Neutral Citation No. - 2024:AHC-LKO:38200
AFR
Reserved

Court No. 21

Case :- CIVIL REVISION No. - 22 of 2022

Revisionist :- Mrs. Ameena Jung And Anr.
Opposite Party :- Faridi Waqf Thru. Mutwalli Mrs. Anush Faridi Khan And Ors.
Counsel for Revisionist :- Subhash Vidyarthi,Dhruv Mathur,Saud Rais
Counsel for Opposite Party :- Syed Qamar Hasan Rizvi,Farhan Habib,Pranav Agarwal,Pritish Kumar,Shantanu Gupta,Syed Aftab Ahmad

Hon'ble Jaspreet Singh,J.

1. The instant revision has been preferred under Section 83 (9) of the Waqf Act, 1995 being aggrieved by the order dated 04.07.2018 passed by the Uttar Pradesh Waqf Tribunal in Waqf Case no. 37 of 2018, as a consequence, several properties belonging to Waqf No. 42-A, Lucknow have been de-listed from the register of Waqf.

2. In order to appreciate the controversy involved in the instant revision, certain facts giving rise to the instant revision are being noted hereinafter:-

3. Dr. Mohd. Abdul Jalil Faridi and his brother Lt. Mohd. Rafey Faridi both sons of Late Khan Bahadur Maulvi Mohammad Abdul Haq Saheb created a Walf-Alal-Nafs and Alal-Aulad to be (known as Waqf Faridi) by a Waqf deed dated 09.11.1945 and two properties were dedicated to the Waqf Faridi; ***(i)*** House No. 91, Dr. Moti Lal Bose Road, Machli Mohal, P.S. Hazratgarnj, Lucknow ***(ii)*** Faridi Building situated on Nazool Plot No. 14 near Maqbara Amzad Ali Shah, Hazratganj, Lucknow.

4. Dr. Mohd. Abdul Jalil Faridi was the first mutawalli of the Waqf and the waqf deed provided that the income of the waqf would be shared

amongst the wakifs from generation to generation in equal amounts. The Waqf deed further stipulated that the income from any of the properties if was less than the amount required for its upkeep and other necessary expenses then the same could be sold to purchase a better property subject to the condition that on the purchase of the new property, the same would also be dedicated to the Waqf.

5. At this stage, it will be relevant to reproduce certain recitals of the Waqf deed:-

> ***Section (1):*** *The present Waqf shall be called 'Waqf Fareedi' and this Waqf is created for purposes of residence and sustenance of the persons endowing the Waqf mentioned in Section (4) on the following conditions. In the event of discontinuance of the progeny of the persons endowing the Waqf mentioned in the aforementioned Section, the income of the Waqf property, in accordance with the conditions mentioned in the present document, will be spent, on relatives and orphans and poors' education for those not having means and other beneficial causes, respectively.*
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> **Section 3: (a)***: It will be incumbent upon every Mutawalli to keep a regular nccounts of the present Waqf and give details of account to cach of the beneficiaries of the Waqf. It will be incumbent upon any Mutawalli that according to the desire of beneficiaries of the Waqf, satisfy them by showing them the accounts of the Waqf.*
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> *(b): If at any time the Mutawalli does not keep accounts, or without any strong and reasonable cause does not pay the income from Wagf property at any appropriate time, to the beneficiaries of the Waqf and necessity of filing of a suit arises, or commits such an omission in the management of the property. or he knowingly commits any act or acts on account of which there is a decrease in the profits of the property or commits express or implied dishonesty or misappropriates then the beneficiaries of the Waqf may jointly or severally will have a right to present a petition before the Authorised Officer get the Mutawalli removed and in his place any other person may be a Mutawalli according to the procedure and intention of the present document to discharge the duties of Mutawalliship.*
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> **Section 4 (a)***: The income of the Waqf property detailed below shall be spent on the repairs of the dilapidated and fallen buildings and payment of every kind of tax and other expenditures which are necessary for conservation of the Waqf property. The amount left after deduction of necessary disbursement and expenditure above mentioned will remain at the disposal of us executants, generations after generations, womb to womb and the said amount shall be distributed equally between we executants. This equal distribution shall remain operative with the progenies of we executants, that is to say half the income will be given to the progeny of me, the first executant and the other half to me the second executant.*

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(j): The beneficiaries of the Waqf will not have the right to transfer, directly or indirectly in any form, the profit which has been given to him in accordance with the conditions of the present document to any person who is not in the progeny of we executants or the sons of the brothers of deceased aforementioned, with or without any consideration. But, the progeny of we executants and the sons of the brothers of the deceased aforementioned can transfer amongst themselves the rights to profits with or without consideration. And if, Allah forbid, any person transfers the profit in violation of the conditions in the present documents, then that transfer with respect to the Waqf property shall be deemed to be illegal and void, and it will be incumbent on the Mutawalli of the Waqf to refuse to implement the same, and if the Mutawalli of the Waqf in disregard to the conditions of the present Section acts on such a transfer then he would be personally responsible for returning of that amount which he had spent in disregard to the conditions in the present Section and the other parties to the profit will have a right to recover that amount from the said Mutawalli and give to the person entitled amongst themselves.

