

Shree Vinayak Buildcon Through ... vs Special Secretary (Appeals), Revenue ... on 29 July, 2022

Author: Sangeeta K. Vishen

Bench: Sangeeta K. Vishen

C/SCA/11525/2022

ORDER DATED: 29/07/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11525 of 2022

With

R/SPECIAL CIVIL APPLICATION NO. 11565 of 2022

With

R/SPECIAL CIVIL APPLICATION NO. 11577 of 2022

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SHREE VINAYAK BUILDCON THROUGH BHARATBHAI BABULAL PATEL

Versus

SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT

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Appearance:

MR VIMAL A PUROHIT(5049) for the Petitioner(s) No. 1

for the Respondent(s) No. 10,11,12,13,14,15,16,17,18,2,3,4,5,6,7,8

MR JAYNEEL PARIKH, AGP for the Respondent(s) No. 1

MR MEHUL S SHAH, SENIOR ADVOCATE WITH MR HENIL M

SHAH(10677) for the Respondent(s) No. 9

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CORAM:HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 29/07/2022

COMMON ORAL ORDER

As the challenge in all these writ petitions is common, the petitions are heard together and decided by this common order.

2. The petitioner, is aggrieved by the order dated 31.5.2022, passed by the learned Special Secretary, Revenue Department (Appeals) (hereinafter referred to as the 'learned Secretary') whereby, the order dated 16.3.2020 of the Collector, Vadodara granting non-agricultural permission (hereinafter referred to as the 'NA permission'), has been quashed and set aside.

3. The issue is with respect to the land bearing survey nos.410/A, 410/B and 411 admeasuring 2433, 988 and 926 sq. mtrs. (total admeasuring 4347 sq. mtrs.) (hereinafter referred to as the 'subject land'). Factual matrix of this case is that the petitioner, by executing a registered sale deed and after making payment of full sale consideration, has purchased the subject land from its original owner, that is, respondent nos.10 to 18 (hereinafter referred to as the 'original owners'). According to the

petitioner, after verifying the C/SCA/11525/2022 ORDER DATED: 29/07/2022 revenue record and the title, which reflected no infirmity that the petitioner entered into the sale transaction. Necessary entries were mutated and certified in favour of the petitioner, reflecting the name of the petitioner in the revenue record.

3.1. The subject land was originally of a restricted tenure which, led to the filing of an application by the original owners before the District Collector, with a request to remove the restrictions. The Collector, passed an order dated 11.2.2020, converting the subject land as well as other lands from new tenure, to old tenure on certain terms and conditions. As per condition no.2, within a period of six months from the date of the order, NA permission under Section 65 of the Gujarat Land Revenue Code, 1879 (hereinafter referred to as 'the Code') was required to be obtained. Original owners, therefore, submitted an online application, seeking NA permission, which according to the petitioner, came to be granted vide order dated 16.3.2020. Subsequent thereto, the petitioner executed a registered sale deed dated 21.10.2020, purchasing the subject land with all right, title and interest.

3.2. It is also the case of the petitioner that the objection to the order dated 16.3.2020 of the Collector granting NA permission, was raised by the respondent no.9 (hereinafter referred to as the 'private respondent'). The basis for raising the objection, was dispute between the original owner on one hand and the private respondent on the other. Suit was filed for specific performance for the agreement to sell in the year 1993, which was decreed by the Civil Court vide judgment dated 12.10.2012. The said judgment and decree was thereafter challenged before this Court; which is registered as First Appeal no.3957 of 2012. Vide order dated 10.1.2014, the First Appeal, has been admitted without grant of any interim relief or stay in favour of the private respondent.

C/SCA/11525/2022 ORDER DATED: 29/07/2022 3.3. It is the case of the petitioner that the Collector, while passing the order dated 16.3.2020 granting NA permission, had called for the opinions from the respective offices and it is only thereafter that the said permission was granted. The petitioner, applied for development permission from Vadodara Urban Development Authority and had put the scheme of residential - cum - commercial complex over the subject land in the name and style of 'Safal Vihaan'. The order dated 16.3.2020 was challenged by the private respondent before the learned Secretary vide Revision Application no.MVV/BKhp/VDD/23/2020 who, has passed an order dated 31.5.2022, allowing it and thereby, the order dated 16.3.2020 of the Collector, granting NA permission, has been quashed and set aside. Hence, the present writ petition.

