

Rs.100/- and it has not been registered and, therefore, it is not admissible in evidence.

29. It is true that this agreement is not duly stamped but the liability to pay stamp duty on this agreement was of the revisionist himself. The revisionist himself has evaded payment of proper stamp duty on this agreement. It is a settled principle of law that no person can be allowed to take advantage of his own wrong. When the revisionist himself had avoided payment of stamp duty on the agreement dated 21.09.2011, he cannot take the plea that the agreement dated 21.09.2011 not being duly stamped, is not admissible in evidence although it has been filed by the revisionist himself. Therefore, this Court finds no reason to disbelieve the agreement filed by the revisionist-defendant alongwith his affidavit filed before this Court.

30. The learned Counsel for the petitioner next submitted that the opposite party – plaintiff had not taken any plea based on the agreement dated 21.09.2011 and, therefore, no decision has been given by the trial Court on this point. In these circumstances, it would be proper to remand the matter to the trial Court for being decided afresh.

31. In Jagdish Prasad v. Angoori Devi: (1984) 2 SCC 590, the Hon'ble Supreme Court had held that: -

“2. ...This was not an attempt to reassess evidence but to take into consideration the evidence which had not been looked into by the trial court. The revisional jurisdiction under Section 25 of the Provincial Small Cause Court Act is not as wide as the appellate jurisdiction under Section 96 of the Code of Civil Procedure; yet in a case of this type we do not think fault could be found with the revisional court

for pointing out the legal error committed by the trial court in its approach to this material aspect....”

32. In the present case also, the revisionist – defendant had himself filed an agreement dated 21.09.2011, as per which, his tenancy stands expired with effect from 31.05.2012, but it was not taken into consideration by the learned trial Court. This Court is well within its jurisdiction to correct the legal error committed by the trial Court by ignoring this material evidence placed by the revisionist.

33. In view of the foregoing discussion, the revision is **allowed** in part. The judgment and order dated 29.05.2024 passed by the learned Additional District and Sessions Judge, Court No. 16, Lucknow in SCC Suit No. 14 of 2014 is set aside to the extent that it holds the rate of rent of the shop in question to be Rs.6,600/- per month and it is held that the rate of rent of the shop in question was Rs.500/- only. The remaining part of the judgment and decree so far as it orders ejectment of the revisionist-defendant, does not suffer from any illegality calling for interference in exercise of this Court's revisional jurisdiction and the revision in respect of this relief is dismissed. The parties will bear their own costs of litigation.

(2024) 9 ILRA 1374

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 23.09.2024

BEFORE

THE HON'BLE JASPREET SINGH, J.

Writ -B No. 853 of 2024

Keshav Prasad & Ors.

...Petitioners

Versus

Consolidation Commissioner, Lko. & Ors.

...Respondents

Counsel for the Petitioners:

Rahul Roshan Dubey

Counsel for the Respondents:

C.S.C., Mohan Singh

A. Land Law – Concealment and non-disclosure – U.P. Consolidation of Holdings Act, 1953 - Section 4(2), 48(3) - 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. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together. 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 former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations 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.

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.

The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed u/Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from

unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misSt.ment or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case. (Para 26)

In the entire present petition there is not a whisper of the fact as to how the petitioners had any personal cause or what is their personal right in respect of any plot. (Para 29)

The petitioners have definitely not disclosed the fact regarding their right to file the instant petition. Moreover, multiple petitions filed by the petitioners were not disclosed in this writ petition but were mentioned by the St./Garam Sabha in their counter-affidavit. It is only when the rejoinder-affidavit was filed that the same has been accepted by the petitioner as a conformation of the averments made in the counter-affidavit but there was no effort of the petitioners to bring the facts which were there in their knowledge at the time of filing of the instant petition including its outcome. (Para 28)

It prima facie appears from the record that the petitioners no.1 and 4 have already been held to be the beneficiaries of fraudulent entries against whom action has been taken and the fraudulent entries have been expunged. This aspect of the matter and the background of the litigation has been deliberately suppressed. (Para 30, 32)

The petition suffers gross concealment of material facts. The petition is vague, no personal cause of action of the petitioners has been made out coupled with the fact that the petition suffers from concealment of material fact and is an attempt to waste the precious time of the court by resorting to filing a frivolous petition and if the St. Counsel and the Gaon Sabha would not have brought the facts to the notice of the Court, the petitioners would have had a leverage by getting away with concealment and non disclosure of material facts. (Para 36)

B. There is a great sanctity attached to the proceedings conducted in the court. Every Advocate putting his signatures on the Vakalatnamas and on the documents to be

filed in the Courts, and every Advocate appearing for a party in the courts, particularly in the Supreme Court, the highest court of the country is presumed to have filed the proceedings and put his/her appearance with all sense of responsibility and seriousness. No professional much less legal professional, is immuned from being prosecuted for his/her criminal misdeeds. (Para 35)

The role of an advocate in the justice dispensation system is of crucial importance. The counsel representing a case of his client is first an officer of the Court and then he pleads the case for his client fearlessly. In the instant case, the counsel for the petitioner, who has been representing them in various petitions appears to have lost sight of his duties as an officer of the Court.

