

Meghmala & Ors vs G.Narasimha Reddy & Ors on 16 August, 2010

Equivalent citations: 2010 AIR SCW 5281, 2010 (8) SCC 383, (2010) 2 ORISSA LR 778, (2011) 3 CIVILCOURT 6, (2010) 7 MAD LJ 693, (2010) 6 ANDHLD 1, (2010) 8 SCALE 237, 2010 (3) SCC (CRI) 878, 2010 (4) KCCR SN 129 (SC)

Author: B.S. Chauhan

Bench: B.S. Chauhan, P. Sathasivam

Reportabl

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 6656-6657 of 2010
(Arising out of SLP (C) Nos. 14447-14448 of 2007)

Meghmala & Ors.

..Appellants

Versus

G. Narasimha Reddy & Ors.

..Respondents

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. Judicial pronouncements unlike sand dunes are known for their stability/finality. However, in this case, in spite of the completion of several rounds of litigation upto the High Court, and one round of litigation before this Court, the respondents claim a right to abuse the process of the Court with the perception that whatever may be the orders of the High Court or this Court, inter-se parties the dispute shall be protracted and will never come to an end.

3. These appeals have been preferred against the Judgment and Order dated 26.04.2007 of the High Court of Andhra Pradesh, at Hyderabad, passed in Writ Petition Nos. 19962-19963 of 2006, by which the High Court has allowed the said petitions against the Judgment and order of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter called, "Act 1982"), dismissing the review application No. 397/2005 in LGC No. 76/1996 and in LGCSR 357/2005.

4. Facts and circumstances giving rise to the present cases are as under :-

(A) V. Ram Chandra Reddy and his brother (vendors) had a huge chunk of land and a part of it could have been the subject matter of the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter called the Act 1976). The said vendors entered into an agreement to sell dated 23.01.1976 for selling a part of the land (hereinafter called 'suit land') to a cooperative society namely, Gruha Lakshmi Cooperative Housing Society Ltd. (hereinafter called, "the Society"). The vendors, V. Ram Chandra Reddy and his brother executed a sale deed in favour of A. Sambashiva Rao (hereinafter called the appellant/applicant) which was registered on 21.05.1980 vide document No. 4758/80 and the appellants were put in possession of the suit land.

(B) The appellant/applicant- vendee filed LGC No. 76/1996 against the respondents under the provisions of the Act, 1982 alleging that he had been working in Andhra Pradesh State Road Transport Corporation and was mostly out of station, and the respondents had forcibly grabbed his land and raised construction thereon. Thus, he sought the relief of their dispossession and action against them under the provisions of the Act, 1982. (C) After complying with the requirements of the statutory provisions i.e. taking the sanction etc., the respondents were issued a show cause notice. The respondents filed their reply submitting that in respect of the suit land, there was an agreement to sell, dated 23.01.1976, in favour of the society and once such an agreement to sell had been executed, vendors had no right to transfer the land in favour of the appellant/applicant. The society had allotted the suit land in their favour, therefore, the application was liable to be rejected.

(D) The Special Court after appreciating the evidence, vide Judgment and order dated 4.11.1997 came to the conclusion that the appellant/applicant was the owner of the suit land and that the respondents had no right, title or claim over the suit land. They had forcibly occupied the land and they were land grabbers, thus, they were liable to be evicted and orders for that purpose were passed.

(E) Being aggrieved by the order of the Special Court dated 4.11.1997, the respondents preferred writ petition No. 33572/1997 before the High Court of Andhra Pradesh, which was dismissed vide Judgment and Order dated 3.07.2001.

(F) Being aggrieved by the order of the High Court, the respondents preferred Special Leave Petition (c) No. 18218/2001 before this Court, which was dismissed as withdrawn vide order dated 2.11.2001 giving liberty to the respondents to file review petition before the High Court. (G) The respondents filed review petition No. 31506/2002 before the High Court. However, the said review petition was dismissed by the High Court vide order dated 16.12.2002.