4. Mr Vimal Purohit, learned advocate appearing for the petitioner, submitted that the petitioner is aggrieved by the order dated 31.5.2022, which has been passed by the learned Secretary, cancelling the NA permission. It is submitted that the Collector, has passed the order dated 16.3.2020; whereas, the appeal was filed on 17.9.2021, which is after a period of 18 months. It is submitted that the revision application, with such a delay, could not have been entertained by the learned Secretary. While inviting the attention of this Court to the earlier round of litigation, it is submitted that the petitioner had approached this Court, and this Court, while disposing of the writ petition, has given the liberty in favour of the petitioner to file an application, raising all the contentions available in law and further direction to the learned Secretary to decide those contentions. It is

submitted that the petitioner has raised contentions as regards the delay and the locus of the private respondent but, without dealing with those contentions, the learned Secretary, has passed the order, allowing the revision C/SCA/11525/2022 ORDER DATED: 29/07/2022 application and cancelling the order of the Collector, granting NA permission. It is submitted that the learned Secretary, has not adhered to or acted in tune with the assurance extended by the learned Assistant Government Pleader before this Court and recorded in the order dated 17.3.2022. It is therefore, submitted that neither the delay nor the locus of the petitioner has been decided.

4.1. It is submitted that the private respondent, is raising the objection on the strength of the agreement to sell which, was the subject matter of the suit filed before the Civil Court, which came to be rejected on the ground that the private respondent is not ready for the specific performance. It is submitted that the judgment of the Civil Court, has been challenged before this Court by way of First Appeal which, though have been admitted, no stay or protection has been granted in favour of the private respondent. It is therefore, submitted that the private respondent has no locus to raise any objection inasmuch as, he is yet to establish his right over the subject land. In absence of any right or order of injunction in his favour, it would be impermissible for him to raise any objection in the proceedings under Section 65 of the Code for grant of NA permission.

4.2. It is next submitted that if one is to go by the language of Section 65 of the Code, it is by now well settled that the keyword in Section 65 is the 'occupant of the land' and it is sufficient for the purpose of Section 65 that the person applying for NA permission, is an occupant of the land. It is submitted that the petitioner, has acquired the ownership by virtue of the registered sale deed and therefore, stands on a higher pedestal. As against this, objection by the private respondent, who is yet to prove his right, title or interest over the properties, will have no locus to raise any objection. The C/SCA/11525/2022 ORDER DATED: 29/07/2022 locus of the private respondent, was the issue which, goes to the root of the matter and therefore, the learned Secretary ought to have decided it first. Having not decided the same, the learned Secretary, has committed an error in passing the order dated 31.5.2022. Therefore, the order of the learned Secretary, is erroneous, unjust and requires to be quashed and set aside.

4.3. It is submitted that the petitioner, is a bona fide purchaser, having purchased the subject land by executing a registered sale deed from the original owners by making full payment. It is submitted that the petitioner, being a partnership firm, has purchased the subject land as a non-agricultural land after verifying the revenue record which, reflected no infirmity and title over the land in question. Since it was clear and marketable, that the sale deed came to be executed by the petitioner and after the execution of the sale deed in favour of the petitioner, necessary entries were posted in the revenue record. The petitioner, even applied for development permission and since was desirous of developing the subject land, the permission was granted. However, the objection has been raised by the private respondent, who has no locus, and that after a period of almost 18 months. It is therefore, submitted that such initiation of the proceedings by the private respondent, was beyond the reasonable period. Therefore, the order dated 31.5.2022 passed by the learned Secretary, suffers from inherent illegality because, the revision application, was filed at the behest of the third party, who had not locus.

4.4. It is further submitted that the reason, which weighed with the learned Secretary for cancelling the order dated 16.3.2020 was that in the application filed by the original owners, the information which they were obliged to furnish, was not furnished. A false statement was made on the affidavit. It is submitted that the said alleged C/SCA/11525/2022 ORDER DATED: 29/07/2022 infirmity, was at the behest of the vendors of the petitioner and not the petitioner, who is now the owner and occupier of the subject land, being a bona fide purchaser by executing a registered sale deed. Under the circumstances, the petitioner cannot be penalised for any infirmity, which has been committed or was at the behest of the original owners.