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Section (6): *If the income of a property out of the Waqf properties mentioned below becomes less than the necessary expenses above mentioned or by selling it, more profit is possible by buying another property then the Mutawalli at that time will have a right to sell that property aforesaid in accordance with the prevalent law and to buy another property but in this situation the property purchased shall be deemed to be a Waqf property and the conditions of the present document shall be promulgated and enforced on the same.*

Section (7): In case the Waqf property is extinguished fully or partly on account of promulgation of a law in force at that time, it would be necessary to abide by Section (6) mentioned above.

6. Dr. Mohd. Abdul Jalil Faridi taking recourse to Clause 6 of the Waqf deed sought permission from the District Judge on 30th April, 1960 and sold part of the waqf property situate at 91, Moti Lal Bose Road by means of a deed dated 04.05.1960 in favour of Sunni Central Board of Waqf for a sale consideration of Rs. 61,307/-

7. Since in terms of Clause 6 upon sale of the waqf property, the proceeds were to be applied for the benefit of the waqf, accordingly, Dr. Mohd. Abdul Jalil Faridi, the mutawalli, purchased plot No. 3 at 23/B Ashok Marg (erstwhile known as 3-B Outram Road) through a sale deed dated 04.08.1961. Another property bearing Plot No. 3/1 Mohalla- Karbala, Alamgir, Ram Teerth Marg (Erstwhile known as New Berry Road), Narahi, Lucknow was purchased from the Sunni Central Board of Waqf by means

of sale deed dated 31.10.1961 as such now the waqf had four properties namely ***(i)*** part of house no. 91, Dr. Moti Lal Bose Road ***(ii)*** Faridi Building, Hazratganj ***(iii)*** Plot No. 3, 23-B Outram Road ***(iv)*** lease hold plot measuring 15811 square feet at 3/1 New Berry Road, Lucknow.

8. The first mutawalli Dr. Mohd. Abdul Jalil Faridi died on 19.05.1974 and his son who also shared the same name as his father Mohd. Abdul Jalil Faridi, he became the mutawalli (for the sake of clarity, the first mutawalli has been referred to as Dr. Mohd. Abdul Jalil Faridi whereas upon his death his son has been referred to as Mohd. Abdul Jalil Faridi).

9. Abdul Jalil Faridi filed an affidavit before the Waqf Board for inclusion of the two properties purchased by the Waqf namely Plot No. 3, 23-B Outram road and the lease hold rights in plot no. 3/1 New berry road, Lucknow as the said two properties were acquired from the funds generated by selling part of the waqf property by Dr. Mohd. Abdul Jalil Faridi, upon which clause 6 of the Waqf deed was applicable.

10. It is also relevant to note that Mohd. Abdul Jalil Faridi after having taken over as the mutawalli of the waqf got a new lease executed in his own name in respect of the property situate at New Berry Road, Lucknow. Later Mohd. Abdul Jalil Faridi entered into an agreement to sell in respect of the plot bearing No. 3/1 New Berry road, Lucknow, through one Sri Mustafa Khan, to sell the property in favour of Sri Keshav Gurnani and in order to take the proceedings to its logical conclusion also received sale consideration in installments.

11. He also made an application dated 08.05.2017 before the Waqf Board

seeking the permission of the Board to de-list/remove the plot No. 3/1 New Berry Road, Lucknow and the property bearing No. 23-B, Outram Road (now known as Ashok Marg, Lucknow) from the register of waqf properties.

12. This application was rejected by the Waqf Board by means of order dated 27.02.2018. Mohd. Abdul Jalil Faridi assailed the said order by filing case No. 37 of 2018 before the Waqf Tribunal. The Waqf Tribunal after hearing Mohd. Abdul Jalil Faridi and the Waqf Board who were the only two parties before the Waqf Tribunal allowed the said petition noticing that the two properties for which Mr. Abdul Jalil Faridi had sought de-listing/removal from the register of Waqf were lease hold properties and since there was no permanent dedication, hence, the same could not be treated to be Waqf property and the Waqf Tribunal relying upon a decision of this Court directed that the two properties could not be waqf properties. Once, the said order was passed by the Waqf Tribunal dated 04.07.2018, Mohd. Abdul Jalil Faridi got the lease hold rights converted into free hold. Mohd. Abdul Jalil Faridi also executed his will dated 09.04.2018 and upon his death on 18.10.2018, in terms of his will the two properties i.e. bearing No. 23-B Ashok Marg and Plot No. 3/1 Ram Teerath Marg were bequeathed to his three daughters and the will also provided that Ms. Anush Khan would be the mutawalli of the Faridi Waqf.

