SUPREME COURT OF INDIA

A.V. Papayya Sastry and Others

Vs

Government of Andhra Pradesh and Others

07.03.2007

(C. K. Thakker and L. S. Panta, JJ)

JUDGMENT

C. K. THAKKER, J.

All these appeals have been preferred by the appellants against common judgment and order passed in WAMP No. 1879 of 2001 in W.A. No. 109 of 1997, WAMP No. 1880 of 2001 in W.A. No. 292 of 1998 and Contempt Case No. 1008 of 2001. By the said order, the High Court recalled common judgment and order passed on April 27, 2000 in Writ Appeal Nos. 109 of 1997 and 292 of 1998. A direction was also issued to the authorities under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as 'the Ceiling Act') to complete proceedings within the stipulated period.

The case has a long and checkered history starting from early seventies of the last century. Appellants herein are the owners of land bearing Survey Nos. 3/1, 3/2 and 4 admeasuring 18 acres, 39 cents of Village Kancharapalem, District Visakhapatnam. It was their case that Visakhapatnam Port Trust ('Port Trust' for short) wanted to acquire land for public purpose, namely, for construction of quarters for its employees. The Chairman of the Port Trust, therefore, sent a requisition letter to the District Collector, Visakhapatnam for acquiring land admeasuring 45 acres, 33 cents of Survey Nos. 1, 2, 3 and 4 of Kancharapalem Village. Advance possession of the land of the appellants, bearing Survey Nos. 3/1, 3/2 and 4 admeasuring 18 acres, 39 cents was taken over by the Estate Manager of the Port Trust on August 29, 1972 by private negotiations. The State Authorities, thereafter, were requested by the Port Trust Authorities to take appropriate proceedings for acquisition of land under the Land Acquisition Act, 1894. According to the appellants, in the statement recorded on August 29, 1972, Akella Suryanarayana Rao stated that he had handed onver possession of the land to the Estate Manager of the Port Trust. Mr. Akella also stated that there was

a dispute regarding land with tenant Koyya Gurumurthy Reddy under Andhra Pradesh Lands Tenancy Act. It was also the case of the appellants that the Port Trust deposited with the Government the amount of compensation payable to the owners of the land. The land acquisition proposals were approved by the Port Trust as also by the Government of India.

It was further case of the appellants that a preliminary notification under sub-section (1) of Section 4 of the Land Acquisition Act was for the first time issued on August 10, 1973 but nothing further was done in the matter. The Ceiling Act came into force in the State of Andhra Pradesh on February 17, 1976. It, inter alia, covered the Visakhapatnam Urban Agglomeration. The appellants filed their declarations taking the stand that possession of land had already been handed over to Port Trust Authorities even before the Act came into force and the provisions of the Ceiling Act, therefore, would not apply to such land. In the light of the above factual position and the case of the appellants, the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam vide his order dated May 25, 1981 in C.C. No. 6143 of 1976 declared that the land- owners of Survey Nos. 3/1, 3/2 and 4 were 'non-surplus land holders'. Then the Government again issued notification under sub-section (1) of Section 4 of the Act on August 29, 1981. Urgency clause under Section 17(4) was not invoked since the possession of land was already with the Port Trust Authorities. A declaration under Section 6 was issued on October 12, 1982. No award, however, was passed.

According to the appellants, the Chief Engineer of Port Trust in reply to a query by the Land Acquisition Officer, clarified vide his letter dated December 19, 1985 that actual and physical possession of the land was not taken by Port Trust as the tenant did not vacate possession of the land. It appears that in view of the above letter that physical possession of land was not with the Port Trust Authorities, the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam referred the matter to the Commissioner, Land Reforms and Urban Land Ceiling, Government of Andhra Pradesh, Hyderabad in February, 1987 to take up the matter under Section 34 of the Ceiling Act in suo motu revision. The Collector, Visakhapatnam also vide his D.O. letter No. 433/78, dated June 27, 1987 requested the Commissioner to reopen the case and start enquiry. On August 21, 1989, Chairman, Visakhapatnam Port Trust addressed a letter to the Commissioner, Land Reforms & Urban Land Ceiling, Government of A.P. categorically stating that land admeasuring 18 acres, 39 cents of Survey Nos. 3/1, 3/2 and 4 of Kancherapalem village had already been taken over by the Port Trust and there was no cause to reopen the case under Section 34 of the Ceiling Act. Once again, the Government approved the proposal for acquisition of land and notification under Section 4(1) of the Land Acquisition Act was issued on May 17,

1991.