4.5. It is further submitted that no action was taken within a period of three months, which is treated to be a reasonable period for cancelling the NA permission. The said issue has been settled by the Apex Court in the case of State of Gujarat vs. Patil Raghav Natha reported in (1969) 2 SCC 187. It is submitted that it is by now well settled that the reasonable period for cancelling the NA permission, would be three months. It is submitted that so far as the initiation of action within a reasonable time within which action is permitted, the Apex Court has held and observed that Section 65 indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months, the permission applied, shall be deemed to have been granted. The section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. It has been held and observed that reading Sections 211 and 65 together, the Commissioner shall exercise his revisional powers within a few months of the order of the Collector. Since, that would be the reasonable time, because after the grant of the permission for building purposes, the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission.

C/SCA/11525/2022 ORDER DATED: 29/07/2022 4.6. It is submitted that the order has been passed by the learned Secretary, without condoning the delay of 18 months, straightaway on the merits which, has curtailed the right of the petitioner and therefore also, the order, is illegal, unjust and bad in law. Reliance is placed on the judgments of the Apex Court as well of this Court in the cases of - (i) Kalpesh Natwarlal Patel vs. State of Gujarat reported in 2009 (3) GLR 372; (ii) Bhayabhai Vajshibhai Hathalia vs. State of Gujarat, reported in 2012 (2) GLR 1741; (iii) Tusharbhaj Harjibhai Ghelani vs. State of Gujarat, reported in 2019 (4) GLR 2578; (iv) SJS Business Enterprises (P) Ltd. vs. State of Bihar, reported in (2004) 7 SCC 166; (v) Arunima Baruah vs. Union of India, reported in (2007) 6 SCC 120; (vi) Shrisht Dhawan vs. Shaw Brothers, reported in (1992) 1 SCC 534; (vii) Brij Mohan Gupta vs. Registrar of Societies, reported in 2012 LawSuit (Del) 4470; (viii) Dashrathbhai Ambalal Patel vs. Priyalaxmi Co-operative Estate Ltd. passed in Special Civil Application no.27413 of 2007; (ix) Gagandeep Pratishthan Pvt. Ltd. vs. Mechano, reported in 2002 (1) SCC 475; (x) Jasvantbhai Chhanubhai vs. Adesinh Mansinh Raval passed in First Appeal no.1539 of 2015; and (xi) Nrupal Narendrabhai Dalwadi vs. State of Gujarat passed in Special Civil Application no.4971 of 2012.

4.6. It is submitted that in the case of Kalpeshbhai Natwarlal Patel (supra), in paragraph 12 wherein it has been held that the law is well settled that in case where a statutory time limit is prescribed for

initiating remedial action, the aggrieved party is bound by the said time schedule and in the event, the remedy is invoked beyond the statutory period of limitation, the authority cannot entertain the proceeding on merits before first recording a decision as to whether the delay which has occasioned in instituting the proceeding has been explained or not.

4.8. It is submitted that as regards delay, the issue should have C/SCA/11525/2022 ORDER DATED: 29/07/2022 been decided first and then the merits should have been entertained, reliance is placed on the judgment of the Apex Court in the case of Gagandeep Pratishthan Pvt. Ltd. (supra) as well as of this Court in the case of Kalpeshbhai Natwarlal Patel (supra).

4.9. So far as the grant of NA permission is concerned, reliance is placed on judgments of this Court in the case of Bhayabhai Vajshibhai Hathalia (supra) as well as Tusharbhai Harjibhai Ghelani (supra). It has been held and observed that Section 65, does not provide for scope of raising objection by any party who is yet to establish its right over the land. Moreover, the non-disclosure of the pendency of the proceedings in the NA application, is not of such a nature that would entail such a harsh action against the petitioner, who was not even a party or has filled the application.

4.10. Reliance is placed on the judgments of the Apex Court in the cases of SJS Business Enterprises (P) Ltd. (supra), Arunima Baruah (supra) and Shrisht Dhawan (supra). It has been held and observed that suppression of material fact by a litigant disqualifies such litigant from obtaining any relief; the rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. Carving an exception, it has been held and observed that the suppressed fact must be a material one in the sense that had it not been suppressed, it would have had an effect on the merits of the case. It is therefore, submitted that the suppression, should be of such a nature that it has some relevance with the issue in question. It is submitted that so far as the non- disclosure, in the present case is concerned, it will have no relevance inasmuch as, the suit was filed for specific performance, which was dismissed and against which, appeal was filed before this Court, but no protection was granted in favour of the private respondent. Therefore, disclosure or non-disclosure of the said fact, was not of such a nature which would disentitle the person seeking NA permission.

