

A GANPATBHAI MAHIJIBHAI SOLANKI

v.

STATE OF GUJARAT & ORS.
(Civil Appeal No. 1727 of 2008)

B MARCH 4, 2008

(S.B. SINHA AND V.S. SIRPURKAR, JJ.)

Code of Civil Procedure, 1908:

C *Condonation of delay – Surplus land – Appeal against, dismissed by appellate authority in 1988 – Allotment of surplus land to weaker section of society – Another appeal filed by original landowners in 1995 was partly allowed by appellate authority – Filing of suits by original owner of land seeking interim injunction against State from taking*

D *possession of suit land – Dismissed by trial Court on ground of suppressing material fact and for misleading the Court – Affirmed by High Court – Correctness of – On appeal, Held: Fraud vitiates all solemn acts – When an order is obtained by committing fraud on court, even the principles of natural justice*

E *need not be complied with for setting aside the order – In case of conflicting interest, the Court may adjust equities, but under no circumstances it should refuse to consider merit of the case when its attention was drawn about suppression of material facts/commission of fraud on Court – While considering*

F *condonation of delay, the principle of the administration of justice need to be followed – In terms thereof, legal process should be finite - Re-opening a case after a delay of considerable period of time runs counter to the principle – However, in exercise of power under Article 136 of the*

G *Constitution, it would not be appropriate for the Supreme Court to interfere with the impugned order – Principles of administration of justice – requirements of – Constitution of India, 1950 – Article 136 – Scope of – Urban Land Ceiling Act, 1976 with repealing Act of 1999.*

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The question which arose for consideration in this appeal was as to whether suppression of a material fact would entail allowing of an application for condonation of delay in filing a review petition.

Appellant contended that the High Court committed a serious error in passing the impugned judgments, by reason whereof not only 2205 days delay has been condoned, but a litigation is sought to be revived which would end in futility having regard to the conduct of the State and the subsequent events.

Respondent submitted that the appellant had committed a fraud on the Court as it had suppressed the material fact about passing of appellate order dated 4.1.1988 while preferring another appeal after 11 years of the passing of the original order dated 12.7.1984.

Dismissing the appeal, the Court

HELD: 1.1 This Court is not oblivious of the fact that the authorities of the State have made a complete goof up with the situation. By its action, it allowed subsequent events to happen. (Para – 13) [945-B]

1.2 It is a well settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same. (Para – 13) [945-C, D]

T. Vijendradas and Another Vs. M. Subramanian & Others 2007 (12) SCALE 1 – relied on.

1.3 If there is a conflicting interest, the Court may adjust equities but under no circumstance it should refuse to consider the merit of the matter, when its attention is drawn that suppression of material facts has taken place or commission of fraud on Court has been committed. The courts, for the aforementioned purpose may have to

A consider the respective rights of the parties. The State has a constitutional duty/obligation to comply with the principle of social justice as adumbrated under Section 23 of the Urban Land Ceiling Act and take the decision to their logical conclusion. (Para – 14) [945-G; 946-A, B]

B 2.1 In the instant case, the allottees have acquired a statutory right. Only because the State was not aware of the factual position and/or the legal implication of the provisions under the Repealed Act which led to withdrawal of the writ petition from the High Court, the same by itself
C may not be sufficient to deprive the allottees from their legal right to hold the said land. (Para – 15) [946-B, C]

D 2.2 The Court of Appeal in the case of *Smith Vs. Kvaerner Cementation Foundations Ltd* condoned the delay on the ground that the appellant therein had a human right to get his lis adjudicated before an independent and impartial tribunal and as the Judge was biased, delay in preferring the appeal was condoned stating that the first criterion to be considered is the interest of the administration of justice. This would normally militate
E strongly against an extension of time as long as that sought in this case. It is an important principle of the administration of justice that legal process should be finite. To reopen the case after a delay of four years plainly runs counter to that principle. But this is a case where
F the appellant had been denied the right to which Art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 entitled him – to a fair hearing before an independent and impartial tribunal. This is the paramount consideration so far as the
G administration of justice is concerned. For the reasons, aforementioned, this Court is of the opinion that the merit of the matter as also the question in regard to adjustment of equities may be considered by the High Court. However, this Court in exercise of jurisdiction in Article
H 136 of the Constitution of India refuse to interfere with the

impugned judgment. (Paras – 17 & 18) [946-D, E, F, G; 947-A, B] A

Smith Vs. Kvaerner Cementation Foundations Ltd 2006 3 All ER 593 – referred to.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1727 of 2008 B

From the Judgment and Order dated 12/7/2006 of the High Court of Gujarat at Ahmedabad in L.P.A. No. 313 of 2006

Aniruddha P. Mayee for the Appellant. C

Hemantika Wahi, Madhvi Divan and Shivangi for the Respondents.