13. Soon after the death of Mohd. Abdul Jalil Faridi, his three daughters transferred plot no. 3/1 New Berry Road to M/s Syks Infratech Pvt. Ltd. It is thereafter the present revisionist have filed the instant revision assailing the order dated 04.07.2018 passed by the Waqf Tribunal by filing this

revision.

14. Sri Dhruv Mathur, learned counsel for the revisionist has assailed the order impugned passed by the Waqf Tribunal primarily on the ground that the proceedings before the Waqf Tribunal were collusive in nature. It is urged that the revisionist nos. 1 and 2 are the sisters of late Mohd. Abdul Jalil Faridi and daughters of Dr. Mohd. Abdul Jalil Faridi (the first mutawalli) and as such they were the beneficiaries of the waqf and without impleading them in proceedings before the Waqf Tribunal, such an order could not have been passed which has the effect of removing the properties from the register of Waqf and ultimately permit the mutawalli to dissipate the property of waqf to his personal benefit.

15. It is further urged that Mohd. Abdul Jalil Faridi (the brother of the revisionist) throughout his lifetime had treated the said properties as waqf and belonging to Waqf Faridi. However, his actions of scheming to sell the waqf properties for his personal benefit were contradictory to his status of a mutawalli, whose primary role was to ensure that the property dedicated to the waqf was perpetuated and protected.

16. It is further submitted that Mohd. Abdul Jalil Faridi knowing fully well that the properties at Ashok Marg road and Ram Teerath Marg road were both Waqf properties and in a surreptitious manner, he got a lease executed in his personal name, which was legally not permissible, as he was trying to create a title in himself, adverse to the interest of the Waqf while he was discharging his obligations as a Mutawalli. Hence, in a fraudulent manner, he devised a methodology to transfer the property for which he used the judicial forum of the Waqf Tribunal to seek a seal of

judicial acceptability and for it he only impleaded the Waqf Board and deliberately ignored to implead the necessary parties i.e. the beneficiaries and procured the order impugned behind the back of the revisionists.

17. The revisionist being the beneficiaries have a direct interest in the well being of the Waqf as well as in the upkeep of the Waqf properties and they have ample right and interest to maintain the revision.

18. Sri Mathur, learned counsel further urges that from the bare perusal of the waqf deed of 1945, it was clear that if any of the waqf properties were sold then the funds generated therefrom would be utilized for the benefit of the waqf and as such the property procured from such funds would also be treated as a waqf property and could not be transferred.

19. It is submitted that once Dr. Mohd. Abdul Jalil Faridi after seeking permission from the District Judge on 13th April, 1960 sold part of the waqf property situate at 91, Dr. Moti Lal Bose Road, the funds generated from the said sale was utilized by Dr. Mohd. Abdul Jalil Faridi in procuring the property at 23-B Ashok Marg and Ram Teerath Marg, hence, by virtue of Clause 6 of the Waqf deed and the said properties too were waqf properties.

20. Once, the said properties were waqf property and the brother of the revisionist i.e. Mohd. Abdul Jalil Faridi also treated the same as Waqf property, thus, he could not have acted adverse to the interest of the waqf by moving an application seeking to de-list the property from the register of the waqf.

21. It is further pointed out that the Waqf Board before whom, at the first instance, an application was moved, though, did not pass any order de-

listing the properties from the register of waqf. However, it paved the way for Mohd. Abdul Jalil Faridi to approach the Waqf Tribunal wherein by merely impleading the Waqf Board who did not oppose the claim rather gave in to the prayer made by Abdul Jalil Faridi and facilitated the passing of the order impugned dated 04.07.2018.

22. It is also urged that the Waqf Board was duly aware of the fact that the part of the property of the Waqf Faridi which was sold by Dr. Mohd. Abdul Jalil Faridi to the Waqf Board itself and from the said sale proceeds received, two properties were created which was in the notice of the Waqf Board including as per the stipulations contained in Clause 6 of the Waqf deed of 1945, hence, in such circumstances, it was apparent that the proceedings before the Waqf Tribunal was nothing but a process to scrub and cleanse the illegal act of Abdul Jalil Faridi.

23. It is also submitted that the provisions of the Uttar Pradesh Muslim Waqf Act, 1960 defines a waqf and the waqf property. The provisions contained in the Waqf Act, 1995 are a little different especially the definition of the word ‘waqf’. It is also submitted that the reliance placed by the Waqf Tribunal on the decision of this Court in ***Mst. Peeran Vs. Hafiz Mohammad Ishaq: AIR 1966 Alld. 201*** which has been followed in a subsequent decision of this Court in ***Abhishek Shukla Vs. High Court of Judicature; AIR 2018; Alld 32*** do not help the case and the dictum therein has been incorrectly applied by the Waqf Tribunal, accordingly, the premise upon which the order has been passed by the Waqf Tribunal is erroneous.

