The writ petition is filed after nearly 4 decades. The petitioner had knowledge and had applied for certified copy. The delay is unexplained and fatal.
- iv. Criminal proceedings alleging forgery was dismissed. The competent Criminal Court has



not found any forgery. Therefore, the allegation of fabrication stands negated.

- v. The Tribunal Order dated 30.11.1975 has attained finality and the petitioner cannot reopen settled matters after decades.
- vi. Mere difference in ink or overwriting does not conclusively establish forgery without an expert opinion. Such allegation cannot be accepted.
- vii. Official acts are presumed to be regularly performed and the Tribunal Order must be presumed valid unless proven otherwise. On those grounds, learned Senior Counsel for respondent No.4 prays for dismissal of the writ petition.

8. Learned Additional Government Advocate for the State submits that the State does not take any adversarial stand, but has placed the original records before this Court to enable proper examination of the issues raised, which



has been perused and directed to be kept in safe custody for proper adjudication.

9. This Court has carefully considered rival submissions and perused the material on record. The following points arise for consideration:

- i. *"Whether the subject lands having been acquired in the year 1954 and vested pursuant to award dated 31.08.1954 could at all be the subject matter of tenancy proceedings under the Karnataka Land Reforms Act?*
- ii. *Whether original register of applications, Form No.7 register and record of rights disclose interpolation, overwriting of fabrication affecting the very foundation of the Tribunal's order?*
- iii. *What order?"*

10. All the points are taken up together in order to avoid repetition of facts.



11. It is not disputed that the lands in question were acquired under the acquisition proceedings culminating in award dated 31.08.1954 and compensation was deposited in Government Treasury. Upon such acquisition, the lands vested absolutely free from encumbrances. The Apex Court in the case of ***Land and Building Department Through Secretary and Another Vs. Attro Devi and Others***⁷ (Attro Devi) has held at paragraph No.12 as under:

"12. The issue as to what is meant by "possession of the land by the State after its acquisition" has also been considered by Constitution Bench of Hon'ble Supreme Court in Indore Development Authority's case (supra). It is opined therein that after the acquisition of land and passing of award, the land vests in the State free from all encumbrances. The vesting of land with the State is with possession. Any person retaining the possession thereafter has to be treated trespasser. When large chunk of land is acquired, the State is not supposed to put some person or police force to retain the possession and start cultivating on the land till it is utilized. The

⁷ 2023 SCC Online SC 396



Government is also not supposed to start residing or physically occupying the same once process of the acquisition is complete. If after the process of acquisition is complete and land vest in the State free from all encumbrances with possession, any person retaining the land or any re-entry made by any person is nothing else but trespass on the State land. Relevant paragraphs 244, 245 and 256 are extracted below:

"244. Section 16 of the Act of 1894 provided that possession of land may be taken by the State Government after passing of an award and thereupon land vest free from all encumbrances in the State Government. Similar are the provisions made in the case of urgency in Section 17(1). The word "possession" has been used in the Act of 1894, whereas in Section 24(2) of Act of 2013, the expression "physical possession" is used. It is submitted that drawing of panchnama for taking over the possession is not enough when the actual physical possession remained with the landowner and Section 24(2) requires actual physical possession to be taken, not the possession in any other form. When the State has acquired the land and award has been passed, land



vests in the State Government free from all encumbrances. The act of vesting of the land in the State is with possession, any person retaining the possession, thereafter, has to be treated as trespasser and has no right to possess the land which vests in the State free from all encumbrances.

245. *The question which arises whether there is any difference between taking possession under the Act of 1894 and the expression "physical possession" used in Section 24(2). As a matter of fact, what was contemplated under the Act of 1894, by taking the possession meant only physical possession of the land. Taking over the possession under the Act of 2013 always amounted to taking over physical possession of the land. When the State Government acquires land and draws up a memorandum of taking possession, that amounts to taking the physical possession of the land. On the large chunk of property or otherwise which is acquired, the Government is not supposed to put some other person or the police force in possession to retain it and start cultivating it till the land is used by it for the purpose for which it has been acquired. The Government*



is not supposed to start residing or to physically occupy it once possession has been taken by drawing the inquest proceedings for obtaining possession thereof. Thereafter, if any further retaining of land or any re-entry is made on the land or someone starts cultivation on the open land or starts residing in the outhouse, etc., is deemed to be the trespasser on land which in possession of the State. The possession of trespasser always inures for the benefit of the real owner that is the State Government in the case.

