

Before Alok Singh, J.

VIJAY PAL,—Petitioner

versus

**FINANCIAL COMMISSIONER, STATE OF HARYANA
AND OTHERS,—Respondents**

C.W.P. No. 1204 of 2009

1st August, 2011

Constitution of India, 1950 - Art. 22/227 - Revision petition allowed by Financial Commissioner on the ground that after finalization of the sanad takseem nothing remains to be done by revenue authorities - Order of Collector set aside and case remanded to Assistant Collector - Petitioners contended share alienated in his favour and according consent to partition by the seller would amount to fraud not only with the Petitioners but also with the Court.

Held, That any order or judgment obtained by playing fraud on petitioner and court would amount to nullity and can be challenged before higher authorities and in subsequent proceedings and can be challenged at any stage of the litigation. SP Changalvaraya Naidu (dead) by LR's v/s Jagannath (dead) by LR's, (1194) 1 SCC 1 and Ashwani Kumar Aggarwal v/s Smt. Kalawati, 2002 (2) PLR 236 relied upon.

(Paras 6, 7, 8)

Further held, that in view of Amarkhan & Ors. v/s State of Punjab & Ors, 2009 (1) RCR (Civil) 741 after finalization of sanad takseem Financial Commissioner as well as this Court can entertain Petition to find out whether sanad takseem was rightly prepared and finalized or not.

(Para 9)

Further held, that petition allowed. Parties directed to appear before Assistant Collector who shall proceed with partition proceedings afresh after hearing Petitioner and after affording him an opportunity to file written statement and other material and conclude proceedings within six months.

(Para 11)

Arun Singal, Advocate, for the petitioner.

Gaurav Dhir, DAG, Haryana.

S.P. Chahar, Advocate, for respondents No.5 and 6.

ALOK SINGH, J. (ORAL)

(1) Learned Financial Commissioner vide order dated 29.5.2008 has allowed the revision petition and set aside the order passed by Collector remanding the case to the Assistant Collector. Learned Financial Commissioner has allowed the revision petition on the ground that after finalization of the *sanad takseem* noting remains to be done by the revenue authorities, therefore, remand by Collector is not justified.

(2) Record reveals that Ram Parshad has sold his share to present petitioner-Vijay Pal during the pendency of the partition proceedings without disclosing him about the pendency of the partition proceedings. Ram Parshad has also not disclosed to the revenue authorities that he has alienated his share to the present petitioner-Vijay Pal; thereafter Ram Parshad has given his consent to the partition; partition proceedings were completed at the back of Vijay Pal without hearing him; Vijay Pal thereafter filed revision before the Collector. Learned Collector vide order dated 24.8.2004 has observed that Ram Parshad had already sold agricultural land of his share on 13.3.2001 in favour of Vijay Pal; he should have brought this fact to the notice of the Court below that he had sold the land of his share under partition; Ram Parshad, vendor, after selling the property in favour of Vijay Pal had wrongly given his no objection on 27.7.2001 for preparation of naksha 'Be' of the land under partition.

(3) Feeling aggrieved, an appeal was preferred by respondents No.5 and 6 herein before the Commissioner, Rohtak Division, which was also dismissed vide order dated 28.9.2006 confirming the order of remand passed by learned Collector. While confirming order of Collector, learned Divisional Commissioner has held that justice demands that Vijay Pal, who had meanwhile purchased the half share of the total lands, naturally deserved to be given hearing so that he could protect his interests.

(4) Feeling aggrieved, respondents No.5 and 6 filed revision before the learned Financial Commissioner, which was allowed by the Financial Commissioner vide impugned order dated 29.5.2008 by setting aside the remand order.

(5) Undisputedly, Ram Parshad had sold his total half share in the land in favour of present petitioner-Vijay Pal on 13.3.2001 and after 13.3.2001 Ram Parshad had no share or interest in the property in dispute. Consent by Ram Parshad to the partition after alienating his share in favour of the present petitioner-Vijay Pal would amount to fraud on Vijay Pal-petitioner as well as on the Court finalizing the partition on the basis of consent by Ram Parshad.

(6) In the opinion of this Court, if any order or judgment is obtained by playing fraud on the petitioner as well as on the Court, shall amount to nullity and can be challenged before the higher authorities as well as in the subsequent proceedings.

(7) Hon'ble Apex Court in the case of **S.P. Changalvaraya Naidu (dead) by L.Rs. versus Jagannath (dead) by L.Rs.** reported in (1) has observed as under: -

“Fraud-avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree – by the first court or by the highest court – has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

(8) Learned Single Judge of this Court in the Case of **Ashwani Kumar Aggarwal versus Smt. Kalawati** reported in (2) while relying on the dictum of Hon'ble Apex Court in the case of S.P. Changalvaraya Naidu (supra), has also held that judgment or decree obtained by fraud from any Court can be challenged at any stage in the litigation.

(1) 1994 (1) SCC 1

(2) 2002 (2) PLR 236

(9) As observed hereinabove that Ram Parshad after alienating his entire share in favour of present petitioner-Vijay Pal on 13.3.2001 had absolutely no authority to give consent to the partition. He should have disclosed to the Court hearing the partition proceedings that he had already sold the property in favour of Vijay Pal-present petitioner. By not telling the Court about the alienation of his entire share and by giving consent in favour of the partition, Ram Parshad has certainly played fraud with the collusion of private respondents No.5 and 6. Therefore, in the peculiar facts and circumstances of the case, learned Collector was well within its jurisdiction while remanding the matter. Not only this, Division Bench of this Court in the matter of **Amarkhan and others versus State of Punjab and others** reported in (3) has held that after finalization of *sanad takseem*, Financial Commissioner as well as this Court can entertain the petitioner to find out as to whether *sanad takseem* was rightly prepared and finalized or not. Learned Financial Commissioner ought to have taken into consideration that Ram Parshad after alienating his share did not disclose to the Court factum of the alienation in favour of present petitioner-Vijay Pal and has given consent to the partition with ulterior motive with the collusion of respondents No.5 and 6. Learned Financial Commissioner while hearing the revision failed to take into consideration the fraud committed by Ram Parshad to enable private respondents No.5 and 6 to get the property partitioned.

(10) In the opinion of this Court, learned Financial Commissioner has committed jurisdictional error while setting aside the remand order passed by learned Collector.

(11) Petition is allowed. Order impugned passed by learned Financial Commissioner is set aside and order dated 24.8.2004 passed by learned Collector is restored. Parties are directed to appear before the Assistant Collector, Ist Grade, on 18.8.2011. Learned Assistant Collector shall proceed with the partition proceedings afresh in accordance with law after hearing present petitioner-Vijay Pal and after affording him opportunity to file written statement and other material and shall conclude the proceedings within a period of six months thereafter.

M. Jain