24. It has further been submitted by Sri Mathur that since the property of the waqf was Nazool, hence, its disposition would not be in terms of the

Transfer of Property Act, 1882 rather it being a grant and was governed by the Government Grants Act, 1895. It is also urged that Section 2 of the Government Grants Act, 1895 clearly indicates that the Transfer of Property Act, 1882 will not apply to Government Grants, thus, the manner in which the Waqf property has been transferred is clearly fraudulent.

25. Lastly, it has been urged that various documents filed in the instant revision would indicate the fraudulent activities of Mohd. Abdul Jalil Faridi and the course he adopted to transfer the Waqf property fraudulently in itself renders all acts as a nullity including the deed which the daughters of Mohd. Abdul Jalil Faridi have executed in favour of M/s SYKS Infratech Pvt. Ltd. Any order which is effectuated by fraud, misrepresentation and concealment of fact is necessarily rendered void and if the order dated 04.07.2018 is held as such then all consequential acts including execution of the deed in favour of M/s Syks Infratech Pvt. Ltd. also falls and the property which has been illegally sold needs to be reverted back and be declared as property and part of Waqf Faridi.

26. Sri Sudeep Seth, learned Senior Counsel assisted by Sri Syed Aftab Ahmad, learned counsel appearing for respondent no. 3 has questioned the submissions made by learned counsel for the revisionist primarily on the ground that the instant revision has been preferred under Section 83 (9) of the Wakf Act of 1995. It is submitted that the scope of a revision in terms of the aforesaid section is very narrow. The thrust of the submission is that the present revisionists were not a party before the Waqf Tribunal. The revisionist allege themselves to be the beneficiaries of the Waqf but since the time of its creation in the year 1945 till the initiation of proceedings of

this revision, the revisionists did not claim any right as a beneficiary and as such they were neither the necessary nor proper parties before the Waqf Tribunal, hence, they have no right to maintain the above revision.

27. It is also urged by the learned Senior Counsel that the order dated 27.02.2018 passed by the Waqf Board has not been challenged by the revisionists. In absence of any challenge to the order dated 27.02.2018 passed by the Waqf Board, the order passed by the Waqf Tribunal dated 04.07.2018 could not be challenged since the genesis is the order dated 27.02.2018. In the said circumstances, the revisionists ought to have filed an appropriate application before the Waqf Tribunal itself rather than rushing to this Court. Even otherwise, the revisionists have filed large number of documents with the revision and the revisionists have raised controversial questions which are pure questions of fact which require evidence and it cannot be seen or adjudicated by this Court in exercise of its revisional jurisdiction.

28. It is further submitted by Sri Seth that admittedly the two properties, the subject matter of controversy i.e. one at Ashok Marg and the other at New Berry Road, were both Nazool properties and it is the State which has absolute title to such properties. Upon the expiry of the period of lease, the said two properties came into the hands of the State. It is further urged that the lease of Ashok Marg property expired on 31.03.1991 whereas the lease relating to the New Berry Road property expired on 27.03.1999. Even assuming if the said properties were of the Waqf, even then at best the Waqf had only a limited interest therein. As soon as the term of the respective lease came to an end, they ceased to be Waqf properties.

29. It is also urged that in any case, as per the definition of the word 'waqf' as contained in the Wakf Act, 1995, it is necessary that the property is dedicated to the waqf permanently. In case if the settlor did not have exclusive right to dedicate the property to the Waqf permanently, in such a situation, a Waqf cannot be created as it lacks the necessary ingredient of permanent dedication. It is further urged that this is the issue which has been considered by this Court in ***Mst. Peeran (supra)*** and reiterated in ***Abhishek Shukla (supra)***. The case of Abhishek Shukla (supra) has been affirmed by the Apex Court in SLP No. 3085 of 2018 (Waqf Maszid Vs. High Court) by means of order dated 13.03.2023, hence, it cannot be said that the order passed by the Waqf Tribunal was bad.

30. It has also been pointed out that actually there is a fallout between the revisionists and the private respondents nos. 2 to 4. The revisionists also sought to transfer some part of the property and at that point of time, there was no protest raised by the revisionist. It is only at a later stage when there appears to be some disagreement regarding the sharing of the funds that the aforesaid dispute has been raised and for all the aforesaid reasons, the revision is not maintainable and deserves to be dismissed.