Writ petition dismissed. (E-4)

Precedent followed:

1. Bhagwan Das Chela Balram Das Vs District Magistrate Ambedkarnagar & ors., 2023 (1) ADJ 342 [LB] (Para 26)
2. All India EPF Staff Federation Vs U.O.I. & ors., 2024 SCC OnLine SC 1629 (Para 27)
3. Kusha Duruka Vs The St. of Odisha, (2024) 4 SCC 432 (Para 27)
4. Bhagwan Singh Vs St. of U.P. & ors., 2024 SCC OnLine SC 2599 (Para 35)

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri Rahul Roshan Dubey, the learned counsel for the petitioners, Dr. Krishna Kumar Singh, learned Standing Counsel for the State and Shri Mohan Singh, learned counsel appearing for the Gaon Sabha.

2. Shri Rahul Roshan Dubey, learned counsel for the petitioners has filed

the rejoinder-affidavit which is taken on record.

3. To put the matter in a prespective, certain facts giving rise to the instant petition are being noticed hereinafter.

4. Eight petitioners have approached this Court seeking the following relief's which reads as under:-

"Issue a writ order or direction in the nature of mandamus directing the opposite parties particularly opposite party no.1 to call for the record in respect of consolidation proceedings commenced during covid-19 pandemic year 2019-2020 of Gram Jamkhuri, Post Jamkhuri, Pargana Chanda, Tehsil Lambhuwa, District Sultanpur and initiate a proceedings under Section 48 of U.P. Consolidation and Holdings Act 1953 and decide after hearing the tenure holders and further be pleased to set aside the orders passed in under Section 9(ka) and section 20 and 42 of U.P. Consolidation of Holdings Act 1953 and CH-41 & CH-45 to meets the ends of justice annexed hereiwith as Annexure No.5 dated 09.08.2021."

5. The writ petition runs in 14 paragraphs. However, paragraphs 4 to 12 are being reproduced hereinafter for better appreciation of the contention as well as the response of the respective parties.

4. That by means of the present writ petition the petitioner is challenging the entire

consolidation proceedings commenced in the year 2019-20 in village Jamkhuri, Pargana-Chanda, Tehsil Lambhuwa, District Sultanpur in which several irregularities have been committed and further no action has been taken by the opp. party no.-1 & upon several representation made by the petitioners.

5. That in the mid of corona (covid-19) in year 2020 without given any notice to any villagers the authorities passed Dhara 9, Dhara-20, Dhara-21 and Dhara-42 opp. party no.4 has passed the order ex parte which is illegal and arbitrary because that time Hon'ble Supreme Court has passed the interim order in whole country which was extended till 2021. The copy of order of Hon'ble Apex Court is being annexed herewith as Annexure No.2 to this writ petition.

6. That the brief facts of the case is that during the Covid-19 pandemic in village Jamkhuri, Pargana-Chanda Tehsil Lambhuwa, District-Sultanpur consolidation proceedings have been commenced and during consolidation proceedings several irregularities have been made in which orders under Section 9(ka) and Section 20 and 42 of U.P. consolidation of Holdings Act 1953 without giving any notice/information to the concern tenure holder and without giving opportunity to lead evidence CH-41 and CH-45 has been finalized some of the irregularities have been mentioned as below:-

a- In CH-41 and CH-45 the consolidation officer has rejected

the entire area and chaks and there are several irregularities in chaks are has been mentioned wrongly and even parentage of tenure holders have been wrongly mentioned and there is no number mentioned in final map.

b. Chak No.643 in CH-23 has been recorded in favour of Ram Nayan in which old gate No.1170 has been left for Panchayat Bhawan but in order to grab that land nail and chak marg has been proposed while there is a chak marg existed.

c. Gata No.22/18. 2/4 and 2/8 was recorded as Naveen Parti but while making CH-41 and 45 without informing to the tenure holders that has been rejected and old gata no.2/2 area 0.632, 2/4 are 0.0063, 2/6 area 0.063, 2/16 area 0.151, 2/20 area 0.262, 63/2 area 0.358 and 23 mi area 0.208 from the tenure holders has been recorded as Naveen parti without even notice to the tenure holders.