The Judgment of the Court was delivered by S.B. SINHA, J. Leave granted. D

1. Whether suppression of a material fact would entail allowing of an application for condonation of 2205 days delay in filing a review application is the core question involved herein.

2. Appellants were owners of various tracts of lands situated in the town of Vadodara. 10,807 sq. meters of land in survey Nos. 345, 347/1 and 267 in Mazalapur were declared as surplus land under the provisions of the Urban Land Ceiling Act, 1976 (for short "the Act") by the competent authority. An appeal preferred thereagainst was dismissed by an Order dated 4.1.1988 by the appellate authority, stating; E

"As discussed above, no contention of the appellant is acceptable and there is no reason to interfere with the impugned order passed by the Competent Authority and therefore the following order is passed. G

The appeal of the appellant is dismissed. The impugned order dated 12/07/1984 passed by the competent authority is confirmed.

The injunction orders passed by this office is vacated. H

A The order be informed to the parties.”

3. All contentions raised by the appellants were considered therein. It was allowed to attain finality.

B 4. Notification under Section 10(3) of the Act was published in the Official Gazette on 4.5.1989. A notification was also issued under Section 10(5) thereof on 23.8.1989.

C Allegedly, the directions contained therein were not complied by the appellant. Possession of the properties were said to have been taken over on 20.4.1992. Surplus lands are said to have been allotted to members of the weaker sections as envisaged under Section 23 of the Act. Another round of litigation was initiated by the appellant. Another appeal was said to have been filed before the appellate authority in terms of Section 33 of the Act in the year 1995. The said appeal was D entertained. By a judgment and order dated 30.3.1995, 6224 sq. meters in Survey No. 267 only was declared as surplus land.

E 5. Respondent-State alleged that the Tribunal was not informed about the result of the earlier appeal and the said order dated 30.3.1995 was passed ex-parte. Even the allottees were not given any notice. A Writ Petition was preferred by one of the allottees before the High Court wherein a direction was issued to allot him an alternate land. The State also filed a writ petition thereagainst which was marked as SCA No. 100 of 1996. Appellant is said to have filed two civil suits in the years 1999 F and 2001 in the Court of Civil Judge, Senior Division, Vadodara being Civil Suit No. 935 of 1999 and 190 of 2001 seeking injunction against the State from taking possession of the lands. The application for interim injunction was, however, dismissed. In the said interim order, allegedly a finding was recorded that G the appellant had suppressed material facts and misled the Court.

H 6. However, in the year 1999, the Act was repealed. On the basis thereof purported statement was made by the Assistant Government Pleader in Special Civil Application No.

100 of 1996 withdrawing the said SCA No. 100 of 1996. The High Court in its Order dated 15.6.1999 recorded;

"Mr. Dave, Ld. Counsel for the petitioner states that in view of the Urban Land (Ceiling & Regulation) Repeal Act, 1999, the present petition does not survive. Consequently the same is disposed off accordingly. Rule discharged with no order as to costs. Ad-interim relief vacated."

Thereafter notices were issued to the allottees for their eviction. Several correspondences passed between the appellant and the Authorities of the State. Allegedly the Order of the High Court dated 23.3.2000 was accepted by the State. A stand was taken that the said order of the High Court dated 15.6.1999 would not be challenged.

7. Appellant sold the land to one Dineshbai Chhotabhai Patel by a registered deed of sale dated 20.5.2000. The said vendee again sold half of the said land in favour of one Sanjay Kumar Manilal Patel on 25.1.2001. Permission was granted for construction of the buildings.

8. The allottees, filed a writ petition before the High Court. The State therein filed a counter affidavit accepting the order of the Tribunal dated 31.3.1995. However, after a few days, an application for recalling of the said order dated 15.6.1999 was filed, whereupon a notice was issued.

9. By reason of a judgment dated 11.10.2005, a learned Single Judge of the High Court allowed the said application assigning cogent reason. A Letters Patent Appeal preferred thereagainst by the appellant has been dismissed by a Division Bench of the High Court by reason of the impugned judgment expressing its agreement with the order passed by the learned Single Judge.

10. Mr. Aniruddha P. Mayee, the learned counsel appearing on behalf of the appellant urged that the High Court committed a serious error in passing the impugned judgments,

A by reason whereof not only 2205 days delay has been condoned, but a litigation is sought to be revived which would end in futility having regard to the conduct of the State and the subsequent events which took after 15.6.1999.