It appears that the proceedings for reopening of the case by invoking Section 34 of the Ceiling Act were initiated. On July 20, 1994, notice was issued to the owners to show cause as to why revisional powers should not be exercised and the order passed by the Special Officer and Competent Authority under the Ceiling Act should not be set aside. It was also stated in the notice that it was brought to the notice of the Government that title to the land was undisputedly with the declarants on the appointed day under the Ceiling Act as the Land Acquisition Proceedings were not concluded by that date. As such land was required to be computed in the holdings of the declarants even if it was admitted by the Port Trust Authorities that they were in possession of the land in 1972. The land-owners submitted the reply to the notice.

Meanwhile, however, the land-owners filed a petition being Writ Petition No. 11754 of 1994 praying therein that the High Court may direct the State Authorities to complete proceedings under the Land Acquisition Act and pass an award. During the pendency of the writ petition the revision was allowed by the State Government under Section 34 of the Ceiling Act on January 20, 1995 and the order passed by the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam declaring that the appellants had no surplus land had been set aside. The appellants, therefore, filed another petition, being Writ Petition No. 3102 of 1995 questioning the legality of the order passed in revision. The learned single Judge allowed both the petitions i.e. Writ Petition Nos. 11754 of 1994 and 3102 of 1995 and by order dated June 4, 1996 directed the authorities to complete Land Acquisition Proceedings and pass award within three months. The learned single Judge also held that the order under the Ceiling Act was passed by the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam in 1981 while suo motu revisional powers were exercised in 1994-95 i.e. after thirteen years. Such action was, therefore, illegal, unlawful and unwarranted. Accordingly, the order passed in revision was set aside. Writ appeals filed by the State were dismissed. A direction was issued by the Division Bench to fix market value on the basis of notification under Section 4(1) issued on May 17, 1991. Special Leave Petition (Civil) Nos. 14860-14861 of 2000 filed by the State Authorities were dismissed by this Court on October 20, 2000.

The State Authorities, thereafter, filed recall- applications on June 13, 2001. In the recall applications, it was stated inter alia that fraud was committed by the land-owners and material facts were suppressed by them. It was alleged that possession of land was never handed over to Port Trust Authorities, nor Port Trust Authorities received such possession of land and yet it was asserted by the owners that possession of land was given to Port Trust Authorities in 1972 which was not correct. It was only in December, 1985 that the correct fact came to the knowledge of the State Authorities from a letter by the Chief Engineer of Port Trust. Hence, the order was taken in suo motu revision under Section 34 of the Ceiling Act. It was further stated that even if the Port Trust Authorities would be deemed to be in possession of land on the day the Ceiling Act came into force, Land Acquisition Proceedings were not concluded and no award was passed. The Port Trust Authorities, in the circumstances, would be in possession of the land for and on behalf of the land-owners and the land was required to be declared surplus and vacant under the Ceiling Act.

It was further averred that the High Court ordered inquiry by the Central Bureau of Investigation (CBI) and Mr. Y. Anil Kumar, IPS, Superintendent of Police, CBI, Visakhapatnam submitted a detailed report in the High Court when the Writ Appeals were placed for hearing. Unfortunately, however, the attention of the Court was never invited to the said report which clearly revealed that there was total fraud on the part of the land-owners in collusion with Port Trust Officers as also Officers acting under the Ceiling Act. It was, therefore, submitted that the orders passed by the Division Bench on April 27, 2000 was required to be recalled by directing the authorities under the Ceiling Act to conclude proceedings.

The High Court, after hearing the learned counsel for the parties and considering the records and proceedings including the report submitted by CBI, held that the case was of a fraud and by suppressing material facts, several orders were passed and actions were taken. In view of correct and true facts and reports which clearly established that the authorities were misled, that proceedings

were initiated to revise the order, dated May 25, 1981. The Court, therefore, held that the order dated April 27, 2004 passed by the Division Bench was required to be recalled and recall applications were allowed.