C/SCA/11525/2022 ORDER DATED: 29/07/2022 4.11. Reliance is placed on the judgment of the Delhi High Court in the case Brij Mohan Gupta (supra) with similar facts. Case was of filing a false affidavit. The deponent was to declare that persons of the Society are not related to each other by way of blood relation or otherwise. It has been held that the authorities could not have insisted for such kind of an affidavit in view of Section 20 of the Societies Registration Act and that the guidelines, which require the person to file affidavit that they are not related to each other by way of blood relation or otherwise, itself cannot be sustained. Since the said requirement itself was bad in law, the infraction of the said requirement by the President/Secretary of the society cannot lead to the consequence of the society losing its existence, even after its registration under the Act. It is therefore, submitted that drawing an analogy, in the present case, the requirement of filing an affidavit by the applicant, is itself bad and even if there is a non-disclosure, shall not entail cancellation of the NA permission.

4.12. Learned advocate appearing for the petitioner states that the judgments at sr. nos. 9, 10 and 12 of the compilation may not be considered inasmuch as, the judgments reiterate the principle laid down in the case of SJS Business Enterprise (P) Ltd. (supra).

4.13. It is further submitted that the suit filed by the private respondent before the Civil Court for specific performance, was itself not maintainable. Reliance is placed on the judgment of this Court in the case of Hasavantbhai Chhanubhai Dalal vs. Adesinh Mansinh Raval passed in First Appeal no.1539 of 2015. It is therefore, urged that the petitions require consideration.

5. Mr Jayneel Parikh, learned Assistant Government Pleader appearing for the respondent - State Government and authorities submitted that the Collector, has passed the order dated 16.3.2020, pursuant to the application filed by the original owners dated C/SCA/11525/2022 ORDER DATED: 29/07/2022 29.2.2020. Certain requirements were to be filled in and provided by the applicant and the original owners, though were obliged to fill in the form, strictly disclosing all the factual details, chose to furnish incorrect details and filled the form with a false affidavit. The said aspect was brought to the notice of the learned Secretary. It is further submitted that as a result of the condition in the schedule itself, the proceedings have been initiated, which has led to the passing of the order dated 31.5.2022.

5.1. It is submitted that the schedule - 2, the affidavit, provides for certain information. In item no.5 of clause 10, there is a tabular form containing details to be provided of various proceedings pending in the Courts, viz. Civil Court, High Court and Supreme Court. Sub-clause (e) of item no.5, clearly makes it incumbent upon the party to provide the details as to whether any proceedings are pending before the Civil Court, High Court, Supreme Court, Tribunal or Secretary. It is undisputed that the original owners have provided the answer 'No' despite the fact that against the judgment of the Civil Court, the proceedings were pending before this Court by way of First Appeal.

5.3. Moreover, item no.15 provides that if any of the details are incorrect or false, the application, would automatically stand rejected. At the end, there is a declaration by the deponent that filing of a false affidavit is a criminal offence which, the deponent knows and if the Government Officers are deceived, the proceedings under the provisions of the Indian Penal Code, 1860 (hereinafter referred to as the 'Code of 1860'), would be initiated. Despite there being clear conditions indicated in the schedule - 2 of an affidavit, the original owners, knowing full well, have filed a wrong affidavit that no proceedings are pending. It is submitted that the issue is not as to whether the said details was material or not? The issue is that a wrong affidavit has been filed by the deponent while submitting an application.

C/SCA/11525/2022 ORDER DATED: 29/07/2022 5.4. It is next submitted that when the fact of filing of false affidavit has not been disputed, only on the ground that the affidavit, has been filed by the original owners and not by the petitioner, cannot give a benefit to the petitioner and discharge the deponents and the applicants of the illegality committed by them. It is therefore, urged that no error has been committed by the learned Secretary in passing the order and cancelling the order of the Collector dated 16.3.2020. In view of no error having been committed, the petitions deserve to be dismissed in limine.