31. Sri Seth, learned Senior counsel has relied upon the following decisions in support of his submissions.

(i) ***Vidya Varuthi Thirtha Vs. Balusami Ayyar and Others; 1921 SCC Online PC 58***

(ii) ***Ahmed G.H. Ariff and Others Vs. Commissioner of Wealth Tax, Calcutta; (1969) 2 SCC 471***

32. Sri Pritish Kumar, learned counsel has opposed the aforesaid revision on behalf of M/s Syks Infratech Pvt. Ltd, the respondent no. 5 and it is urged by that the respondent no. 5 is a bonafide purchaser for valuable consideration. It is submitted that the respondent no. 5 had purchased the property for a valuable sale consideration which was paid to the private respondent nos. 2 to 4. On the date of the execution of the said deed dated 24.12.2018, admittedly, the said property was not a waqf property. Any dispute between the revisionists on one hand and the private respondent nos. 2 to 4 is primarily between the beneficiaries of the Waqf inter se, however, the same cannot affect the right, title and interest of the respondent no. 5, inasmuch as, the deed executed in favour of respondent no. 5 has not been challenged before any court of law and still continues to subsist.

33. It is further submitted that in so far as the contention made by Sri Seth, learned Senior Counsel for the respondent no. 3 regarding the status of a lease hold property and whether such property could have been dedicated to a Waqf stands answered by a Division Bench of this Court in the case of Abhishek Shukla (supra) and in such circumstances, the property could not be treated to be a waqf property, hence, transferring the same by the respondent nos. 2 to 4 in favour of the respondent no. 5 cannot be said to be effectuated by any misrepresentation or fraud and to that extent the rights of the respondent no. 5 continues to be good and for the aforesaid reasons, the revision deserves to be dismissed.

34. Sri Farhan Habib, learned counsel who has appeared on behalf of the Waqf Board has merely adopted the submissions of the learned Senior

Counsel Sri Sudeep Seth and did not make any independent submissions.

35. The Court has heard the learned counsel for the parties and also perused the material on record.

36. The question that arises for adjudication before this Court is; ***(i)*** whether the instant revision is maintainable at the behest of the revisionists who were not parties before the Waqf Tribunal; ***(ii)*** Whether the lease hold property could be Waqfed or in the given facts and circumstances, upon the expiry of the lease period, the Waqf was extinguished and as such the Waqf Tribunal was justified in passing the impugned order dated 04.07.2018.

37. This Court proposes to take up the issue no. (i) first since in case if it is held that the revisionists were necessary and proper parties then they are to be given an opportunity to contest and considering the fact that the documents which have been filed by the revisionists before this Court, apparently, were not before the Waqf Tribunal and in such circumstances the said documents would have to be considered in context with the defence of the revisionists. Hence, in case if the answer to question no. (i) is in the affirmative then necessarily the matter will have to be remanded for a decision afresh and in case if the answer to question no. (i) is in the negative then the Court shall proceed to consider the issue no. (ii) as noticed above irrespective of the documents filed by the revisionists.

38. In order to answer the first question, it will be relevant to notice certain facts which are not in dispute. A Waqf was created in the year 1945 by Dr. Mohd. Abdul Jalil Faridi and his brother Lt. Mohd. Rafey Faridi. The Waqf deed has been brought on record and the relevant clauses have

already been reproduced hereinabove first:-

39. Clause 6 of the said Waqf deed clearly indicates that in case if with the prior permission any part of the waqf property is sold, then the proceeds generated therefrom shall be utilized for the Waqf and the same would also be treated to be a Waqf property.

40. The record would further indicate that the revisionists have filed a letter which has been written by Mohd. Abdul Jalil Faridi addressed to the Waqf Board dated 08th August, 1975 requesting the Waqf Board to incorporate the property situate at Ram Teerath Marg to be incorporated as part of Waqf Faridi. Another letter dated 31.07.1975 written by Mohd. Abdul Jalil Faridi and addressed to the Waqf Board seeking permission of the Board for raising a loan from the LIC and for the said purpose permission to mortgage the said property as collateral was sought. Another letter dated 27th May, 1991 followed by a letter dated 27th July, 1991, 20th September, 1991 indicating that Mohd. Abdul Jalil Faridi always treated the said property as Waqf property. The very fact that the Waqf was a dedication for the beneficiaries of the creator of the Waqf (settlor) which includes the present revisionists who are the daughters of Dr. Mohd. Abdul Jalil Faridi and after his death his son Mohd. Abdul Jalil Faridi became the mutawalli and the present revisionists being his sisters were the beneficiaries.