d. In CH-11, recorded khata no.51 gata no.-63 Mi, 67, 69, 1031 has been rejected from the khata and recorded as Naveen parti and in gata no.63 name of Jai Narayan son of Chandrika and in gata no.67 Rajendra son of Krishna Chandra and in 69 Makhdom son of Jhuri wrongly and double recorded without even notice to the tenure holder.

e. In CH-45 parentage of several persons have been wrongly recorded like in CH-23 at Khata no.999 Adha Prasad son of Ramnath has been recorded and in 45 in khata no.155 Adha Prasad

and others son of Ram Nayak has been recorded.

f. Chak of Ram Yug son of Girja Shankar was proposed nearby his house but at the time of preparing CH-41 and 45 chak has been shown far away and no notice has been issued to the tenure holder.

g. The entire map of village is wrongly made which is not in accordance with the sanctioned map. Copies of Nakal Khatauni Gram Jhamkhuri alongwith akar patra are collectively annexed herewith as Annexure No.3 to this writ petition.

7. That in respect of above irregularities the tenure holders of the above Gram Jhamkhuri Pargana Chanda, Tehsil Lambhuwa, District Sultanpur has given on 25.08.2021 in before the opposite party no.1 in which opposite party no.1 has directed the Assistant Consolidation Officer to present his report after enquiry. A copy of application dated 25.08.2021 and postal order alongwith endorsement order is being annexed herewith as Annexure No.4 to this writ petition.

8. That upon that application the Settlement Officer Consolidation has directed the Consolidation Officer Lambhuwa and Consolidation Officer Lambhuwa has directed to Assistant Consolidation Officer, Lambhuwa but till date no any report has been presented.

9. That again on 09.08.2021 the petitioners again submitted an application before the

opposite party no.1 but nothing concrete has come out neither any report has been sent in respect of above mentioned irregularities. A copy of application dated 09.08.2021 is being annexed herewith as Annexure no.5 to this writ petition.

10. That during commencement of consolidation proceedings in covid-19 pandemic several irregularities have been committed due to which the poor tenure holders have to face multiplicity of litigations for their life time.

11. That the proceedings of consolidation has been commenced during the year 2019-20 without giving notice to the tenure holders and without providing any opportunity of hearing and Ch-41 and CH-45 has been made in most illegal and arbitrary manner.

12. That the authorities/opposite parties are turning deaf ear into the matter despite no report has been presented in respect of above mentioned irregularities which leads multiplicity of litigations to the poor tenure holders.

6. Taking note of the aforesaid facts which are pleaded, the Court had required the learned Standing Counsel to seek instructions. Once the instructions were placed before the Court, this Court had passed the order dated 03.09.2024 as under:-

Heard learned counsel for the petitioners as well as Dr. Krishna Singh, learned Standing Counsel for the State-respondents

who has provided a copy of the written instructions for perusal of the Court and the same is taken on record.

As per the instructions, it has been informed that the entire petition suffers from material concealment of fact.

It has been further pointed out that even earlier few of the present petitioners including the petitioner no. (i) and (iv) amongst others had filed a Writ Petition bearing No. 943 (Consolidation) of 2005 which came to be dismissed on 21.03.2007 relating to the same property.

It has further been pointed out that it was noticed that the petitioners were involved in falsification of the records and a First Information Report was lodged against them on 27.12.2012 and this fact has also been concealed.

It has also been submitted that the proceedings under the Uttar Pradesh Consolidation of Holdings Act, 1953 were duly proceeded and complied with so much so that the notification under Section 52 of the Act of 1953 was made on 19.10.2020.

Since the petitioners are responsible for encroaching and falsely occupying the government land, hence, without disclosing the aforesaid facts, the instant petition has been filed.

The matter is serious.

The learned counsel for the petitioners is directed to file their response and clearly indicating by bringing on record the complete pleadings of W.P. No. 943

(Consolidation) of 2005 including the fact whether any First Information Report was lodged against them on 27.12.2012 and what is the status as to whether the matter has gone to the trial and whether at any point of time, the petitioners were apprehended in context with the said First Information Report. Sri Mohan Singh, learned counsel who usually appears for the Gaon Sabha has informed the Court that other than the matter which has been brought to the notice of the Court by the learned Standing counsel, there is further material concealment, inasmuch as, the Gaon Sabha concerned had also filed a writ petition against the fraudulent entries of which the petitioners are the beneficiaries wherein the Court had required the petitioners to file a counter affidavit which was not done, however, in order to avoid the same, the petitioners are allegedly said to have filed the subsequent petitions which are connected with the petition filed by the Gaon Sabha and this fact has also not been disclosed.

The learned counsel for the petitioner is directed to implead the Gaon Sabha concerned as a party-respondent no. 5 during the course of the day.