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256. Thus, it is apparent that vesting is with possession and the statute has provided under Sections 16 and 17 of the Act of 1894 that once possession is taken, absolute vesting occurred. It is an indefeasible right and vesting is with possession thereafter. The vesting specified under Section 16, takes place after various steps, such as, notification under Section 4, declaration under Section 6, notice under Section 9, award under Section 11 and then possession. The statutory provision of vesting of property absolutely free from all encumbrances has to



be accorded full effect. Not only the possession vests in the State but all other encumbrances are also removed forthwith. The title of the landholder ceases and the state becomes the absolute owner and in possession of the property. Thereafter there is no control of the landowner over the property. He cannot have any animus to take the property and to control it. Even if he has retained the possession or otherwise trespassed upon it after possession has been taken by the State, he is a trespasser and such possession of trespasser enures for his benefit and on behalf of the owner.

(emphasis supplied)”

12. The Apex Court reiterated that once the possession is taken pursuant to acquisition, vesting is absolute and indefeasible.

13. Under the Karnataka Land Reforms Act, 1961 occupancy rights can be granted only if:

- i. The land is agricultural.
- ii. The applicant was a tenant.



- iii. The applicant was in possession as on 01.03.1974.
- iv. The application was filed within time.
- v. The existence of tenancy as on 01.03.1974, is a jurisdictional fact.
- vi. If the jurisdictional fact is absent, the Tribunal lacks authority.
- vii. When the land has vested pursuant to the acquisition decades prior to 01.03.1974, the burden lies heavily on the claimant to establish subsisting agricultural tenancy.

14. In the present case, apart from the disputed entries, no independent materials such as rent receipts, lease agreement, or any documents are produced to demonstrate lawful tenancies. Therefore, the Tribunal's jurisdiction itself becomes doubtful, holding that the vesting in 1954, seriously impairs the jurisdictional foundation of the Tribunal proceedings.



15. The State has produced the original records including:

- i. Register of Form No.7 application.
- ii. Original RTC for 1963-1964.
- iii. Proceedings in KLR-CR/27/2015-16.
- iv. Order dated 30.11.1975.

16. These records were taken on record on 12.01.2026 and directed to be kept in sealed custody. On examination of the Form No.7 register, this Court recorded on 12.01.2026 as under:

"1. The State has produced the Original Register of applications pertaining to filing of Form No.7 before the Tribunal, Bagalkot.

2. This Court has perused the said original registers. It is noticed that after the entry dated 28.08.1974, standing in the name of Yallappa Shivaramappa Jannamatti, there is a subsequent entry made in Black ink dated 26.12.1974, wherein the name of Sushilavva Hanumant Madar (respondent No.4) is recorded.



3. A perusal of column No.5 of the said register indicates that the name of the landlord corresponding to Sushilavva Hanumant is not mentioned. In column No.6, Survey Nos.80 and 81 are indicated. The extent of the land, under cultivation for a period of 20 years, as well as the reference to the final order, are also entered in 'Black ink', while all the other entries are in '***Blue ink**'.

4. The State has further produced the original records pertaining to the proceedings in KLR-CR/27/2015-2016, including the order dated 13.11.1975, the statement of the applicant and the original Record of Rights. On examination of the Record of Rights for the year 1963-1964, it is noticed there is an over-scribbling in the column No.1 showing the name of "Sushilavva," and the mode of cultivation has been overwritten as "iii".

5. The original Record of Rights and the original proceedings produced by the State are taken on record. The same shall be kept in safe custody in a sealed cover until the disposal of the writ petition.

6. Heard Shri Pramodkumar Dubey, learned Senior Counsel appearing on behalf of the petitioner.

7. To hear learned counsel appearing for respondent No.4, list this matter on **21.01.2026 at 2:30 p.m, for further hearing.**"



17. This Court on 12.01.2026 observed that :

- i. Entry dated 26.12.1974 in the name of respondent No.4 appears in "*black ink*".
- ii. Surrounding entries are in "blue ink".
- iii. Column No.5 landlord name is left blank.
- iv. Reference to final order also is in "*black ink*".

18. Such insertion in different inks and omission of landlord's name in statutory register is abnormal and indicative of subsequent interpolation. On examination of the RTC for 1963-64, overwriting is visible in column No.1, inserting the name of respondent No.4 and mode of cultivation is written as "iii" appears overwritten. The revenue records are foundational public documents. Visible overwriting in original record of rights affecting ownership and tenancy cannot be lightly brushed aside. These discrepancies are not minor clerical irregularities, they go to the root of jurisdiction. The impugned order dated 30.11.1975 was passed on Sunday. Though not conclusive



by itself, the absence of any supporting order sheet or proceedings lends supports to the petitioner's allegation.

19. The petitioner alleges forged signatures on:

- i. Form No.7 application.
- ii. Tribunal's order.
- iii. Certified copy application.
- iv. Affidavit.