(H) In the intervening period, when the review petition was pending before the High Court, the appellant/applicant filed execution proceedings by moving IA No. 518/2002. The Respondents also moved an application to summon the record of the Revenue Divisional Officer, Secundrabad, pertaining to the survey of the suit land along with an application for the stay of Execution proceedings. The Special Court vide order dated 7.11.2002 allowed the Execution Application filed

by the appellant/applicant but dismissed the application filed by respondents directing the Revenue Divisional Officer to implement the order dated 4.11.1997. (I) The respondents being aggrieved by the common order dated 7.11.2002, filed writ petition nos. 22953 and 23105 of 2002, which were, dismissed by the High Court vide order dated 17.12.2002. (J) In pursuance of the order in Execution Proceedings dated 7.11.2002, the appellants were put into possession of the suit land on 16.12.2002. (K) The respondents being aggrieved by the order of the High Court dated 17.12.2002, preferred review petitions before the High Court, which were dismissed by the Court vide order dated 17.11.2003.

(L) The respondents filed Review Application no. 397/2005 in LGC No. 76 after an inordinate delay, seeking review of the order dated 4.11.1997. The respondents subsequently filed an application in LGCSR No. 357/2005 before the Special Court for fresh declaration that they were the owners and that the appellants, who had succeeded throughout the litigation, were the land grabbers. The respondents in the said application impleaded persons other than the appellant/applicant also, i.e. the vendors of the appellant/applicant and govt. officials etc., who are the other appellants in these cases. The Special Court dismissed the said applications vide orders dated 6.7.2006 and 11.7.2006.

(M) The respondents, being aggrieved by both the orders, filed Writ Petition Nos. 19962 and 19963 of 2006, which have been allowed by the High Court vide impugned Judgment and order dated 26.04.2007, directing the Special Court to decide both the applications afresh on merit, as in the opinion of the High Court, the applications required certain inquiry on factual matters and the claim of the respondents could not have been rejected merely on the determination and attaining finality of orders in earlier proceedings. Hence, these appeals.

5. Sh. P. Vishwanatha Shetty, learned senior counsel appearing for the appellants, has submitted that even if there was an agreement to sell by the vendor of the appellants in favour of the society, such an agreement did not confer any title in the suit land in their favour. The respondents had not been the members of the said Society, nor had any allotment ever been made by the Society in their favour. The earlier proceedings came to an end after having several rounds of litigation upto the High Court and one round upto this Court. The orders passed therein attained finality and in pursuance of the same, the appellant/applicant came into possession of the suit land. Issues of fraud and identification of land had been in issue in some of the earlier proceedings. Once the respondents had approached this Court, the question of entertaining the review petition after an inordinate delay of 7-8 years does not arise. The respondents have no locus standi to ask the Special Court to determine under what circumstances the appellant/applicant had obtained the suit land. An application to call for certain records in respect of the suit land from 1972 to 2002, the survey reports etc. cannot be made by them. The High Court has gravely erred in interfering with the orders of the Special Court rejecting both the applications. Thus, the appeals deserve to be allowed.

6. Per contra, Sh. M.V. Durga Prasad, learned counsel appearing for the respondents submitted that the transfer of land in favour of the appellant/applicant vide registered sale deed dated 21.05.1980 was itself a fraudulent transaction and material in this regard was suppressed from the Special Court while obtaining the orders in their favour. Fraud vitiates everything. The respondents have raised the issue of the identification of the suit land. Thus, the applications filed by the respondents

were maintainable and the High Court has rightly reversed the orders passed by the Special Court. The appeals lack merit and no interference is warranted by this Court.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

Admittedly, there is a registered sale deed in favour of the appellant/applicant dated 21.05.1980 and there may be an agreement to sell in favour of the society dated 23.01.1976. It is settled legal proposition that an agreement to sell does not create any right, or title in favour of the intending buyer. The Society did not file suit for specific performance against the vendors prior to the execution of sale deed in favour of the appellant/applicant on 21.05.1980. The Special Court, after appreciating the entire evidence on record, came to the conclusion that the appellant/applicant was the owner and was in actual physical possession of the land and that the respondents had grabbed the said land. The Special Court has observed as under :-

"In the cross-examination, RW1 (respondent No.1 herein) had to admit that they have not filed any document to show that the said plot was allotted in their favour by the society and that they have not filed any document to show that they are the members of the said society. He also admitted that without any municipal sanction or permission, they raised the construction in the scheduled land."