6. Mr Mehul S. Shah, learned Senior Advocate with Mr Henil M. Shah, learned advocate appearing for the respondent no.9 on caveat, has vehemently opposed the entertainment of the writ petitions. It is submitted that the petitioner in the petitions under Article 226 of the Constitution of India, is claiming equitable relief and therefore, the conduct of the petitioner, is very much material. It is submitted that it is the case of the petitioner that it is not the petitioner, who had filed the application or has committed wrong in filling up the form, but the original owners, and for which petitioner cannot be penalised. The predecessor-in-title, if have filed the application, and if they are not entitled for equitable relief, the petitioner, will equally not be entitled.

6.1. It is submitted that the application, seeking NA permission, is to be filed online for which purpose, the State Government in its revenue department, has issued the circular dated 6.12.2018 providing for a procedure and system. It is submitted that the objective behind the circular is to simplify the procedure applying for NA permission and was with a view to seeing that the application seeking NA permission are disposed of expeditiously and in a transparent manner. It is submitted that clause (b) of item no.1 titled 'procedure', provides for filing of an application in the prescribed format and the affidavit which, the applicant is required C/SCA/11525/2022 ORDER DATED: 29/07/2022 to upload. Clause (d) of item no.1 provides that if the details furnished through online, are found to be false, proceedings shall be initiated against the applicant for the offences under Sections 192, 195 and others of the Code of 1860.

6.2. It is submitted that there is a trust reposed in the applicant of providing correct, accurate and full information, so as to facilitate the issuance of the NA application by the authorities concerned. With this objective in mind, it was expected and is expected that the applicant shall provide correct information and not commit any mischief by providing false information or hide the information, which are relevant for the purpose of grant of NA permission. Knowing full well if the applicant provides false details and misuses the system, it will surely disentitle him/her of any reliefs.

6.3. It is submitted that the learned Secretary, in its order dated 31.5.2022, has considered the provisions, particularly item no.9 of the circular dated 16.8.2018 and item no.7 (h) of the circular dated 12.12.2018. The learned Secretary has taken note of the fact that if it is found that wrong affidavit has been filed, NA application, shall stand automatically rejected as, providing wrong information to the State Government, is nothing, but a fraud committed by the applicant concerned. It is submitted that by now it is well settled that NA permission, has nothing to do with person, but is attached to the land. It is submitted that the learned Secretary, therefore, considering the provisions of the circular, the objective behind the system of online application, so also the non-disclosure of relevant facts on affidavit, had concluded that the conduct on the part of the predecessor-in-title, while filing an application, was nothing, but a fraud and any order obtained by fraud, is a nullity. The learned Secretary had also considered that if such excuses put forward by the subsequent purchasers are accepted, then, in future, this will form a practice.

C/SCA/11525/2022 ORDER DATED: 29/07/2022 6.4. It is further submitted that not only this, the petitioner before the RERA authority, has also suppressed the proceedings pending before this Court. It is therefore, submitted that considering the conduct of the predecessor-in-title, so also the petitioner, the authority has exercised the jurisdiction legally and in an equitable manner and

therefore, no indulgence may be shown. Reliance is placed on the judgment in the case of K. Jayaram v. Bangalore Development Authority, reported in 2021 (14) Scale 663 : 2021 SCC OnLine SC 1194. It is further submitted that it is likely that tomorrow a third person will come and claim that he was not aware about the fact of filing of the wrong affidavit; however, the same will not absolve the party concerned from the mischief or the lapse committed by the person applying for the NA permission. It is undisputed, rather admitted that the false affidavit has been filed in the matter of seeking NA permission and therefore, the said conduct is nothing, but a fraud and it vitiates everything.

6.5. Reliance is placed on the judgment of the Apex Court in the case of A.V. Papayya Sastry vs. Government of A.P., reported in (2007) 4 SCC 221. The Apex Court, has held and observed that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. The Apex Court, has referred what has been proclaimed by Chief Justice Edward Coke that "fraud avoids all judicial acts, ecclesiastical or temporal". It is submitted that the Apex Court has further held and observed that the judgment, decree or order obtained by playing a fraud on the Court, Tribunal or authority, is a nullity and non est in the eyes of law. Such a judgment, decree or order by the first Court or by the final Court, has to be treated as nullity by any Court, superior or inferior. It is submitted that by filing the false affidavit, the conduct on the part of the predecessor-in-title, is nothing, but a fraud and the order of the Collector dated 16.3.2020, has been obtained by fraud and C/SCA/11525/2022 ORDER DATED: 29/07/2022 therefore, nullity.