41. The concept of proper and necessary parties has been enshrined in Order 1 Rule 10 C.P.C. and with the aid of the decisions of the Apex Court, the said provision has been explained as under:-

42. In ***Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay, (1992) 2 SCC 524***, the Apex Court has held as under:-

> *5. It was argued that the Court cannot direct addition of parties against the wishes of the plaintiff who cannot be compelled to proceed against a person against whom he does not claim any relief. Plaintiff is no doubt dominus litis and is not bound to sue every possible adverse claimant in the same suit. He may choose to implead only those persons as defendants against whom he wishes to proceed though under Order 1 Rule 3, to avoid multiplicity of suit and needless expenses all persons against whom the right to relief is alleged to exist may be joined as defendants. However, the Court may at any stage of the suit direct addition of parties. A party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him. Rule 10 specifically provides that it is open to the Court to add at any stage of the suit a necessary party or a person whose presence before the Court may be necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.*
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> *6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.*
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> *8. The case really turns on the true construction of the rule in particular the meaning of the words "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit". The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the inter-vener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.*

43. In ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., (2010) 7 SCC 417***, the Apex Court has observed as under:-

> *"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:*

"10. (2) Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

44. In ***Baluram V. P.Chellathangam; (2015) 13 SCC 579***, the issue before the Apex Court was regarding the right of impleadment of a beneficiary viz a viz a Trust and this is similar to the issue involved in the instant case. The Apex Court has held as under:-

"12. After due consideration of the rival submissions, we are of the view that the High Court erred in interfering with the order of the trial court impleading the appellant as a party defendant. Admittedly, the appellant is a beneficiary of the Trust and under the provisions of the Trusts Act, the trustee has to act reasonably in exercise of his right of alienation under the terms of the trust deed. The appellant cannot thus be treated as a stranger. No doubt, it may be permissible for the appellant to file a separate suit, as suggested by Respondent 1, but the beneficiary could certainly be held to be a proper party. There is no valid reason to decline his prayer to be impleaded as a party to avoid multiplicity of proceedings. Order 1 Rule 10(2) CPC enables the court to add a necessary or proper party so as to "effectually and completely adjudicate upon and settle all the questions involved in the suit".
In Mumbai International Airport [(2010) 7 SCC 417 : (2010) 3 SCC (Civ) 87] this Court observed: (SCC pp. 422-25, paras 13-15, 19 & 22)
"13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he

does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ('the Code', for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

10. (2)Court may strike out or add parties.—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.'

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

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19. Referring to suits for specific performance, this Court in Kasturi [Kasturi v. Iyyamperumal, (2005) 6 SCC 733 : AIR 2005 SC 2813] , held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

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22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such

deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice."

45. Applying the principles as culled out from the aforesaid decisions, it would be clear that in so far as the present dispute is concerned, where a mutawalli was seeking the permission to de-list certain properties from the register of Waqf then in such a case, at least those parties who, in the knowledge of the mutawalli, were the direct beneficiaries and would be affected ought to have been impleaded in the proceedings before the Tribunal. The Waqf Board, though, was a necessary and a proper party to the said proceedings but it could not exclude the revisionists who were the beneficiaries and their identity was very well known to the then mutawalli, moreso where it was a Waqf-Al-Aulad, (a private Waqf for the benefit of the descendants of the settlor) and the then mutawalli himself was its beneficiary and he had full knowledge of the fact that his two sisters, amongst others, were in the category of direct beneficiaries. The least he could do was to have impleaded them as a party as in this sort of dispute which was before the Waqf Tribunal, their presence was both necessary and imperative as it affected the character and composition of waqf property which was the corpus of the waqf and was for the benefit of the beneficiaries.

46. The factual matrix which unfolds indicates that the Mutawalli Abdul Jalil Faridi had moved an application before the Waqf Tribunal seeking de-listing the properties from the Waqf Board from the register of Waqfs maintained by the Waqf Board. The documents which have been filed before the Waqf Tribunal were selective in the sense that Mohd. Abdul Jalil

Faridi did not bring on record all those letters which have been mentioned hereinabove by which Mohd. Abdul Jalil Faridi himself had sought the permission from the Waqf Board to mortgage the property to incorporate the property in the Waqf Register as well as seeking permission to raise residential flats over the Waqf property.

47. There are certain documents which have been filed by the revisionists to submit that Mohd. Abdul Jalil Faridi was in a habit of maintaining a diary/a journal wherein he had recorded sequence of events and facts which indicates the mindset that the Waqf property was being transferred for which unscrupulous means were being adopted.

48. Though, the said documents are not admitted to the respondents nor they were before the Waqf Tribunal but without commenting on the said documents on merits regarding their admissibility and relevancy, suffice to state that they do appear to have some bearing on the controversy.

49. Moreover, the said documents do require proof but the very fact that the documents which have been brought on record by the revisionists along with their affidavit in support of the application for interim relief filed along with the revision and with the rejoinder affidavit relate to the controversy in question and could have thrown light over the controversy raging between the parties.