Sri Mohan Singh, learned counsel for the Gaon Sabha is directed to bring the details of all the pending litigations within the aforesaid period of one week.

The learned Standing counsel is directed to bring the material filed along with the written instructions on record by

way of a short counter affidavit and as noticed above, the petitioner shall also file the affidavit as called for within a period of one week.

List this matter on 12th September, 2024, as fresh showing the name of Sri Mohan Singh, as counsel for the Gaon Sabha.

7. On 12.09.2024, the Court had passed the following order which reads as under:-

This Court had passed a detailed order on 03.09.2024 and in terms whereof the learned counsel for the petitioners was required to file his response regarding the earlier petitions filed by him, the reference of which has not been mentioned in the instant petition and it has come to light only in light of the instructions available with the learned Standing Counsel as well as the learned counsel for the Gaon Sabha.

The learned counsel for the Gaon Sabha as well as the learned Standing Counsel have filed their short counter affidavits bringing the material on record as required in terms of the order dated 03.09.2024.

The learned counsel for the petitioner submits that since he has received a copy of the short counter affidavit filed by the State as well as the Gaon Sabha today itself, he requires some short time to respond to that and he further submits that, though, he has collected all the materials as is required in terms of the earlier order but the affidavit could not be sworn, hence, he may be granted some liberty so that the

compliance of the order dated 03.09.2024 is made also referring to the short counter affidavits filed by the learned counsel for the Gaon Sabha as well as the learned Standing Counsel.

Let the same be done by 18th September, 2024.

The learned counsel for the petitioners shall provide an advance copy of his affidavit in the aforesaid context both to the learned counsel for the Gaon Sabha as well as the learned Standing Counsel.

List this matter shall come up before this Court on 23rd September, 2024, as fresh.

8. Thereafter the matter was listed on 23.09.2024 and on the said date a rejoinder-affidavit has been filed by the learned counsel for the petitioners.

9. The State had filed a short counter-affidavit on 11.09.2024 under the signatures of Shri Shivanand Singh Rathaur, who is posted as the Consolidation Officer, Lambhua, District Sultanpur wherein several documents were brought on record indicating the manner in which the consolidation proceedings were held as well as the facts that the writ petition suffered from gross concealment of material facts. The short counter-affidavit filed by the State also had various annexures including orders which have been passed earlier against which the present petitioners had availed their rights of challenging the said orders and final orders in such proceedings were passed which arose from consolidation proceedings.

10. Shri Mohan Singh, learned counsel for the Gaon Sabha on 10.09.2024 had filed their short counter-affidavit also

reflecting the aforesaid facts as narrated by the State counsel including multiple writ petitions filed by the petitioners at different point of time relating to the property in question as well as copies of the FIR which were lodged against the petitioners for falsification of the government documents.

11. It is in the aforesaid context, the Court had required the counsel for the petitioners to give his response and while filing the rejoinder-affidavit the counsel for the petitioners has primarily not disputed the factual scenario regarding filing of multiple petitions at different point of time. It is also not disputed that the FIR had been lodged against some of the petitioners where they have been chargesheeted and for some time they remained under judicial custody as well.

12. In the aforesaid factual backdrop and the pleadings which are now before this Court, the issue arises regarding the bonafities of the petitioners while filing petitions and as to whether they have concealed material facts from the Court while instituting the instant petition or whether the facts which have been brought on record by the State counsel as well as counsel for the Gaon Sabha can be treated to be not relevant for the purposes of adjudicating the controversy raised in the instant petition, hence the petition be entertained on its own strength.

13. Learned counsel for the petitioners Shri Rahul Roshan Dubey has attempted to submit that the issue raised in the writ petition is regarding the anomalies, irregularities committed by the Consolidation Authorities. Moreover, the writ petitions, filed by the some of the petitioners earlier, which have been referred to by the State Counsel as well as

by the Gaon Sabha relates to different plots number, hence the same has no nexus with the facts of the instant case vis a vis the relief's which have been claimed in the instant petition.

14. It is also urged that the writ petition filed by the petitioners on earlier occasion were based on different cause of action which has nothing to do with the averments made in the instant petition, hence the petitioners cannot be held to be guilty of suppression of material facts nor the petition suffers from any vice of misrepresentation.

15. Per contra, Dr. Krishna Kumar Singh as well as Shri Mohan Singh counsel for the State and the Gaon Sabha respectively has pointed out that the entire text of the averments made in the writ petition are based on an incorrect premise. What has not been indicated by the petitioners in the writ petition is the fact that the notification under section 4(2) of the U.P. Consolidation of Holdings Act, 1953 was published on 15.07.1981 and the notification under section 52 of the U.P. Consolidation of Holdings Act was made on 19.10.2020.