6.6. Further reliance is placed on the judgment of the Apex Court in the case of Smt. Narayanamma vs. Sri Govindappa, reported in AIR 2019 SC 4654. It is submitted that the principle of *pari delicto potior est conditio defendetis et possidentis* will also not apply to the facts of the present case.

6.7. While adverting to the power exercised by the learned Secretary, it is submitted that, what is required is, bringing it to the knowledge of the Secretary the order and not necessarily, that there has to be an application. While exercising the jurisdiction under Section 211 of the Code, the learned Secretary, can examine the legality and propriety of the order and see whether it has been passed in accordance with law. It is submitted that by not adhering to the guidelines issued, there is mischief committed by the applicant and the same would disentitle the petitioner and the original owner to take benefit of its own wrong. It is submitted that if the statute required a particular thing to be done in a particular manner, it is to be done in a particular manner and not otherwise. The provisions of the circular, require the application to be filed in a particular manner, disclosing the particular facts and if the same is not done, it would dis-entitle the person of the benefit of the order.

6.8. It is further submitted that it is also argued by the learned advocate for the petitioner that the non-disclosure by the applicant about the pendency of the proceedings, is immaterial; however, the said contention is misplaced and does not deserve to be accepted for, what is material, is the non-disclosure itself. Stating something false on oath, is nothing, but a fraud committed on statute and therefore, considering the facts of the case and the conduct of the predecessor-in-title, the learned Secretary, cannot be said to have C/SCA/11525/2022 ORDER DATED: 29/07/2022 committed any error in cancelling the NA permission granted on the edifice of the wrong affidavit which, would be an offence punishable under the Code of 1860. It is urged that the petition deserves

dismissal in limine.

7. Heard the learned advocates appearing for the respective parties and considered the submissions as well as the documents and the judgments cited.

8. Tersely stated are the facts.

9. The petitioner, has purchased the subject land by executing registered sale deed from the original owners and applied for development permission, which came to be granted and on the basis whereof, started construction.

10. Against the original owners, the private respondent, had filed a suit for specific performance of the agreement to sell executed in the year 1993, which came to be decided vide judgment and decree dated 12.10.2012. The private respondent, has filed First Appeal no.3957 of 2012 and this Court, vide order dated 10.1.2014, issued rule. In Civil Application, order dated 10.1.2014 has been passed calling for record & proceedings of Special Civil Suit no.1064 of 1999. Orders were also passed in the Civil Application; however, the detailed reference at this stage, is not necessitated. The dispute between the original owners and the private respondent, was adjudicated in Special Civil Suit no.1064 of 1999 and against the said judgment and decree, First Appeal no.3957 of 2012 has been filed and was very much pending before this Court. Pendency of the proceeding before this Court and non-disclosure whereof, in the application seeking NA permission and consequences of providing incorrect information on oath, is the issue.

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11. As is discernible from the record, the original owners have applied for conversion of the land and the Collector, has passed an order dated 11.2.2020, converting the land from new tenure to old tenure with a stipulation that the applicant, that is, the original owners shall apply for NA permission. The original owners, that is, the predecessor-in-title, filed an online application as per the prevalent procedure. The original owners, that is, predecessor-in- title, along with the application, had filed an affidavit in schedule - 2, providing information; relevant is item no.5, which is set out in the tabular form. As per the tabular form, the applicant is obliged to provide the details of cases pending under different statutes. In the 2nd column, details are to be provided in 'yes' and 'no'. The 3rd column provides that if the answer is 'yes', the details of the case is also required to be provided. Clause (e) is with respect to the details to be provided of the cases pending before the Civil Court, High Court, Supreme Court, Tribunal or the learned Secretary.

12. Item no.15, is in form of caution, that, if any, details are found to be incorrect, NA permission, shall stand automatically rejected or it will be cancelled. It also says that the said cancellation will be binding to the applicant and all the consequential responsibilities or liabilities will be of the deponent concerned. Relevant would also be the declaration in the last paragraph, which says that the applicant is aware that filing of the false affidavit is a criminal offence and by filing false affidavit, the proceedings under the Code of 1860, shall be initiated. Therefore, the original owners, knew that filing of the false affidavit would be an offence and incorrect information, would entail

cancellation of NA permission, if any sanctioned, and the legal proceedings against the applicant.