The Court therefore passed the following order;

"Considering all the aspects as stated above, we are of the considered view that the recall petitions have to be allowed. Accordingly we allow the recall petitions by setting aside the common judgment passed in the aforesaid writ appeals.

We further direct that the proceedings under ULC Act have to be completed within a period of one month from the date of receipt of this order by the concerned authorities by giving opportunity to the petitioners and respondents herein to put forward their cases and after final decision is taken by the authorities under ULC Act, the further proceedings have to be initiated under Land Acquisition Act depending upon the result under the ULC Act. The proceedings under the Land Acquisition Act if initiated, compensation to be awarded to the respondents herein within a period of three months from the date of order of the authorities under the ULC Act. The Land Acquisition Officer is also directed to consider the legal date of possession of the land taken by the VPT Authorities after conclusion of the enquiry under the ULC Act".

The appellants have challenged the aforesaid order of the High Court. On August 5, 2002, notice was issued by this Court. Affidavits and counter affidavits were filed. On August 6, 2004, leave was granted and hearing was expedited and the matters were placed before us for final hearing.

We have heard learned counsel for the parties.

Mr. K.K. Venugopal, Senior Advocate, appearing for the appellants contended that the High Court committed an error in law in passing the impugned order. It was clear from the evidence on record and various communications that before the proposal was submitted by the Port Trust Authorities for acquisition of land for a public purpose (construction of quarters for its employees), advance possession of land had been taken over by Port Trust Authorities and land-owners were not in possession of the property. The said fact was noted by the Special Officer and Competent Authority, Urband Land Ceiling, Visakhapatnam and an order was passed in May, 1981 that the appellants were 'not surplus land owners'. In or about 1985, however, there appeared to be encroachment over the land and some officers of the Port Trust, with a view to save their skin, wrote a letter on December 19, 1985 that the possession of land had not been handed over to Port Trust Authorities since tenants were occupying the land. The said statement was not correct and could not have been considered for initiating proceedings under the Ceiling Act. It was also submitted by the counsel that suo motu power was sought to be exercised after a decade. As per settled law, revisional powers should be exercised within 'reasonable time'. By no stretch of imagination, more than ten years can be said to be 'reasonable time'. According to the learned counsel, learned single Judge was wholly justified in allowing both the writ petitions filed by the land-owners and in issuing directions, namely, (i) to complete land acquisition proceedings and pass award; and (ii) exercise of revisional

powers after about thirteen years was wholly unwarranted. The said order was confirmed by the Division Bench in Writ Appeals. Special Leave Petitions were also dismissed by this Court. After dismissal of Special Leave Petitions, neither it was open to the authorities to make an application for recalling earlier orders as has been done in June, 2001, nor it was permissible for the Court to grant such relief. It was also submitted that the Division Bench, while dealing with Writ Appeals took note of the fact that the land was 'agricultural land' and was having fruit bearing trees i.e. a garden land. The said finding had not been disturbed even by this Court in SLPs. The Division Bench ought to have taken into account that fact as well. By not doing so, an illegality had been committed and the order deserves to be set aside.

The learned counsel for the State Authorities as also Port Trust Authorities supported the order passed by the High Court and action of recalling of the order dated April 27, 2000. It was submitted that the authorities proceeded on the basis that advance possession of the land was given by land-owners to Port Trust Authorities in August, 1972. But the statement was not correct and the authorities were misled. The order passed by the Special Officer and Competent Authority under the Ceiling Act declaring that the owners did not possess surplus land was founded on the above statement that the land-owners were not in possession of land, which was false. But even otherwise, the order passed by the Special Officer and Competent Authority was not in consonance with law inasmuch as even if the owners were not in possession of land, proceedings under the Land Acquisition Act were not finalized. The legal position is that the ownership of the land-owners continued and in the eye of law, Port Trust Authorities remained in possession for and on behalf of the land-owners. It was, therefore, incumbent on Special Officer and Competent Authority under the Ceiling Act to declare land to be excess and surplus under the Ceiling Act so that appropriate consequential action could be taken. No such action, however, was taken. Moreover, it was made clear by the Chief Engineer, Port Trust vide his letter dated December 19, 1985 that actual and physical possession of land was never taken by Port Trust Authorities as it remained with tenants and disputes were going on. The matter, therefore, required detailed investigation.