The Special Court further held that the respondents were land grabbers within the meaning of the Act, 1982 and thus, they were directed to restore the premises to the appellant/applicant. These findings of fact had been affirmed upto the High Court.

8. The record of the case reveals that respondents have filed review petitions before the Special Court as well as before the High Court. However, all the applications had been dismissed by the Courts concerned. The respondents again filed an application seeking review of the order dated 4.11.1997. Section 17-A of the Act, 1982 provides that in order to prevent the miscarriage of justice, a review application can be entertained on the grounds that the order has been passed under a mistake of fact, ignorance of any material fact or an error apparent on the face of law. Limitation for filing the review application before the Special Court has been prescribed under Rule 18 of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988, as 30 days from the date of the order of which the review is sought. The respondents had earlier challenged the said order dated 4.11.1997 before the High Court, as well as before this Court. Review petitions had been filed before the Special Court, as well as before the High Court. Thus, question does arise as to whether it is permissible for a litigant to file a review application after approaching the superior forum/court. Review - After approaching the Higher Forum:-

9. In M/s. Kabari Pvt. Ltd. Vs. Shivnath Shroff & Ors. AIR 1996 SC 742, this Court had taken a view that the court cannot entertain an application for review if before making the review application, the superior court had been moved for getting the self-same relief, for the reason that for the self-same relief two parallel proceedings before the two forums cannot be taken.

10. In *State of Maharashtra & Anr. Vs. Prabhakar Bhikaji Ingle* AIR 1996 SC 3069, this Court held that when a special leave petition from the order of the Tribunal was dismissed by a non-speaking order, the main order was confirmed by the Court. Thereafter, the power of review cannot be exercised by the Tribunal as it would be "deleterious to the judicial discipline".

11. Same view has been reiterated by this Court in *Raj Kumar Sharma Vs. Union of India* (1995) 2 Scale 23; *Sree Narayana Dharmasanghom Trust Vs. Swami Prakasananda & Ors.* AIR 1997 SC 3277; *K. Ajit Babu & Ors. Vs. Union of India & Ors.* (1997) 6 SCC 473; and *Gopabandhu Biswal Vs. Krishna Chandra Mohanty & Ors.* AIR 1998 SC 1872.

12. In *Abbai Maligai Partnership Firm & Anr. Vs. K. Santhakumaran & Ors.* AIR 1999 SC 1486, a three Judge Bench of this Court considered the issue afresh and held that filing of the review petition after dismissal of the special leave petition by it against the self-same order amounted to an abuse of process of the court and the entertainment of such a review application was in affront to its order and it was subversive of judicial discipline.

13. In *Kunhayammed & Ors. Vs. State of Kerala & Anr.* AIR 2000 SC 2587, a three Judge Bench of this Court reconsidered the issue and all above referred judgments and came to the conclusion that dismissal of special leave petition in limine by a non-speaking order may not be a bar for entertaining a review petition by the court below for the reason that this Court may not be inclined to exercise its discretion under Article 136 of the Constitution. The declaration of law will be governed by Article 141 where the matter has been decided on merit by a speaking judgment. In that case doctrine of merger would come into place and lay 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. The 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 the 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 the 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.

14. The Court came to the conclusion that where the matter has been decided by a non-speaking order in limine the party may approach the High Court by filing a review petition.

Similar view has been reiterated in *National Housing Coop. Society Ltd. Vs. State of Rajasthan & Ors.* (2005) 12 SCC 149.

15. In *K. Rajamouli Vs. A.V.K.N. Swamy* AIR 2001 SC 2316, this Court considered the ratio of the judgment in *Kunhayammed* (supra); and *Abbai Maligai Partnership Firm* (supra) and held that if a review application has been filed before the High Court prior to filing the special leave petition before this Court and review petition is decided/rejected, special leave petition against that order of review would be maintainable. In case the review application has been filed subsequent to dismissal of the special leave petition it would amount to abuse of process of the court and shall be governed by the ratio of the judgment in *Abbai Maligai Partnership Firm* (supra). The said judgment has been approved and followed by this Court in *M/s. Green View Tea & Industries Vs. Collector, Golaghat, Assam & Anr.* AIR 2004 SC 1738.