16. It is also submitted that the alleged non-compliance of various provisions of the U.P. Consolidation of Holdings Act as alleged by the petitioners is patently false; inasmuch as the publication in terms of Section 10 was made on 31.12.1984, publication in terms of Section 20 was done on 15.10.1985. Publication in terms of Section 20 was done on 30.11.1994, publication in terms of Section 23 was done on 21.09.1988 and the delivery of possession as contemplated under Section 24 of the Act was done on 27.10.1998.

17. It is also submitted that certain complaints had been made to the Hon'ble the Chief Minister, upon which an inquiry was held which revealed that in the village in question i.e. Jamkhari Form C.H. 45 was issued and the objections in this regard which were received was decided. These are acts and function which are done in the official line of duty and there is presumption in law that all official acts are in accordance with law unless contrary is proved.

18. It is further submitted that reference was initiated bearing No.419 /51 under Section 48 (3) of the U.P. C H. Act 1953 which revealed that fraudulent entries were existing in the name of certain persons which included the petitioners and thereafter the same were corrected and the fraudulent entries were expunged on 18.08.2005. The then Deputy Director of Consolidation also directed the Settlement Officer of Consolidation concerned to lodge an FIR against erring persons which inter alia included the petitioners no.1 and 4. They were also apprehended and later enlarged on bail. In respect of Plot no.65, the Gaon Sabha had proposed construction of a water tank and this was opposed and interfered with by the family members of the petitioner no.1 and an FIR was lodged bearing no.170/23 under sections 186, 353, 323, 504, 506 IPC and 2/3 Prevention of Damages to Public Property Act by the Laekhpal concerned.

19. It is in this context that the petitioners no.1 and 5 filed multiple petitions. The petitioner no.1 Keshav Prasad alongwith two others had filed writ petition No.943 (Cons.) of 2005 against the order dated 18.08.2005 (i.e. the order by which the Deputy Director of Consolidation in reference had expunged

the fraudulent entries and directed the Settlement Officer of Consolidation to lodge an FIR.) Needless to say that the said writ petition came to be dismissed on merits on 21.03.2017.

20. The Gaon Sabha had also filed a petition bearing Writ-C No.15987 of 2021 stating therein that the Gram Panchayat had reserved the plot for constructing of Gram Panchayat Bhawan and since there was certain fraudulent entries which were made the subject matter of judicial proceedings and the entries were corrected but the private respondents of the said petition No.15987 of 2021 were creating interference who are none other than the petitioners of this petition while Writ-C No.15987 of 2021 is still pending.

21. It is further urged that for the cause of action as agitated in the instant petition, first the petitioners had filed Writ-C No.2626 of 2024 before the Division Bench of this Court and the said petition was dismissed by the Division Bench granting liberty to the petitioners to assail the order before the appropriate court. It is also pointed out that the counsel for the present petition in the instant case merely Shri Rahul Roshan Dubey, was representing the petitioners in Writ-C No.2626 of 2024 as well as in another petition preferred under Article 227 of the Constitution of India bearing No.1547 of 2024 which also came to be dismissed by means of order dated 28.03.2024. Another petition Writ-C No.2882 of 2024 was filed before another Single Judge of this Court which was directed to be connected with Writ-C No.15987 of 2021 (which was filed by the Gaon Sabha) by means of order dated 01.04.2024. However, there is no disclosure of the aforesaid petition either in the instant petition nor the relevant orders

have been brought on record by ways of annexures.

relating to the issue of concealment of material facts had noticed as under:-

22. What has been brought on record is an order passed by a Division Bench of this Court wherein the present petitioners had filed a PIL bearing No.667 of 2024 and the Division Bench of this Court by means of order dated 07.08.2024 noticing that the present petitioners had not filed their objections to the basic year Khatauni, hence their case in the shape of a PIL was not maintainable. However, liberty was granted to seek remedy as may be prescribed in law. It is thus urged that all the aforesaid facts which gave a cause of action ought to have been disclosed, hence non-disclosure leads to misrepresentation and petitioners have definitely not come before the Court with clean hands. Accordingly, the petition deserves to be rejected.

23. Shri Mohan Singh, learned counsel has also adopted the aforesaid arguments of Dr. Krishna Kumar Singh.

24. The Court has heard the learned counsel for the parties and also perused the material on record.

25. Before adverting to the aforesaid submissions, it will be worthwhile to take a look at the law relating to concealment of the material facts and suppression vis a vis the duty of the courts especially Constitutional Courts while dealing with the writ petition.

26. This Court had the opportunity to examine such an issue in ***Bhagwan Das Chela Balram Das Vs. District Magistrate Ambedkarnagar and others, 2023 (1) ADJ 342 [LB]*** wherein this Court with the aid of decision rendered by the Apex Court

"In Ram Chandra Singh Vs. Savitri Devi and others; (2003) 8 SCC 319 the Hon'ble Supreme Court has held as under:

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. 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 former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.