20. This Court defers from recording a definite criminal finding of forgery in writ jurisdiction without forensic examination. However, writ Courts are not powerless when public records show visible tampering.

21. The Apex Court in the case of **Ram Preeti Yadav** has held at paragraph Nos.13, 14, 15 and 26 as under:

"13. 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.

14. In Lazarus Estates Ltd. v. Beasley the Court of Appeal stated the law thus: (All ER p. 345 C-D)

"I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. 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. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever;"

15. In S.P.Chengalvaraya Naidu v. Jagannath this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal.

26. Further, we find that there is no equity in favour of Respondent 3, inasmuch as he knew that his result had been withheld because of the allegation of having used unfair means in the examination. Suppressing this fact, he took admission in BA and studied further."

(Emphasis supplied)



22. The Apex Court in the case of **Mritunjoy Das** has held at paragraph No.9 as under:

"9. On going through the records placed before us, what we find is that the contesting respondents herein inflated their marks in order to obtain admission in the Primary Teacher's Training Institute. Had the marks not been inflated in the aforesaid manner, the contesting respondents would not have got the admission in that particular Institute as it is disclosed from the records. Therefore, the admission sought for was through an illegal means which is to be deprecated. The conduct of the contesting respondents being such, we cannot find fault with the course of action taken by the appellant herein. It is not that the contesting respondents were not given any opportunity of hearing. They were given a show-cause notice and were also given an opportunity of hearing which opportunity they did not accept although they submitted a reply to the show-cause notice. There is, therefore, no violation of the principles of natural justice in the present case. If a particular act is fraudulent, any consequential order to such fraudulent act or conduct is non est and void ab initio and, therefore, we cannot find any fault with the action of the appellant in dismissing the service



of the contesting respondents. In this context we refer to the decision of this Court in Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education¹ for the proposition that no person should be allowed to keep an advantage which he has obtained by fraud."

(emphasis supplied)

23. The Apex Court in the case of **Vipin Kumar** has held at paragraph No.36 as under:

"36. In this regard, the learned Senior Counsel for the appellant placed reliance on the judgment of this Court in A.V. Papayya Sastry v. State of A.P.¹⁷, by contending that when there has been a fraud played by the first respondent herein, the same would have to be considered by the High Court by recalling the earlier orders passed by it and by rehearing the parties and rendering a judgment in accordance with law. The relevant observations from the aforesaid judgments are paraphrased as under: (SCC p. 222)

"Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even the most solemn proceedings stand



vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

A judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non-est in the eye of the law. Such a judgment, decree or order — by the first court or by the final court — has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

The matter can be looked at from a different angle as well. ... If this Court grants leave and thereafter decides to dismiss the appeal, such an order can be a judgment to which Article 141 of the Constitution would apply and the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order. ... However, where a special leave petition is simply dismissed, the doctrine of merger would not apply.

The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order



cannot be held legal, valid or in consonance with law. It is non-existent and non-est and cannot be allowed to stand. This is the fundamental principle of law. The principle of "finality of litigation" cannot be stretched to the extent of any absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."

(emphasis supplied)

24. The Apex Court in the case of **Mamata Mohanty** has held at paragraph No.37 as under:

"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of



Assam, Mangal Prasad Tamoli v. Narvadeshwar
Mishra and Ritesh Tewari v. State of U.P.)"

(emphasis supplied)

25. The Apex Court in the case of **Papayya Sastry** has held at paragraph Nos.21 to 27, 30 to 33, 39 and 46 as under:

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

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

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



23. *In the leading case of Lazarus Estates Ltd. v. Beasley Lord Denning observed: (All ER p. 345 C)*

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."

24. *In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.*

25. *It has been said: fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*



26. *Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.*

27. *In S.P.Chengalvaraya Naidu v. Jagannath this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the*



trial court, observing that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

30. *The Court concluded: (SCC p. 5, para 5)*

"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."

31. *In Indian Bank v. Satyam Fibres (India) (P) Ltd. referring to Lazarus Estates and Smith v. East Elloe Rural Distt. Council this Court stated: (SCC pp. 562-63, para 22)*

"22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from



indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business."

32. *In United India Insurance Co. Ltd. v. Rajendra Singh by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached this Court.*

33. *Allowing the appeal and setting aside the orders, this Court stated: (SCC pp. 587-88, paras 15-17)*

"15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the



award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

17. The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to



substantiate their contentions it might certainly lead to a serious miscarriage of justice.”