16. In *Kumaran Silk Trade (P) Ltd. Vs. Devendra* AIR 2007 SC 1185, this Court held as under :-

"As a matter of fact at the earlier stage this Court did not consider the question whether one of the appeals against the order dismissing the Review Petition on merits was maintainable. At best the order of remand and the decision in Kunhayammed & Ors. v. State of Kerala & Anr. (2000) 6 SCC 359 would enable the petitioner to get over the ratio of the three Judge Bench decision in Abbai Maligai Partnership Firm & Anr. v. K. Santhakumaran & Ors. (1998) 7 SCC 386 that the seeking of a review after the petition for special leave to appeal was dismissed without reserving any liberty in the petitioner was an abuse of process."

17. Thus, the law on the issue stands crystallized to the effect that in case a litigant files a review petition before filing the Special Leave Petition before this Court and it remains pending till the Special Leave Petition stands dismissed, the review petition deserves to be considered. In case it is filed subsequent to dismissal of the Special Leave Petition, the process of filing review application amounts to abuse of process of the court.

18. In view of the above, we are of the considered opinion that filing of such a review application by the respondents at a belated stage amounts to abuse of process of the Court and such an application is not maintainable. Thus, the High Court ought not to have entertained the writ petition against the order of dismissal of the review application by the Special Court and the order of the High Court to that extent is liable to be set aside.

19. So far as the other application filed by the respondents before the Special Court is concerned, it is based on the grounds that earlier judgment and order had been obtained by the appellant/applicant suppressing material facts and the suit land had not been identified properly, and therefore, the judgment of the Special Court duly affirmed by the High Court stood vitiated.

Fraud/Misrepresentation: -

20. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent Authority, such order cannot be sustained in the eyes of law.

"Fraud avoids all judicial acts ecclesiastical or temporal." (Vide S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors. AIR 1994 SC 853). In Lazarus Estate Ltd. Vs. Besalay 1956 All. E.R. 349), the Court observed without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

21. In Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills & Anr. AIR 1994 SC 2151; and State of Maharashtra & Ors. Vs. Prabhu (1994) 2 SCC 481. this Court observed that a writ Court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and sub-letties invented to evade law."

22. In Smt. Shrisht Dhawan Vs. M/s. Shaw Brothers. AIR 1992 SC 1555, it has been held as under:-

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

23. In United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors. AIR 2000 SC 1165, this Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

24. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in such circumstances the Court should not perpetuate the fraud. (See District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram & Anr. Vs. M. Tripura Sundari Devi (1990) 3 SCC 655; Union of India & Ors. Vs. M. Bhaskaran (1995) Suppl. 4 SCC 100; Vice Chairman, Kendriya Vidyalaya Sangathan & Anr. Vs. Girdharilal Yadav (2004) 6 SCC 325; State of Maharashtra v. Ravi Prakash Babulalsing Parmar (2007) 1 SCC 80; Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Company AIR 2007 SC 2798; and Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr. (2009) 8 SCC 751).

25. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. (Vide Dr. Vimla Vs. Delhi Administration AIR 1963 SC 1572; Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550; State of Andhra Pradesh Vs. T. Suryachandra Rao AIR 2005 SC 3110; K.D. Sharma Vs. Steel Authority of India Ltd. & Ors. (2008) 12 SCC 481; and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir & Ors. (2008) 13 SCC 170).

26. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu (*supra*); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi & Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr. AIR 2004 SC 2836).

27. In *kinch Vs. Walcott* (1929) AC 482, it has been held that "...mere constructive fraud is not, at all events after long delay, sufficient but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury."

Thus, detection/discovery of constructive fraud at a much belated stage may not be sufficient to set aside the judgment procured by perjury.

28. From the above, it is evident that even in judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the questions of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

29. The instant case required to be examined in the light of the aforesaid settled legal propositions.

The case of the respondents has been that transfer by the vendor in favour of the appellant was not genuine. Material information had been suppressed from the Special Court. More so, there was no proper identification of the suit land in the earlier litigation. The reports submitted in this regard were not correct.

30. Respondents have never been able to show as under what circumstances they are interested in the suit land because before the Special Court in the first round they failed to show any document that land had ever been transferred by the tenure holders/owners in favour of the Society or the Society had made any allotment in their favour or they were member of the said Society or they obtained any sanction from statutory authority to raise the construction.