The CBI made an enquiry and the report was submitted by the Police Inspector which revealed startling facts. From the report, it is clear that fraud was committed by the land owners in collusion with officers of the respondents. Criminal proceedings were also initiated and they are pending. It was, therefore, submitted that the High Court was right in recalling its earlier order.

Regarding non-applicability of the provisions of the Ceiling Act as the land being garden land and hence agricultural land under the Ceiling Act, it was submitted that it was never the case of the land-owners when proceedings under the Ceiling Act had been initiated that the Act would not apply because the land was used for agriculture. The sole ground put forward by the land- owners was that possession of land had already been given to Port Trust Authorities and hence the Ceiling Act had no application. It was, therefore, submitted that the appeals deserve to be dismissed and the impugned order calls for no interference.

Having given anxious consideration to the rival contentions of the parties, in our opinion, no case has been made out by the appellants for interference with the order passed by the High Court allowing the applications and recalling earlier order. The High Court has considered the matter in detail. The case of land- owners was that advance possession was taken over by Port Trust

Authorities in August, 1972. The subsequent facts and letter by Chief Engineer of Port Trust in 1985 clearly revealed that it was not so. Possession of land was never with the land owners and was not given to Port Trust Authorities. From the record it is clear that neither the land-owners nor the Port Trust Authorities were in actual or physical possession of land, but it was occupied by tenants and disputes were also going on between the tenants and land owners. Therefore, the basis on which the Special Officer and Competent Authority, Urban Land Ceiling proceeded to decide the matter was non-existent and non est.

In our opinion, the learned counsel for the respondents are also right in submitting that even if the statement of land-owners and Port Trust Authorities is believed and it is held that actual and physical possession of land was handed over by land-owners and taken over by Port Trust Authorities, it does not change the legal position. It was not the case of land-owners themselves that proceedings under the Land Acquisition Act were finalized and award was passed. From the record, it is clear that no notification under the Land Acquisition Act was issued in 1972. Such notifications were issued subsequently in the years 1973, 1981, 1991 and 1996. At more than one occasion, notifications were issued only because the proceedings were not finalized and award was not passed. It is also clear that in the writ petitions filed by the land-owners in 1994-95, a single Judge of the High Court directed the authorities to complete land acquisition proceedings by initiating fresh action commencing from issuance of notification under Section 4(1) of the Act and to complete them within a period of three months. In our opinion, therefore, the High Court was right in holding that the provisions of the Act would apply to the land and Special Officer and Competent Authority, Urban Land Ceiling was wholly wrong in excluding the land said to have been in possession of the Port Trust Authorities.

We are further of the view that the State Government, in the facts and circumstances of the case, was right in exercising revisional jurisdiction under Section 34 of the Act. Mr. Venugopal is indeed right in submitting that even though no period of limitation is prescribed for exercise of revisional jurisdiction by the State Government suo motu, such power must be exercised within a reasonable time [vide State of Gujarat v. Patel Raghav Natha, . But taking into account the facts and circumstances in their entirety and in particular, a letter of Chief Engineer, Visakhapatnam Port Trust of December 19, 1985, it cannot be said that the power had not been exercised within a reasonable period. It is also pertinent to note that the subsequent development shows as to how some of the Officers of the Port Trust were parties to fraud said to have been committed by land-owners. In this connection, the respondents are right in inviting our attention to a letter dated August 21, 1989 by the Port Trust Authorities to the Commissioner of Land Reforms stating therein that the Government intended to exercise suo motu power under Section 34 of the Act but there was no necessity to reopen proceedings and suitable directions were required to be issued to District Collector, Visakhapatnam to pass an award in respect of land sought to be acquired under the Land Acquisition Act. In view of these developments, in our opinion, the High Court was fully justified in recalling the earlier order.

The High Court has dealt with the contention regarding fraud said to have been committed by land-owners in collusion with officers of the respondents. It is stated as to how the High Court ordered CBI enquiry on prima facie satisfaction that there was a fraud and report was submitted by Mr. Y. Anil Kumar, IPS, Superintendent of Police, CBI, Visakhapatnam. In the said report, CBI had stated that possession was never taken over by the Port Trust Authorities and tenancy cases were pending.