39. *The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every court, superior or inferior.*

46. *Keeping in view totality of facts and attending circumstances including serious allegations of fraud said to have been committed by the landowners in collusion with officers of the respondent Port Trust and the Government, report submitted by the Central Bureau of Investigation (CBI), prima facie showing commission of fraud and initiation of criminal proceedings, etc. if the High Court was pleased to recall the earlier order by issuing directions to the authorities to pass an appropriate order afresh in accordance with law, it*



cannot be said that there is miscarriage of justice which calls for interference in exercise of discretionary and equitable jurisdiction of this Court. We, therefore, hold that this is not a fit case which calls for our intervention under Article 136 of the Constitution. We, therefore, decline to do so."

(emphasis supplied)

26. In all the above referred judgments, the principle enumerated is that once the fraud is shown, any advantage, order, decree, judgment or given advantage acquired must be deprived. Fraud vitiates all solemn acts whether *in rem* or *in personam* and judgment, decree or order obtained by fraud is to be treated *non est* and can be challenged in any Court in any proceedings. The cumulative circumstances show the only reasonable inference is that the proceedings are tainted. This Court holds that the Tribunal proceedings culminating in the order dated 30.11.1975 are vitiated by fraud and manipulation of public records.

27. The respondent relies upon the dismissal/acquittal in criminal proceedings. Criminal law



requires proof beyond reasonable doubt and the civil case proceeds on preponderance of probabilities. An acquittal does not vitiate or does not validate a civil order or erase civil consequences of fraud. Therefore, criminal proceedings do not bar a writ relief. Learned Senior Counsel for the respondent contends that the writ petition is belated. However, if an order is void for lack of jurisdiction or obtained by fraud it does not confer legality. In ***Sudama Devi's*** case the Apex Court held that the relief cannot be denied where manifest injustice is shown.

28. Cause of action effectively arose when mutation proceedings were initiated and the petitioner became aware. Fraud unravels finality and delay cannot sanctify a nullity and accordingly, the points framed for consideration are answered and for the foregoing discussion and findings, this Court proceeds to pass the following:

ORDER

- i. The writ petition is ***allowed***.



- ii. The Order dated 30.11.1975, passed by the Land Tribunal, Bagalkot granting occupancy rights in favour of respondent No.4 is hereby declared void *ab initio* and is **quashed**.
- iii. The consequential Form No.10 dated 15.04.1983 issued pursuant to the said order also stands **quashed**.
- iv. The revenue entries, if any, made on basis of the said order and Form No.10 shall stand **annulled**.
- v. In view of the serious discrepancies noticed by this Court in:
 - a. Form No.7.
 - b. Registered entry dated 26.12.1974.
 - c. The omission of landlord's name in Column No.5.
 - d. The difference in inks in registered entries.
 - e. The overwriting in original records of rights for the year 1963-1964.
- vi. In view of the above, suspicious circumstances surrounding the order, the State Government is directed to constitute a High Level Enquiry Committee headed by an Officer not below the



rank of the Deputy Commissioner within four (4) weeks from the date of receipt of the copy of this order.

- vii. The Enquiry Committee shall:
 - a. Examine the authenticity of the Form No.7 register entry.
 - b. Examine overwriting and alteration in the RTC.
 - c. Verify the signature on Form No.7, application and Tribunal Order.
 - d. Obtain forensic examination of documents wherever necessary.
 - e. Examine the role of concerned officials, if any.
- viii. Submit a report to the Registry of this Court within four (4) months from the date of receipt of copy of this order.
- ix. Liberty is reserved to the State to initiate appropriate criminal proceedings in accordance with law, if forgery or fabrication is established upon enquiry.
- x. The original records produced before this Court shall remain in sealed cover in the safe custody



of the Registrar (Judicial) of this Court until completion of the enquiry directed herein.

- xi. The said original records shall not be opened, tampered with, inspected or removed except under the express orders of this Court.
- xii. If any party of the proceedings or enquiry committee constituted pursuant to this order seeks copies of any documents forming part of the sealed records for the purpose of enquiry or any further proceedings, the Registrar (Judicial) shall, upon proper application and identification, furnish certified copies or photostat copies of such documents.
- xiii. Such copies shall be prepared only in the presence of responsible officer deputed by the Registrar (Judicial) to ensure preservation of integrity of the original records. After preparation of copies, the original records shall forthwith be resealed and restored to safe custody.
- xiv. The Enquiry Committee, upon completion of the enquiry, submits its report to the Registry of this Court within the time stipulated.



- xv. The Registry shall place the said report before the appropriate Bench for further orders.
- xvi. Upon consideration of the enquiry report and further orders of this Court, the original records shall be thereafter returned to the State under proper acknowledgment.

All pending interlocutory applications, if any, do not survive for consideration.

**Sd/-
JUSTICE K.S.HEMALEKHA**

AT
CT:VH
List No.: 1 Sl No.: 1