Shri M.V. Durga Prasad, Ld. Counsel appearing for the said respondents was repeatedly asked by us to show any document on record linking the said respondents with the suit land. Though, he argued for a long time, raised large number of issues but could not point out a single document which may reflect that respondents could have any claim on the suit land. Therefore, we are of the considered opinion that the application at their behest was not maintainable.

31. The issue of mis-representation/fraud, suppression of material fact and identification of land had been in issue in earlier review petitions before the Special Court and in the Writ Petitions before the High Court. In this regard, the Special Court in execution proceedings was fully satisfied regarding the identity of land on the basis of revenue record and came to the conclusion that there was no mis-representation or fraud on the part of the appellant/applicant. The order of the Special Court dated 11th July, 2006 made it clear that all these issues had been agitated in earlier proceedings. The Special Court has held as under:

"The applicants herein as contended in this L.G.C. have filed IA No.869/2002 for stay of proceedings and IA No. 861/2002 for summoning the record in File No.B/9815/97 from the office of the Revenue Divisional Officer on the ground of alleged fraud played by the Mandal Revenue Officer and the Mandal Surveyor. Those petitions were heard at length and were dismissed holding that the alleged fraud as contended by the applicants herein was not made out and the property which is the subject matter of L.G.C. No.76/96 should be delivered to the respondents herein by evicting the applicants. As mentioned already, in execution of the said order,

applicants herein were evicted and possession was delivered to the respondents.

Admittedly, the common order passed in IA Nos.

518/2002, 861/2002 and 869/2002, by this Court was questioned by the applicants herein by filing Writ Petitions before the Hon'ble High Court of A.P. and the same was also dismissed holding that the applicants herein are trying to protract the litigation and to delay the delivery of possession of the property in question to the respondents."(emphasis added)

32. In another case decided by the Special Court vide order dated 6th July, 2006 the Court had taken note of the pleadings in respect of identification of land and mis-representation/fraud/collusion in the earlier proceedings and the observations made by the Writ Court in its order dated 17th December, 2002 that the said respondents were interested in protracting the litigation and obstructing the implementation of the order of the Special Court dated 4.11.1997. The said order had been passed in Application No. 51 of 2002 where one of the main grounds had been that the appellant/applicant had played fraud in obtaining the said order as is taken note of in paragraph 13 of the said order by the Special Court. The Special Court also took note of earlier direction to the Revenue Divisional Officer to identify the land and possession of the same was delivered to the decree holder. The said order was under challenge before the High Court in Writ Petition Nos. 22953/2002 and 23105/2002 wherein pleading of the alleged fraud and mis-identification of suit land were taken. The Special Court came to the conclusion that there was no suppression of any fact by the revenue authorities or the court was misled at the time of obtaining such orders.

33. There is a registered sale deed dated 21.5.1980 in favour of the appellant/applicant. Nobody has ever filed any application before the competent court to declare said sale deed as null and void. Respondents have no right or interest in the suit property. The Society claimed to have an agreement to sell in its favour which did not confer any title in favour of the Society. A finding of fact had been recorded in earlier proceedings that the appellant/applicant was in actual physical possession of the land and he was illegally/forcibly dispossessed by the respondents. Forcible dispossession:-

34. Even a trespasser cannot be evicted forcibly. Thus, a person in illegal occupation of the land has to be evicted following the procedure prescribed under the law. (Vide Midnapur Zamindary Co. Ltd. Vs. Naresh Narayan Roy AIR 1924 PC 124; Lallu Yeshwant Singh Vs. Rao Jagdish Singh & Ors. AIR 1968 SC 620; Ram Ratan Vs. State of U.P. AIR 1977 SC 619; Express Newspapers Pvt. Ltd. & Ors. Vs. Union of India & Ors. AIR 1986 SC 872; and Krishna Ram Mahale Vs. Mrs. Shobha Vankat Rao AIR 1989 SC 2097) .

35. In Nagar Palika, Jind Vs. Jagat Singh AIR 1995 SC 1377, this Court observed that Section 6 of the Specific Relief Act 1963 is based on the principle that even a trespasser is entitled to protect his possession except against the true owner and purports to protect a person in possession from being dispossessed except in due process of law.

36. Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. Government can resume possession only in a manner known to or recognised by law and not otherwise. (Vide *Bishan Das Vs. State of Punjab* AIR 1961 SC 1570; *Express Newspapers Pvt. Ltd. (supra)*; *State of U.P. & Ors. Vs. Maharaja Dharmander Prasad Singh & Ors.* AIR 1989 SC 997; and *State of West Bengal & Ors. Vs. Vishnunarayan & Associates (P) Ltd. & Anr.* (2002) 4 SCC 134).

37. The forcible eviction of the appellant/applicant by the respondents was unwarranted and unlawful. Proceedings had been initiated under the Act, 1982. It is a special Act to prevent illegal activities of land grabbing. The Legislature, in its wisdom, constituted a Special Court presided over by a person who is or eligible to be the Judge of the High Court, and consisting of the Members who are or eligible to become District Judge and District Collector. Therefore, persons having enough experience and who have acquired a higher status have been given responsibility to adjudicate upon the disputes under the Act 1982. That Special Court has been conferred with the powers of Civil or Criminal Courts.

As per the provisions of Section 10 of the Act 1982, the burden of proof is on the accused to prove that he is not guilty. Thus, it is not like any other criminal case where accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right, however, subject to the statutory exceptions, the said principle forms the basis of Criminal Jurisprudence. For this purpose, the nature of offence, its seriousness and gravity thereof has to be taken into consideration. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988; and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. Thus, the Legislature has adopted a deviating course from ordinary criminal law shifting the burden on the accused to prove that he was not guilty. The High Court while deciding these cases has not considered the issue of the locus standi of the respondents to maintain the application for eviction of the appellant/applicant. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution.

38. In view of the above factual position, we reach the following conclusions:

(i) There has been a registered sale deed in favour of the appellant/applicant by the vendors which was registered on 21.5.1980 and he was put in possession.

(ii) Prior to the execution of the said sale deed there has been an agreement to sell dated 23.1.1976 in favour of the Society.

(iii) In respect of the said agreement to sell the litigation remained pending before the Civil Court but there is nothing on record to show as to what had been its outcome.

(iv) An agreement to sell did not confer any right on the Society, though the appellant acquired the title over the suit land by execution and registration of the sale deed dated 21.5.1980.

(v) The respondents had not been the members of the Society nor Society made any allotment in their favour.

(vi) Before the Special Court, the respondents could not show as under

what circumstances they could stake their claim on the suit land and no document worth the name could be shown which may link them to the suit land.

(vii) Respondents grabbed the suit land forcibly and raised a construction without any authorisation.

(viii) In spite of our repeated queries, learned counsel for the respondents could not point out a single document on record to show that they could have any right, interest or title in the suit land.

(ix) The litigation completed several rounds before the High Court and this is the second round of litigation before this Court.

(x) All the courts proceedings reveal that after proper adjudication the declaration had been made that suit land belonged to the appellant/applicant and respondents were merely land grabbers.

(xi) In earlier review petitions filed by the respondents before the Special Court and further taking the matter to the High Court in Writ Petitions and Review Applications before the High Court the issue of mis-

representation/fraud/collusion and mis-identification of the suit land had been raised but they could not succeed.

(xii) In execution proceedings, the appellant/applicant succeeded and came in possession of the suit land in 2002.

(xiii) Respondents filed frivolous application raising the issue of fraud and mis-identification of the suit land which had earlier been adjudicated upon. The review application was filed at much belated stage.

(xiv) The review application was certainly not maintainable as the respondents had approached the higher forum and it merely amounted to abuse of process of the court.

(xv) The respondents had been interested only to protract the litigation by one way or the other.

(xvi) Fresh proceedings taken by the respondents before the Special Court in fact, is tantamount to malicious prosecution.

39. The High Court failed to take all aforesaid factors into consideration before passing impugned judgment and order.

40. In view of the above, we are of the considered opinion that judgment and order of the High Court impugned herein, is not sustainable in the eyes of law. The appeals are allowed. The judgment of the High Court dated 26.4.2007 is set aside and the judgments and orders dated 6.7.2006 and 11.7.2006 passed by the Special Court are restored. No costs.

.....J.
(P. SATHASIVAM)

New Delhi,
August 16, 2010

.....J.
(Dr. B.S. CHAUHAN)