

CASE NO.:
Appeal (civil) 4461 of 2005

PETITIONER:
The State of Andhra Pradesh & Anr.

RESPONDENT:
T. Suryachandra Rao

DATE OF JUDGMENT: 25/07/2005

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No. 7944 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

The State of Andhra Pradesh and the Mandal Revenue Officer (in short the 'Revenue Officer') Peddapuram, East Godavari call in question legality of the judgment rendered by a learned Single Judge of the Andhra Pradesh High Court. By the impugned order the High Court held that the Land Reforms Appellate Tribunal, East Godavari, Kakinada (in short "the Appellate Tribunal") and the Land Reforms Tribunal, Kakinada (in short the "Tribunal") were not justified in holding that the respondents had fraudulently taken advantage by suppression of facts; thereby taking benefit under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (in short 'the Act'). Basic features of the case which need to be noted are as under:

The respondent as declarant submitted a declaration as regards determination of his ceiling limit of land under the Act. The Appellate Tribunal passed an order dated 16.11.1978 determining the ceiling limit of the declarant to be surplus and declared 0.4388 S.H. land to be in excess of the ceiling limit on the notified date. Thereafter, certain lands were surrendered and surrender was accepted by order dated 8.5.1991 by the Additional Revenue Divisional Officer, Land Reforms Kakinada. Subsequently, it was noticed that the land which was surrendered had already been acquired in proceedings under the Land Acquisition Act, 1898 (in short the 'L.A. Act'). Therefore, a notice was issued on 8.2.1995 proposing to consider declaration of alternative lands as surplus in lieu of the lands which were earlier surrendered. The Tribunal passed order in this regard after verifying the records of the land acquisition proceedings. An appeal was carried to the Appellate Tribunal and the same was dismissed. A revision was carried under Section 21 of the Act before the High Court, which by the impugned order held that it was for the Tribunal to have considered the correctness of the declaration made by the declarant. After having accepted the land to be surrendered, it was not to

open to the Tribunal to vary the order. It was held that even though power was available to the Tribunal to reopen the matter and pass necessary orders when fraud was practiced, in the instant case the Tribunal having accepted the matter after enquiry, it was not open to take a different view.

Though the High Court accepted on principle that the Tribunal has ample power to reopen the matter when the error is apparent on the face of record, it held that once the enquiry had been conducted question of reopening the matter did not arise. It was held that under Section 10(3) of the Act the Tribunal has to make an enquiry after statement relating to surrender is filed. Merely because in the statement it was indicated that some land was proposed to be surrendered there was no scope for reopening the matter even though the land was not available to be surrendered.

Learned counsel for the appellants submitted that the approach of the Tribunal is clearly erroneous. There is no dispute that the land which was offered for surrender had already been acquired under the L.A. Act and there was no scope for the respondent to again offer the said land. This was clearly fraudulent act and, therefore, the High Court was not justified in its view.

In response, learned counsel appearing for the respondent submitted that having accepted the land offered for surrender after enquiry, it was not open to the Tribunal to take note of any acquisition earlier.

The order of the High Court is clearly erroneous. There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.

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 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. Changalvaraya 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 ensues 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 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 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 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 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 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 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).

In that case it was observed as follows:

"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 Contract Act 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 the fact with knowledge that it was false. In a leading English case *Derry v. Peek* [(1886-90) ALL ER Rep 1: (1889) 14 AC 337 (HL)] 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'."

This aspect of the matter has been considered recently 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) and *Ashok Leyland Ltd. v. State of T.N. and Another* (2004 (3) SCC 1).

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.

Considering the aforesaid principles of law and the background facts, the Tribunal was justified in modifying the earlier order and varying it. The Appellate Tribunal did not commit any error in upholding it. The High court's order is clearly unsustainable and is set aside.

The appeal is allowed with no orders as to costs.