13. It is not the case of the petitioner that the applicants, that is, the original owners, nine in number, were not aware about the C/SCA/11525/2022 ORDER DATED: 29/07/2022 pendency of First Appeal no.3957 of 2012 before this Court inasmuch as, they are very much party to the said proceeding. Despite that, the original owners, had provided false information on affidavit. By operation of condition 15, when the information are found to be false and incorrect, the order dated 16.3.2020, granting NA permission, stands automatically cancelled.

14. Clearly, the circular dated 6.12.2018 of the revenue department, provides for the procedure for conversion of the land from agricultural to non-agricultural. The objective behind is to see that simplified and transparent procedure is provided for expeditious decision on the NA application, reposing trust in the applicant that the applicant shall furnish correct, accurate and all relevant and requisite information. When the policy has been framed, facilitating simplified and transparent procedure, it is expected rather the obligation is upon the person concerned that applicant provides the requisite details and information as called for. The circular also provides that furnishing a wrong information would be an offence punishable under the provisions of the Code of 1860 and consequential initiation of the proceeding. The original owners having not provided the information as required, this Court is unable to accept, as to how it can be said that the learned Secretary has committed an error in passing the order dated 31.5.2022, cancelling the NA permission.

15. The issue, so also the order of the learned Secretary dated 31.5.2022, are required to be examined in the backdrop of the aforementioned discussion. At this juncture, a brief reference to the order dated 16.3.2020 of the Collector, be taken note of. As discussed, an online application was filed, seeking NA permission. Along with the application, the original owners, have filed the affidavit in schedule - 2 and the tabular form against item no.5 and C/SCA/11525/2022 ORDER DATED: 29/07/2022 more particularly, clause (e), answer provided is in 'No' which, is against the information as to whether any proceedings before the Civil Court, High Court, Supreme Court, Gujarat Revenue Tribunal or the learned Secretary, is pending or not? Accepting the affidavit, that the order has been passed and the said order was assailed before the learned Secretary who, has passed the order dated 31.5.2022.

16. The learned Secretary, has recorded the facts and the provisions which is not disputed by the petitioner. In paragraph 5.3, the learned Secretary, has discussed the provisions of the circulars dated 16.8.2018 as well as 12.12.2018. It has been stated that false information has been provided by the applicant and as it is found that the information is false, the NA application, stand automatically rejected. Paragraph 5.3 further takes note of the fact that providing a wrong information to the State Government, would be a fraud which, having proved, would entail proceedings under the provisions of the Code of 1860. The learned Secretary, has further noted the arguments of the petitioner that the NA permission is connected with the land and not with the person. While accepting such contention, it has been observed that it is true that the NA permission, is to the land; however, the person applying or seeking the permission, if has provided incorrect and false information, such permission, would be nullity. In paragraph 5.5, the learned Secretary has concluded that the permission has been obtained by the original owners on falsehood, suppressing the information and

if such permission, has been obtained by suppression, the order, would be nullity. Procuring of permission by illegal means, would be nothing, but a fraud exercised by the party.

17. The learned Secretary, while referring to the judgment of this Court, has noted that fraud vitiates all the proceedings. While C/SCA/11525/2022 ORDER DATED: 29/07/2022 discussing the factum of filing of the false affidavit by the applicant and the consequences which flows, the learned Secretary, has passed an order, quashing the order dated 16.3.2020. The fact that false information on affidavit was provided, is not disputed by the petitioner or by the learned advocate appearing for the petitioner. The only explanation which has been offered is that it was done by the original owners and not by the petitioner and for which, the petitioner may not be penalised.

18. At this stage, it is required to be noted that when the conditions in the affidavit itself provide that if there is any false information furnished, NA permission would stand automatically cancelled, and hence, the effect of the non-disclosure is immaterial and what is material, is the non-disclosure, itself on oath. Therefore, this Court is unable to accept the contention of the learned advocate appearing for the petitioner that the order of the learned Secretary, is bad and illegal.

19. Contention has also been raised that assuming that the original owner have not furnished the information as regards pendency of the proceedings before this Court; however, the pendency of First Appeal by the original owner, was not material suppression since even if it was disclosed, the same would have no bearing on the decision to grant or not to grant NA permission, inviting harsh consequences of cancellation of NA permission, more particularly, when the same is at the behest of the private respondent. The said contention, is ill-founded.