50. Before proceeding further, it will be worthwhile to notice certain decisions of the Apex Court as to the effect of not bringing on record the complete documents or selective disclosure or concealment of facts which are relevant to the controversy and known to the party. The Apex Court in

S.P. Chengalvaraya Naidu Vs. Jagannath; 1994 1 SCC 1 has held as under:-

> *"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."*

53. Again in ***Indian Bank V. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550***, the Apex Court in para 20, 22 and 23 has held as under:-

> *"20. By filing letter No. 2775 of 26-8-1991 along with the review petition and contending that the other letter, namely, letter No. 2776 of the even date, was never written or issued by the respondent, the appellant, in fact, raised the plea before the Commission that its judgment dated 16-11-1993, which was based on letter No. 2776, was obtained by the respondent by practising fraud not only on the appellant but on the Commission too as letter No. 2776 dated 26-8-1991 was forged by the respondent for the purpose of this case. This plea could not have been legally ignored by the Commission which needs to be reminded that the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraus et jus nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man (Fraus et dolus nemini patrocinari debent).*
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> *22. The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on court. In the case of fraud on a party to the suit or proceedings, the court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the court's business.*
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> *23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the*

court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. (See:Benoy Krishna Mukerjeev.Mohanlal Goenka[AIR 1950 Cal 287] ;Gajanand Sha v. Dayanand Thakur [AIR 1943 Pat 127 : ILR 21 Pat 838] ; Krishnakumar v. Jawand Singh [AIR 1947 Nag 236 : ILR 1947 Nag 190] ;Devendra Nath Sarkar v. Ram Rachpal Singh [ILR (1926) 1 Luck 341 : AIR 1926 Oudh 315] ;Saiyed Mohd. Raza v.Ram Saroop [ILR (1929) 4 Luck 562 : AIR 1929 Oudh 385 (FB)] ; Bankey Behari Lal v. Abdul Rahman [ILR (1932) 7 Luck 350 : AIR 1932 Oudh 63] ; Lekshmi Amma Chacki Amm v. Mammen Mammen [1955 Ker LT 459] .) The court has also the inherent power to set aside a sale brought about by fraud practised upon the court (Ishwar Mahton v. Sitaram Kumar [AIR 1954 Pat 450]) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh [AIR 1958 Pat 618 : 1958 BLJR 651] ; Tara Bai v.V.S. Krishnaswamy Rao [AIR 1985 Kant 270 : ILR 1985 Kant 2930] .)"

51. Similarly, the Apex Court in ***United India Insurance Co. Ltd. Vs. Rajendra Singh; (2000) 3 SCC 581*** in paras 15 and 16 has held as under:-

"15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

52. Again in **K.D. Sharma v. Steel Authority of India Limited; ((2008) 12 SCC 481**, the Hon'ble Apex Court has held as under:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R.V. Kensington Income Tax Commissioners, [1917] 1 K.B. 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"...it has been for many years the rule of the Court, and one which it is of

the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts-it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

37. In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:

"...Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play 'hide and seek' or to 'pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts"."

53. In ***A.V. Papayya Sastry v. Government of A.P., (2007) 4 SCC 221*** the Apex Court has observed as under*:*

"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, (1956) 1 All ER 341 : [1956] 1 Q.B. 702 : [1956] 2 WLR 502, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

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.

27. In S.P. Chengalvaraya Naidu (dead) by LRs. v. Jagannath (dead) by LRs., (1994) 1 SCC 1 : JT (1994) 6 SC 331, this Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

28. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', Kuldip Singh, J. stated:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

(emphasis supplied)

29. The Court proceeded to state:

"A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would he guilty of playing fraud on the court as well as on the opposite party".

30. The Court concluded:

"The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".

54. In ***Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319*** the Apex Court has held as under:

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.
16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentations may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In Derry v. Peek, [L.R.] 14 App. Cas. 337, it was held:

In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.
A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief

that it is true, is not fraudulent and does not render the person make it liable to an action of deceit."

20. In Kerr on Fraud and Mistake, at page 23, it is stated:

"The true and only sound principle to be derived from the cases represented by Slim v. Croucher is this : that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with Derry v. Peek. A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. "A consideration of the grounds of belief", said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

21. In Bigelow on Fraudulent Conveyances at page 1, it is stated:

"If on the facts the average man would have intended wrong, that is enough."

It was further opined:

"This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to 'moral' fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as 'fraud upon the law'. What is fraud upon the law? Fraud can be committed only against a being capable of rights, and 'fraud upon the law' darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question."

22. Recently this Court by an order dated 3rd September, 2003 in Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education reported in (2003) 8 SCC 311 : JT 2003 Supp (1) SC 25 held:

"Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See Derry v. Peek, [L.R.] 14 App. Cas. 337) In Lazarus Estate v. Berly, [1971] 2 WLR 1149 the Court of Appeal stated the law thus:

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

In S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1 this Court stated

that fraud avoids all judicial acts, ecclesiastical or temporal."

23. 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.

24. In Arlidge & Parry on Fraud, it is stated at page 21:

"Indeed, the word sometime appears to be virtually synonymous wit "deception", as in the offence (now repealed) of obtaining credit by fraud. It is true that in this context "fraud" included certain kind of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud". In Jones, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences : his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act, 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both Jones and the "false front" could now be treated as cases of obtaining property by deception."

25. 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 f any equitable doctrine including resjudicata.