18. 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.

19. In Derry v. Peek, [1889] 14 A.C. 337, it was held:

In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief

in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit."

20. *In Kerr on Fraud and Mistake, at page 23, it is stated:*

"The true and only sound principle to be derived from the cases represented by Slim v. Croucher is this: that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with Derry v. Peek. A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. "A consideration of the grounds of belief", said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

21. *In Bigelow on Fraudulent Conveyances at page 1, it is stated:*

"If on the facts the average man would have intended wrong, that is enough."

It was further opined:

"This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to 'moral' fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as 'fraud upon the law'. What is fraud upon the law? Fraud can be committed only against a being capable of rights, and 'fraud upon the law' darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question."

22. *Recently this Court by an order dated 3rd September, 2003 in Ram Preeti Yadav vs. U.P. Board of High School & Intermediate Education & Ors. reported in JT 2003 (Supp. 1) SC 25 held:*

"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 former either by words or letter. Although negligence is not fraud

but it can be evidence on fraud. (See Derry vs. Peek [1889] 14 A.C. 337) In Lazarus Estate vs. Berly [1971] 2 W.L.R. 1149 the Court of Appeal stated the law thus:

"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."

In S.P. Chengalvaraya Naidu vs. Jagannath 1994 (1) SCC 1 this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal."

23. 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.

24. In Arlidge & Parry on Fraud, it is stated at page 21:

"Indeed, the word sometime appears to be virtually synonymous with "deception", as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context "fraud" included certain kind of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud". In

Jones, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both Jones and the "false front" could now be treated as cases of obtaining property by deception."

25. 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.

26. In Smt. Shrisht Dhawan vss. M/s. Shaw Brothers 1992 AIR(SC) 1555], it has been held that:

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

27. In S.P. Chengalvaraya vs. Jagannath [1994 (1) SCC 1]

this Court in no uncertain terms observed:

"...The principles of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.... 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... 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."

28. In *Indian Bank vs. Satyam Fibers (India) Pvt. Ltd.* [1996 (5) SCC 550], this Court after referring to *Lazarus Estates*

(supra) and other cases observed that 'since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order'.

It was further held:

"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."

29. In *Chittaranjan Das vs. Durgapore Project Limited & Ors.* 99 CWN 897, it has been held:

"Suppression of a material document which affects the

condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied within such a situation.

It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

In A.V. Papayya Sastry and others Vs. Government of A.P. and others; (2007) 4 SCC 221 the Hon'ble Supreme Court has held 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 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,

(1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:

"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 utilized as an engine of oppression by dishonest and fraudulent litigants.

27. In *S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors.* (1994) 1 SCC 1 : JT 1994 (6) SC 331, 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 was 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.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan- dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

(emphasis supplied)

29. The Court proceeded to state: "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".

30. The Court concluded: "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) Pvt. Ltd.* (1996) 5 SCC 550 : JT 1996 (7) SC 135, referring to *Lazarus Estates and Smith v. East Elloe Rural District Council*, 1956 AC 336 : (1956) 1 All ER 855 : (1956) 2 WLR 888, this Court stated;

"22. The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., 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".

(emphasis supplied)

32. In United India Insurance Co. Ltd. v. Rajendra Singh and others., (2000) 3 SCC 581 : JT 2000 (3) SC 151, 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."

In K.D. Sharma Vs. Steel Authority of India Limited and others; (2008 12 SCC 481, the

Hon'ble Apex Court has held as under:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R.V. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"...it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court

enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

37. In *Kensington Income Tax Commissioner*, Viscount Reading, C.J. observed:

"...Where an *ex parte* application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before

coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification.

This is because, "the Court knows law but not facts".

In Dalip Singh Vs. State of Uttar Pradesh and others; (2010) 2 SCC 114 Hon'ble the Supreme Court has held as under:

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with

tainted hands, is not entitled to any relief, interim or final.

3. In *Hari Narain v. Badri Das* AIR 1963 SC 1558, this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue and misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In *Welcome Hotel and others v. State of Andhra Pradesh and others etc.* AIR 1983 SC 1015, the Court held that a party which

has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G.Narayanswamy Reddi and other v. Governor of Karnataka and another* AIR 1991 SC 1726, the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed:

"2....Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

6. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others* JT 1993 (6) SC 331, the Court held that

where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd. v. State Bank of India* (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v Kensington Income Tax Commissioners* (1917) 1 K.B. 486, and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure

of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

*In **Bhaskar Laxman Jadhav and others Vs. Karamveer Kakasaheb Wagh Education Society and others; (2013) 11 SCC 531** the Hon'ble Supreme Court has held as under:*

"42. While dealing with the conduct of the parties, we may also notice the submission of learned counsel for respondent No.1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2nd May 2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. Learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2nd May 2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a

mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In Hari Narain v. Badri Das, AIR 1963 SC 1558 stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows:

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."