20. The judgment relied upon by the petitioner in the case of SJS Business Enterprises (P) Ltd. (supra), will not be of any help inasmuch as, opening words in paragraph 13 is 'as a general rule, suppression of a material fact by a litigant disqualifies such litigant C/SCA/11525/2022 ORDER DATED: 29/07/2022 from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case'. The petitioner had tried to press in service the said judgment; however, in the present case, it is the matter of filing a false affidavit, knowing full well that the proceeding is pending, and was not disclosed. The details are called for with a specific purpose and to say that it has no relevance with the grant of NA permission, would be far-fetched.

21. Apt would the judgment of the Apex Court in the case of A.V. Papayya Sastry (supra). The Apex Court has held and observed that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. It has been further held and observed 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. Paragraphs 21 to 26 of the said judgment read thus:-

"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 Lord C/SCA/11525/2022 ORDER DATED: 29/07/2022 Denning observed: (All ER p. 345 C), "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."

22. Pertinently and as discussed herein above, the State Government only with a view to providing simplified and transparent procedure, that has issued a circular, facilitating filing of an online application. While doing so, there is an element of trust reposed in the applicant that whatever information is provided, would be correct and accurate. If the applicant takes a risk of providing false information, the consequences as provided in the circular and the affidavit, are to follow. In the present case, what has followed, are the consequences of filing false information which, may be at the instance of original owners, but will have to be suffered by the original owners as well as the subsequent purchaser. The subsequent purchaser cannot be allowed to get out of, only on the C/SCA/11525/2022 ORDER DATED: 29/07/2022 ground that it was the original owners, who have

provided the false information and not the petitioner. Ultimately, what is important, is providing the false information irrespective of the applicants, who are party to the NA application.

23. Reliance is also placed on other judgments; however, the judgments, cannot be made applicable to the facts of the present case for, element of falsehood is missing. In none of the judgments, the facts involving fraud or allegation of fraud was an issue. In view of the facts of the present case, the principles laid down by the Apex Court in the judgments referred to herein above, cannot be made applicable to the facts of the present case.

24. Contention is also raised that the NA permission was challenged after a period of 18 months; however, the learned advocate appearing for the petitioner is unable to point out any limitation provided for filing the revision application before the learned Secretary. The learned Secretary has exercised the powers under the provisions of Section 211 of the Code for which, there is no limitation provided. It is true that the proceedings are to be initiated within a reasonable period; however, when the issue involves the element of falsehood, it is difficult to accept the contention of the learned advocate that the challenge to the NA permission after a period of 18 months, was impermissible and the same is stated to be rejected.

25. Adverting to the aspect of locus, pertinently, the issue is about disclosure of incorrect information rather non-disclosure of the material information, in the application or affidavit, considering the issue, the submissions that the private respondent has no locus to file the revision application, cannot be accepted. Also, the powers of revision under Section 211 of the Code, can be exercised by the C/SCA/11525/2022 ORDER DATED: 29/07/2022 State Government or the officers mentioned therein for the purpose of satisfying itself as to the legality and propriety of any decision or order passed by any subordinate revenue officers. The powers, can be exercised either suo motu or on an application by any person. This view is supported by the judgment of this Court in the case of Hindustan Petroleum Corp. Ltd. vs. State of Gujarat, reported in LAWS (GJH) 2017 4 17. Paragraph 11 of the said judgment, reads thus:-

"11.It was sought to be submitted by learned Sr. Advocate Mr.Kavina that the respondent no.4 being not an aggrieved person, did not have any locus standi to file the revision application before the SSRD under Section 211 of the Code. However, the said submission cannot be accepted. The powers of revision under Section 211 of the Code could be exercised by the State Government or the officers mentioned therein for the purpose of satisfying itself as to the legality and propriety of any decision or order passed by any subordinate revenue officer. Such powers could be exercised suo motu or on an application of any person not necessarily by the aggrieved person."

26. In view of the aforementioned discussion, this Court, is of the considered opinion that no error has been committed by the learned Secretary in passing order dated 31.5.2022, cancelling the NA permission and therefore, the petitions do not warrant interference and are dismissed in limine. No order as to costs.

(SANGEETA K. VISHEN,J) BINOY B PILLAI