B 11. Ms. Madhvi Divan, learned counsel appearing on behalf of the respondent on the other hand, urged that the appellant had committed a fraud on the Court as it had suppressed the appellate order dated 4.1.1988 while preferring another appeal after 11 years of the passing of the original order dated 12.7.1984.

C At no stage, the learned counsel would submit, the appellant had brought to the notice of the authorities of the State as also the High Court that the Order dated 12.7.1984 had attained finality. It was, furthermore, contended that the stand
D taken by the Assistant Government Pleader was not binding upon the State as those cases where possession had also been taken over from the owner of the land have explicitly been saved under the provisions of the 1999 Act.

E 12. Steps indisputably had been taken under the provisions of the Act, pursuant to the final order passed in the said proceeding as not only some lands were declared to be surplus, an appeal preferred thereagainst was dismissed, possession had been taken over and even allotments have been made in favour of the members of the weaker sections of the Society.

F We may notice that even possession of portions of lands were handed over to 15 persons.

G If the State is correct in its submission that in that view of the matter, the 1999 Act will have no application, indisputably, any wrong concession made by a counsel would not be binding upon the State.

In *State of Haryana and Others Vs. M.P. Mohla* [(2007) 1 SCC 457], it was held;

H "25. The law as regards the effect of an admission is also

no longer res integra. Whereas a party may not be permitted to resile from his admission at a subsequent stage of the same proceedings, *it is also trite that an admission made contrary to law shall not be binding on the State.*" A

13. We are not oblivious of the fact that the authorities of the State have made a complete goof up with the situation. By its action, it allowed subsequent events to happen, viz. sales of the lands have taken up, constructions have come up, but the question which arises for our consideration is as to whether even in such a situation, this Court would allow a suppression of fact to prevail. B C

It is now a well settled principle that fraud vitiates all solemn acts. If an order is obtained by reason of commission of fraud, even the principles of natural justice are not required to be complied with for setting aside the same. D

In *T. Vijendradas and Another Vs. M. Subramanian & Others* [2007 (12) SCALE 1], this Court held;

"21. When a fraud is practiced on a court, the same is rendered a nullity. In a case of nullity, even the principles of natural justice are not required to be complied with. [*Kendriya Vidyalaya Sangathan and Others v. Ajay Kumar Das and Others* (2002) 4 SCC 503 & *A. Umarani v. Registrar, Cooperative societies and Others* (2004) 7 SCC 112-para 65] E F

22. Once it is held that by reason of commission of a fraud, a decree is rendered to be void rendering all subsequent proceedings taken pursuant thereto also nullity, in our opinion, it would be wholly inequitable to confer a benefit on a party, who is a beneficiary thereunder....." G

14. The object and purport of a statute must be given effect to. If there is a conflicting interest, the Court may adjust equities but under no circumstance it should refuse to consider the merit of the matter, when its attention is drawn that suppression of H

A material facts has taken place or commission of fraud on Court has been committed.

B The courts, for the aforementioned purpose may have to consider the respective rights of the parties. The State has a constitutional duty/obligation to comply with the principle of social justice as adumbrated under Section 23 of the Act and take the decision to their logical conclusion.

C 15. The allottees have acquired a statutory right. Only because the State was not aware of the factual position and/or the legal implication of the 1999 Act which led to withdrawal of the writ petition from the High Court, the same by itself may not be sufficient to deprive the allottees from their legal right to hold the said land.

D 16. An extra-ordinary situation of this nature would require an extra-ordinary order.

E 17. In the matter of passing an order of condonation of delay, we may notice that the Court of Appeal in *Smith Vs. Kvaerner Cementation Foundations Ltd (Bar Council intervening)* [2006 3 All ER 593] condoned the delay on the ground that the appellant therein had a human right to get his lis adjudicated before an independent and impartial tribunal and as the Judge was biased, delay in preferring the appeal was condoned stating;

F "41. The first criterion to be considered, (a), is the interests of the administration of justice. These would normally militate strongly against an extension of time as long as that sought in this case. It is an important principle of the administration of justice that legal process should be finite.

G To reopen this case after a delay of four years plainly runs counter to that principle. But this is a case where Mr. Smith has been denied the right to which art 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (as set out in Sch 1 to the Human Rights Act 1998) entitled him – to a fair hearing

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before an independent and impartial tribunal. This, in our view, is the paramount consideration so far as the administration of justice is concerned."

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18. For the reasons, aforementioned, we are of the opinion that the merit of the matter as also the question in regard to adjustment of equities may be considered by the High Court. We, for the foregoing in exercise of our jurisdiction in Article 136 of the Constitution of India refuse to interfere with the impugned judgment.

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The appeal is dismissed with costs. Counsel's fee assessed at Rs. 10,000/-

C

S.K.S.

Appeal dismissed.