Even if there was transfer of possession, it was in violation of the Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 which came into force on June 5, 1972. (It may be recalled that according to the land owners as well as Port Trust Authorities, possession was taken over by the Port Trust by private negotiations on August 29, 1972). CBI, therefore, observed that transfer of possession in favour of Port Trust did not constitute legal transfer under 1972 Act. CBI also noted that proceedings under the Andhra Pradesh Tenancy Act were pending.

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". 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.

In the leading case of Lazarus Estates Ltd. v. Beasley, [illegible] 1956 Indlaw CA 60 : [illegible] 1956 Indlaw CA 60 : [illegible] 1956 Indlaw CA 60, 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."

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.

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).

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.

In S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors. [illegible] : [illegible] 1994 (6) JT 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.

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)

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 he guilty of playing fraud on the court as well as on the opposite party".

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".* In Indian Bank v. Satyam Fibres (India) Pvt. Ltd., [illegible] 3 : [illegible] 3, referring to Lazarus Estates and Smith v. East Elloe Rural District Council, [illegible] 1956 AC 336 : [illegible] 1956 Indlaw HL 23 : [illegible] 1956 Indlaw HL 23, this Court stated;

"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)

In United India Insurance Co. Ltd. v. Rajendra Singh & Ors., [illegible] : [illegible] , 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.

Allowing the appeal and setting aside the orders, this Court stated;

"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because 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 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.

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.

The allegation made by the appellant Insurance Company, that 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. 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 serious miscarriage of justice". (emphasis supplied)

Mr. Venugopal, no doubt, contended that when the order passed by the earlier Division Bench was not interfered with by this Court and SLPs were dismissed, it was not open to the High Court thereafter to entertain recall-applications and grant the relief of recalling of earlier orders. According to him, such an exercise of power was unlawful and abuse of process of law. In this connection, our attention has been invited by the learned counsel to a decision of this Court in Abbai Maligai Partnership Firm & Anr. v. K. Santhakumaran & Ors., [illegible] 6 : [illegible] 6. In that case, after dismissal of Special Leave Petition by this Court, review petition was entertained by the High Court and earlier judgment was recalled. When the matter reached this Court, setting aside the order

passed by the High Court, the Court observed:

"The manner in which the learned Single Judge of the High Court exercised the review jurisdiction, after the special leave petitions against the self-same order had been dismissed by this court after hearing learned counsel for the parties, to say the least, was not proper. Interference by the learned single Judge at that stage is subversive of judicial discipline. The High Court was aware that SLPs against the orders dated 7.1.87 had already been dismissed by this court. This High Court, therefore, had no power or jurisdiction to review the self same order, which was the subject matter of challenge in the SLPs in this court after the challenge had failed. By passing the impugned order on 7.4.1994, judicial propriety has been sacrificed. After the dismissal of the special leave petitions by this court, on contest, no review petitions could be entertained by the High Court against the same order. The very entertainment of the review petitions, in the facts and circumstances of the case was an affront to the order of this Court. We express our strong disapproval and hope there would be no occasion in the future when we may have to say so. The jurisdiction exercised by the High Court, under the circumstances, was palpably erroneous. The respondents who approached the High Court after the dismissal of their SLPs by this court, abused the process of the court and indulged in vexatious litigation. We strongly depricate the manner in which the review petitions were filed and heard in the High Court after the dismissal of the SLPs by this court." (emphasis supplied)

The respondents, on the other hand, placed reliance upon Kunhayammed & Ors. v. State of Kerala & Anr., [illegible] : [illegible] 2000 (9) JT 110, wherein this Court had an occasion to consider the application of the doctrine of merger to orders passed by this Court while exercising jurisdiction under Article 136 of the Constitution. The Court there observed that exercise of jurisdiction by this Court under Article 136 is in two stages; (i) granting of a special leave to appeal; and (ii) hearing of appeal. The Court went on to observe that the doctrine of merger does not apply to first stage i.e. at the stage of granting of special leave to appeal. It applies only at the second stage of hearing of appeals. The Court in the light of above position, laid down the following principles:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. First stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and special leave petition is converted into an appeal.

(iii) Doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The

doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the apex court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties,

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by Sub-rule (1) of Rule (1) of Order 47 of the C.P.C.