26. In Shrisht Dhawan v. Shaw Brothers, (1992) 1 SCC 534 : AIR 1992 SC 1555], it has been held that:

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

27. In S.P. Chengalvaraya v. Jagannath [(1994) 1 SCC 1] this Court in no uncertain terms observed:

"…The principles of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation…. A fraud is an act of deliberate deception with the design of security something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage… A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then

he would be guilty of playing fraud on the Court as well as on the opposite party."

28. In Indian Bank v. Satyam Fibers (India) Pvt. Ltd. [(1996) 5 SCC 550], this Court after referring to Lazarus Estates (supra) cases observed that 'since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order".
It was further held:
"The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers, which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business."

29. In Chittaranjan Das v. Durgapore Project Limited, 99 CWN 897, it has been held:

"Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied within such a situation.
It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

55. Apparently, had the revisionist been impleaded and were granted an opportunity to contest and the aforesaid documents would have been placed on record of the Tribunal then at least its impact could have been noticed and assessed by the Tribunal after hearing the concerned parties while giving its verdict, however, this Court finds that in absence of the revisionist who were not impleaded and they could not raise their defence nor could produce the relevant documents before the Waqf Tribunal, hence, they have been deprived of an opportunity to contest as they were both necessary and proper parties.

56. It is no doubt true that the scope of revision is not as wide as rights

exercised by an Appellate Authority but the fact remains that even while exercising the powers of revision in terms of Section 83 (9) of the Waqf Act, 1995, the Court has the power to see the legality and proprietary of the order impugned and in order to ascertain the same, this Court in the aforesaid facts and circumstances finds that there are number of issues which require consideration; ***(i)*** Whether in terms of Clause 6, the subsequently purchased properties were waqf property or not; **(ii)** whether a lease hold property could be made the subject matter of a waqf **(iii)** whether the mutawalli who by his conduct has been treating a particular property as a waqf and later takes recourse to certain acts which is adverse to his status of a mutawalli viz.a.viz. the Waqf and its effect; **(iv)** whether the free hold deed got executed by the mutawalli in his personal name and thereafter the said property was sold to the respondent no. 5, what rights would accrue to the respondent no. 5 is also an issue to be considered; **(v)** whether the respondent no. 5 was a bonafide purchaser for valuable consideration and whether his rights are protected in terms of Section 44 of the Transfer of Property Act; **(vi)** whether the provisions of the Transfer of Property Act viz.a.viz, the provisions contained in the Government Grants Act, 1885 are applicable; ***(vii)*** whether Mohd. Abdul Jalil Faridi could have bequeathed the waqf properties by way of a will and could have made his daughter a mutawalli by a testamentary disposition to the exclusion of his sisters as per their personal law is also an issue which requires consideration; ***(viii)*** whether the decisions of this Court in Mst. Peeran and Abhishek Shukla (supra) would have an impact in the given facts and circumstances of this case.

57. The issues as noticed above could have been adjudicated had the persons having right and interest in the waqf would have been impleaded. Unfortunately, the revisionists were not impleaded as a party and even the Waqf Board while filing its response before the Waqf Tribunal did not raise a relevant defence but a formal written statement filed which was nothing but an eye-wash and in such circumstances, this Court is of the clear opinion that the presence of the revisionists before the Waqf Tribunal was necessary and imperative.

58. Having arrived at the aforesaid conclusion that the presence of the present revisionists before the Waqf Tribunal was imperative and it was further necessary to have given an opportunity of hearing to the revisionists as the matter involved deeper questions as noticed above which required adjudication. Hence, in the aforesaid circumstances, the impugned order dated 04.07.2018 is set aside. The petition no. 37 of 2018 before the Waqf Tribunal shall stand restored. The parties shall appear before the Tribunal on ***01st July, 2024*** and the revisionist shall be entitled to move an formal application for impleadment along with their written statements and documents in case if such an application is moved, the same shall be allowed. The parties shall be permitted to lead evidence on the issue emerging from their pleadings including the issues noticed by this Court and after affording full opportunity of hearing to the parties, but without granting an unnecessary adjournments, the Waqf Tribunal shall hear the matter afresh and pass appropriate orders in accordance with law by a reasoned and a speaking order.

59. It is made clear that this Court has only allowed the revision on

question no. (i) i.e. the revisionists were necessary and proper parties and they have been deprived of an opportunity to contest and the question no. (ii) is left open to be decided on merits after due contest, hence, any observation made by this Court may not be taken as an expression of opinion on merits of the matter. The parties shall be at liberty of raising all pleas open to them in law including on the issue of admissibility and relevancy of documents filed by the respective parties which shall be decided by the Tribunal in accordance with law.

60. Accordingly, the revision is ***allowed*** in the aforesaid terms. Costs are made easy.

Order Date :- 21st May, 2024

Asheesh

(Jaspreet Singh, J.)