46. More recently, in Ramjas Foundation vs. Union of India, (2010) 14 SCC 38 the case law on the subject was discussed. It

was held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said:

“The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case.”

27. The aforesaid propositions have been very recently reiterated by the Apex Court in **2024 SCC OnLine SC 1629, All India EPF Staff Federation Vs. Union of India & others** and similar sentiment has been echoed by the Apex Court in **Kusha Duruka Vs. The State of Odisha (2024) 4 SCC 432** wherein the petitioners before the Apex Court were dismissed with costs for the reason of concealment and non-disclosure.

28. Having taken note of the aforesaid legal spectrum relating to the issue of concealment and misrepresentation and non-disclosure of and in light thereof if the

facts of the instant case are examined, it would reveal that the petitioners in the writ petition has definitely not disclosed the fact regarding their right to file the instant petition. Moreover, multiple petitions filed by the petitioners were not disclosed in this writ petition but were mentioned by the State/Garam Sabha in their counter-affidavit. It is only when the rejoinder-affidavit was filed that the same has been accepted by the petitioner as a conformation of the averments made in the counter-affidavit but there was no effort of the petitioners to bring the facts which were there in their knowledge at the time of filing of the instant petition including its outcome.

29. The contents of the writ petition which have been quoted hereinabove, would reveal that in the entire petition there is not a whisper of the fact as to how the petitioners had any personal cause or what is their personal right in respect of any plot. Vague and disjuncted averments have been made. Reference has been made relating to one Shri Ram Nain in paragraph 6-(b), Jai Narain, Makdoom, Adha Prasad, Ram Yug, in paras 6(d)(e)(f) but there is no mention regarding the right of any of the petitioners in respect of any of the plots. In absence of the aforesaid coupled with the fact that there has been deliberate concealment of the earlier petition and most importantly order passed by the Deputy Director of Consolidation in exercise of his powers conferred under reference in terms of Section 48(3) of the U.P. Consolidation of Holdings Act including passing of the order dated 18.08.2005 wherein the petitioners no.1 and 4 inter alia alongwith one Shri Bhagwant Prasad, son of Achchaibar were prima facie found guilty of usurping the public utility land by fabricating documents and in pursuance of the FIR lodged Keshav

Prasad remained in jail since 03.06.2015 till 03.11.2015 when he was granted bail by this Court.

30. It has also not been disclosed that the present petitioner no.1 and 2 others had assailed the order passed by the Deputy Director of Consolidation dated 18.08.2005 and the said writ petition was dismissed on 21.03.2017 and needless to say the dismissal of the writ petition would confirm the order passed by the Deputy Director of Consolidation dated 18.08.2005 and the legal position as obtained is that the order in reference holding that the entries allegedly in favour of the petitioners no.1 and 4 were found to be fraudulent and were set aside and expunged and this order attained finality.

31. Even though it is attempted to state by the counsel for the petitioners that a review has been filed but the fact remains that this fact has also not been disclosed by the petitioners in the writ petition and it is only when the matter was heard today that it has been mentioned. Moreover, vague and non descriptive averments have been made in the petition and it is also not clear whether the petitioners have any personal right to mention this petition.

32. The names as indicated in the paragraph-6 as noticed above also do not indicate any personal cause of action. In case if any of the petitioners would have been aggrieved, they would have a right of taking recourse to the provisions of U.P. Consolidation of Holdings Act, 1953 to ventilate their grievance but what prima facie appears from the record is that the petitioners no.1 and 4 have already been held to be the beneficiaries of fraudulent entries against whom action has been taken and the fraudulent entries have been

expunged. This aspect of the matter and the background of the litigation has been deliberately suppressed.

33. It appears that the petitioners by taking recourse to an oblique and circuitous route is attempting to malign the Consolidation Authorities. It has also not been brought on record that what is the outcome of the criminal case as to whether after filing of the chargesheet, the trial has concluded or not and whether the petitioners no.1 and 4 have been convicted or acquitted in the said trial.

34. This Court finds that the explanation as offered by the counsel for the petitioners for not disclosing the detailed facts and the background of the litigation is not cogent or inadvertent to be ignored. The petitioners counsel Shri Rahul Roshan Dubey has been representing the petitioners in several petitions and it cannot be said that the counsel himself was not aware. Before the counsel espouses the cause of any litigant, he is first an officer of the Court. It was his bounden duty to have disclosed the correct facts candidly and it also cannot be said that the counsel for the petitioners is not aware of the law or he has not much experience since the petitioners counsel has been registered with the U.P. Bar Council in the year 2012 and as such he has a standing of more then ten years at the Bar.