In Kunhayammed, Abbai Maligai was considered and it was observed that in the facts and circumstances of that case, this Court did not approve the order passed by the High Court. The Court noted that in Abbai Maligai, this Court did not consider the doctrine of merger. According to the Court, a careful reading of Abbai Maligai "brings out the correct statement of law and fortifies us in taking the view" as taken. [see also S. Shanmugavel Nadar v. State of T.N. & Anr., [illegible] 7 : [illegible] 7.

The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, 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. 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 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.

Hence, the argument of Mr. Venugopal cannot be upheld. Even if he is right in submitting that after dismissal of SLPs, the respondent herein could not have approached the High Court for recalling its earlier order passed in April, 2000 and the High Court could not have entertained such applications, nor the recalling could have been done, in the facts and circumstances of the case and in the light of the finding by the High Court that fraud was committed by the land-owners in collusion with the officers of the Port Trust Authorities and Government, in our considered view, no fault can be found against the approach adopted by the High Court and the decision taken. The High Court, in our opinion, rightly recalled the order, dated April 27, 2000 and remanded the case to the authorities to decide the same afresh in accordance with law.

Mr. Venugopal also submitted that the Division Bench of the High Court in an order dated April 27, 2000 observed that the land being a garden land having fruit bearing trees which had been cultivated by a tenant, it did not fall within the description of 'urban land' or 'vacant land' within the meaning of Section 2(o) or 2(q) of the Ceiling Act and the said aspect had not been gone into at all by the State Government. The High Court thereafter considered the provisions of the Ceiling Act and held that the land was agricultural land and required to be excluded from the operation of the Ceiling Act.

As to the above, we may only observe that it was never the case of land-owners while filling a form under Section 6 of the Act that the provisions of the Act were not applicable to the land in question because the land was used for agriculture or horticulture purposes or that it was having fruit bearing trees. The exclusion or non- operation of the Act was sought only on the ground that the possession of the land had already been handed over to Port Trust Authorities in 1972 and hence the land cannot become subject matter of the Ceiling Act. In view of the above fact, in our opinion, the High Court was right in passing the impugned order directing the authorities to consider all aspects and pass an appropriate order in accordance with law.

Last but not the least. We are exercising jurisdiction under Article 136 of the Constitution. It is discretionary and equitable in nature.? Clause (1) of the said Article confers very wide and extensive powers on this Court to grant special leave to appeal against any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or Tribunal in India. The Article commences with a non- obstante clause, "Notwithstanding anything in this Chapter" (i.e. Chapter IV of Part V). These words are of overriding effect and clearly indicate the intention of the Framers of the Constitution that it is a special jurisdiction and a residuary power unfettered by any statute or other provisions of Chapter IV of Part V of the Constitution. It is extraordinary in its amplitude. Its limit, when it chases injustice, is the sky. Such power, therefore, may be exercised by this Court whenever and wherever justice demands intervention by the highest Court of the country.

Article 136, however, does not confer a right of appeal on any party. It confers discretion on this Court to grant leave to appeal in appropriate cases. In other words, the Constitution has not made

the Supreme Court a regular Court of Appeal or a Court of Error. This Court only intervenes where justice, equity and good conscience require such intervention.

In Baiganna v. Deputy Collector of Consolidation, [illegible] 1978 (2) SCR 509 : [illegible] ; Krishna Iyer, J. pithily stated;

"The Supreme Court is more than a Court of appeal. It exercises power only when there is supreme need. It is not the fifth court of appeal but the final court of the nation. Therefore, even if legal flaws may be electronically detected, we cannot interfere sans manifest injustice or substantial question of public importance". (emphasis supplied)

[see also V.G. Ramachandran, 'Law of Writs'; Revised by Justice C.K. Thakker & Mrs. M.C. Thakker; Sixth Edn; Vol.2; pp.1440-1528]

Keeping in view totality of facts and attending circumstances including serious allegations of fraud said to have been committed by the land-owners in collusion with officers of the respondent-Port Trust and 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.

Before parting with the matter, we may state that all the observations made by us hereinabove have been made only for the purpose of deciding the legality and validity of the order passed by the High Court. We may clarify that we may not be understood to have expressed any opinion on merits of the matter one way or the other. Therefore, as and when the matter will be considered by the authorities in pursuance of the directions of the High Court, it will be decided on its own merits without being inhibited by the observations made by us in this judgment.

For the foregoing reasons, the appeals deserve to be dismissed and are accordingly dismissed with costs.