35. The role of an advocate in the justice dispensation system is of crucial importance as already noticed above that the counsel representing a case of his client is first an officer of the Court and then he pleads the case for his client fearlessly. In the instant case, the counsel for the petitioner, who has been representing them in various petitions appears to have lost

sight of his duties as an officer of the Court. Recently in ***Bhagwan Singh Vs. State of U.P. and Others; 2024 SCC OnLine SC 2599*** wherein the Apex Court in paragraph nos. 3, 4, 31, 33 and 34 has held as under:-

"3. While the finest of the legal minds and legal eagles on the Bench and in the Bar of the Supreme Court are busy developing the best of the jurisprudence and laying down the best of the laws for the country, there are certain sinister cabal of unscrupulous litigants and a coterie of their counsellors, who are always busy in taking undue advantage of the systemic lacunae and in misusing the process of law, in turn damaging the image of the Courts as also of the entire legal fraternity/legal profession. The huge quantum of work load in the Courts, limitations of the human agencies in manning the Justice Delivery System and the fertile minds of the unscrupulous litigants and their legal counsellors are some of the factors responsible for not allowing the Justice Delivery System to work as effectively and efficiently as it is expected to work.

4. The wrongdoers must fear the law that they will be punished, the innocents must rest assured that they will not be, and the victims must be confident that they will get the justice. This is what a citizen of the democratic country like India, governed by Rule of Law would legitimately expect from the Courts. The Courts are called the 'Temple of Justice'. However, often brazen attempts are being made to abuse and misuse

the process of law by committing frauds on Courts. This is one of such cases where such an attempt has been made to pollute the stream of justice. With this little Preface let us deal with the facts of the case.

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31. People repose immense faith in Judiciary, and the Bar being an integral part of the Justice delivery system, has been assigned a very crucial role for preserving the independence of justice and the very democratic set up of the country. The legal profession is perceived to be essentially a service oriented, noble profession and the lawyers are perceived to be very responsible officers of the court and an important adjunct of the administration of justice. In the process of overall depletion and erosion of ethical values and degradation of the professional ethics, the instances of professional misconduct are also on rise. There is a great sanctity attached to the proceedings conducted in the court. Every Advocate putting his signatures on the Vakalatnamas and on the documents to be filed in the Courts, and every Advocate appearing for a party in the courts, particularly in the Supreme Court, the highest court of the country is presumed to have filed the proceedings and put his/her appearance with all sense of responsibility and seriousness. No professional much less legal professional, is immuned from being prosecuted for his/her criminal misdeeds.

WAY FORWARD TO
CORRECTIVE MEASURES

33. This is the opportune time to remind the Advocates about the Standard of Professional misconduct and Etiquettes as contained in Chapter II Part VI of the Bar Council of India Rules. As stated in the Preamble thereof, an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may still be improper for an advocate. Though an Advocate is expected to fearlessly uphold the interests of his client, his conduct must conform to the Rules of Conduct and Etiquettes laid down in the said Chapter, both in letter and in spirit.

34. The role and the duty of the Advocates particularly Advocates-on-Record are contained in Order IV of the Supreme Court Rules, 2013. The relevant part of Rule 7 Order IV of the said Rules reads as under:

“7. (a).

(b) (i) Where the vakalatnama is executed in the presence of the Advocate-on-Record, he shall certify that it was executed in his presence.

(ii) Where the Advocate-on-Record merely accepts the vakalatnama which is already duly executed in the presence of a

Notary or an advocate, he shall make an endorsement thereon that he has satisfied himself about the due execution of the vakalatnama."

36. For all the aforesaid reasons, this Court comes to a definite conclusion that the petition suffers now gross concealment of material facts. The petition is vague, no personal cause of action of the petitioners has been made out coupled with the fact that the petition suffers from concealment of material fact and is an attempt to waste the precious time of the court by resorting to filing a frivolous petition and if the State Counsel and the Gaon Sabha would not have brought the facts to the notice of the Court, the petitioners would have had a leverage by getting away with concealment and non disclosure of material facts.

37. In light of the detailed discussions, this Court finds that it is a fit case for dismissing the petition but it also is a case where exemplary cost must be imposed. Accordingly, the petition is dismissed with the cost of Rs.50,000/- to be deposited with the District Legal Aid Services Authority, Lucknow within a period of eight weeks from today.

(2024) 9 ILRA 1397
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2024

BEFORE

**THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.**

Writ -C No. 17513 of 2024

Ved Prakash & Ors. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents