

Reserved On : 01/10/2025
Pronounced On : 16/10/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4881 of 2002
With
R/SPECIAL CIVIL APPLICATION NO. 12559 of 2002

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT **Sd/-**

Approved for Reporting	Yes	No
	✓	

KARSHANDAS B MAKADIA & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR RS SANJANWALA(728) for the Petitioner(s) No. 48

MR. AADIT R SANJANWALA(9918) for the Petitioner(s) No.

13,15,18,19,21,22,27,28,32,34,39,4,41,42,44,5

MS SIMRAN PAHWA(12846) for the Petitioner(s) No. 1

ADVOCATE NAME DELETED for the Respondent(s) No. 23,25,31,32

APPEARANCE WITHDRAWN for the Respondent(s) No. 20

MR VISHAL C MEHTA(6152) for the Respondent(s) No. 55.1,55.2

MS DIMPLE M PARIKH(7500) for the Respondent(s) No.

13,33,35,36,37,38,38.1,38.2,38.3,38.4,38.5,39,50,51,53

MS SM AHUJA(118) for the Respondent(s) No. 8.3

NOTICE ISSUED BY PUBLICATION for the Respondent(s) No.

11,14,15,16,17,18.1,18.2,18.3,19,22.1,22.2,22.3,24,27,28.1,28.2,28.3,28.4,28

.5,29,3,30,40,41.1,41.2,41.3,42,43,44,45,46,48,49,5,54,6,8.1,8.2,8.4,8.5,8.6,8

.7

SIMPLE M PARIKH(8370) for the Respondent(s) No.

13,33,35,36,37,38,39,50,51,53

DECEASED LITIGANT for the Respondent(s) No. 18,22,28,41

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES

for the Respondent(s) No. 55,8

DELETED for the Respondent(s) No. 12,21,35,47,52

MR SHIVAM PARIKH, ASSISTANT GOVERNMENT PLEADER for the

Respondent(s) No. 1,2,56,57

MR JITENDRA M PATEL(620) for the Respondent(s) No. 10,26,34

MR MJ PARIKH(577) for the Respondent(s) No.

13,36,37,38,38.1,38.2,38.3,38.4,38.5,39,50,51,53

MR PK SHUKLA(1056) for the Respondent(s) No. 9

MR PS CHAMPANERI(214) for the Respondent(s) No. 4,7

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

CAV JUDGMENT

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1. Both these writ petitions are filed under Articles 226/227 of the Constitution of India by Rajdhani Cooperative Housing Society Ltd. (hereinafter referred to as “**Society**”) including its members, who aggrieved by the illegal and unauthorized acts of the private respondents herein, having so obtained consent decree from Civil Court as well as got it registered unilateral cancellation deeds of sale deeds in relation to lands situated at

Survey Nos.73, 78 to 80, 81/1, 81/2, 83 and 84, at Village Nabhoi, District Gandhinagar (hereinafter referred to as “**the lands**”).

HISTORY OF THE PETITIONS

2. Before adverting to the facts and the issues germane in these writ petitions, it would be appropriate to first refer to the past history of this litigation, as follows:-

2.1. These writ petitions were initially heard and decided by Co-ordinate Bench of this Court vide its common oral judgment dated 01.05.2024, thereby, learned Single Judge dismissed these writ petitions by holding that the petitioners have an alternative efficacious remedy available under law for the prayers sought in these writ petitions.

2.2. It appears that the petitioners challenged the said common judgment passed by the Co-ordinate Bench of this Court by way of intra-court appeals before the Division Bench of this Court, being Letters Patent Appeal Nos.518 of 2024 and 519 of 2024.

2.3. After hearing the parties, the Division Bench of this Court, vide its CAV Judgment dated 17.05.2024, quashed and set aside the aforesaid common judgment passed by the Coordinate Bench of this Court by the learned Single Judge of this Court. Having done so, the Division Bench remanded the matters back to the learned Single Judge by restoring both these petitions.

2.4. While remanding/restoring both these writ petitions, the Division Bench arrived at the conclusion that petitioners cannot be relegated to an alternative remedy after about 22 years of pendency of the writ petitions. Accordingly, the learned Single Judge has been requested to decide the writ petitions as expeditiously as possible, on its merits.

2.5. In view of the aforesaid judgment of the Division Bench, both these writ petitions are restored back to their original file and placed before this Court for hearing.

3. These matters were initially heard at length and reserved for judgment by this Court vide its order dated 09.07.2025,

but request made by the learned advocates of the petitioner to list these matters again for hearing on 16.07.2025, which was accepted. When these writ petitions were again taken up for hearing, the petitioners submitted several documents, which included sale deeds executed between the parties in relation to the lands. Such sale deeds pertain to the execution of the sale of the lands by its original owners in favour of Respondent Nos.8 and 9 herein, and in turn by them in favour of Petitioner - Society, which have already taken on record.

4. The prayers prayed for in Special Civil Application No.12559 of 2002 are as under:-

“6(A) The Honourable Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or writ of certiorari or writ in nature of certiorari or any other appropriate writ, direction or order securing the name of the petitioner society in revenue record with the protection and its title (1) to quash and set aside the order recording the said Consent Terms and the consequential decree dated 27th March, 2002 passed in the Regular Civil Suit No.30 of 1998.

(B) Be pleased to declare that the registration of the Cancellation Deeds dated 30th June, 2000, Cancellation Deeds dated 10th June, 2000 and the deed extending the so called oral tenancy of Gopalbhai C. Amin, dated 30th June, 2000 and 10th July, 2000, are void and to command the respondent see not to register the said deeds of Cancellation and the Deeds extending oral tenancy

dated 30th June, 2000 and 10th July, 2000. Copies of the Index II whereof are at Annexure-L and M.

(C) Pending hearing of this petition, this Hon'ble Court be pleased to command the respondent Nos. 1 to 3 not to make any changes in the Revenue Records on the basis of the Deeds of Cancellation dated 30th June, 2000 and 10th July 2000 (copies of the Index - II whereof are Annexure - L above) as well as on the basis of the so called documents extending the oral tenancy dated 30th June, 2000 and 10th July, (sic June) 2000.

(D) Alternatively, this Hon'ble Court be pleased to pass such order that pending the hearing and final disposal of the petition, the Hon'ble Court be pleased to restrain the respondent Nos. 1 to 3 from making any changes in the Revenue Records relating to lands bearing S.No. 73, 78, 79, 80, 81/1, 81/2, 83, 84 on the basis of the Deeds of Cancellation dated 30th June, 2000 and 10th July, 2000 (copies of the Index where of are Annexure-L above) as well as on the basis of the so called documents extending the oral tenancy dated 30th June, 2000 and 10th July, 2000.

(E) This Hon'ble Court be pleased to stay the execution and operation of the Consent Terms recorded in Regular Civil Suit No.30 of 1998 on 27.3.2000, till the final disposal of this petition.

(F) The Hon'ble Court be pleased to pass such other order as may be deemed just and proper in the circumstances of the case.

(G) The Hon'ble Court be pleased to provide cost of petition to the petitioner."

5. Special Civil Application No.4881 of 2002 is taken as the lead matter. The prayers prayed for in this writ petition are as under:

"(A) That the Hon'ble Court in exercise of powers conferred under Article 227 of the Constitution of India, be pleased to call for the record and proceedings of Regular Civil Suit No.30 of 1998 of the Court of Civil Judge, Gandhinagar and be pleased (1) to declare that the Consent Terms filed in the said proceedings are a fraudulent, collusive, unlawful and non est (2) to quash and set

aside the Order recording the said Consent Terms and the consequential decree dated 27th March 2002 passed in the said suit.

(B) That the Hon'ble Court be pleased to issue a writ of certiorari and/or mandamus or any other appropriate writ, direction or Order and be pleased: (1) To declare that the registrations of the Cancellations Deeds dated 30th June, 2000, Cancellation Deeds dated 10th June, 2000, and the deed extending the so called oral tenancy of Gopalbhai C Amin dated 30th June 2000 and 10th July 2000, are void and to command the Respondent Nos.2 not to register the said Deeds of Cancellation and the Deeds extending oral tenancy dated 30th June 2000 and 10th July 2000. Copies of the index II whereof are at Annexure-L & M) (2) to command the Respondent Nos.1 to 3 not to make any changes in the Revenue Records on the basis of the Deeds of Cancellation dated 30th June 2000 and 10th July 2000 (copies of the index-II whereof are annexed-L above) as well as on the basis of the so called documents extending the oral tenancy dated 30th June 2000 and 10th June 2000 (copies of the index-II whereof are annexed-M above)

(C) that pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to restrain the Respondents no.1 to 3 from making any changes in the Revenue Records relating to lands bearing S.No.73, 78, 79, 80, 81/1, 81/2, 83 and 84 on the basis of the Deeds of Cancellation dated 30th June 2000 and 10th July 2000 (copies of the Index where of are annexed-L above) as well as on the basis of the so called documents extending the oral tenancy dated 30th June 2000 and 10th July 2000 (copies of the index-II whereof are annexed-M above).

(D) That pending the hearing and final disposal of the Petitioners, the Hon'ble Court be pleased to restrain the Respondents No.4 to 55, either jointly or severally from interfering with the possession of the members to in the lands of the society, bearing survey No.from creating any interest in the lands of the society, bearing survey Nos. 73, 78, 79, 80, 81/1, 81/2, 83 and 84, as also from transferring or disposing off the same, in any manner whatsoever.

(E) That pending the hearing and final disposal of the Petition, the Consent Terms recorded in Regular Civil Suit No.30 of 98 on 27.3.2002, at Annexure-N be stayed.

(F) That pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to appoint a Court Commissioner to make inventory of the records of the Society at the office of the Society, which is at the office of the Respondent No.4 to 7, situated at 20-21, National Chambers, Ashram Road, Ahmedabad and be pleased to direct the said Commissioner to cease and collect the said and place the same in the custody of the Hon'ble Court.

(G) For costs.

(H) Such other and further relief as may be deemed fit in the facts of the present case be granted."

6. There were several civil applications filed by the petitioners seeking miscellaneous reliefs, which were allowed by this Court vide orders dated 09.07.2025. So far as Civil Application No. 3 of 2025 is concerned, it was heard and reserved for its order. Today itself, by way of a separate order, same is also partly allowed by this Court.

THE SHORT FACTS OF CASE

7. The short facts necessitated to resolve the dispute/issues germane in these writ petitions are as under:-

7.1. The original petitioners of Special Civil Application No.4881 of 2002 are members of the Society, and such Society happens to be the petitioner of Special Civil Application

No.12559 of 2002. Now, the Society also become co-petitioner of Special Civil Application No. 4881 of 2002 by the order dated 09.07.2025, passed in Civil Application No. 2 of 2019 in Special Civil Application No. 4881 of 2002.

7.2. Respondent Nos. 1, 2, and 3 are the government and its authorities, whereas Respondent Nos. 10 to 55 are the original owners of the lands (hereinafter referred to as “**Original Owners**”). Respondent Nos. 8 and 9 were the initial purchasers of the lands (hereinafter referred to as “**Aggregators**”), who, in turn, sold the lands to the Petitioner - Society, and Respondent Nos. 4 to 7 are the developers of the lands in question.

7.3. The original owners appear to have executed around 11 registered sale deeds in favour of the Aggregators between 1968 to 1980 for the lands. The Mamlatdar, Gandhinagar, vide its order dated 14.10.1985, initiated an inquiry under Section 84(C) of the Gujarat Tenancy and Agricultural Land Act, 1948 (hereinafter referred to as “**the Tenancy Act**”), thereby,

declared the transactions between the owners and Aggregators for selling the lands illegal and consequently forfeited the lands. Nonetheless, parties were given one chance to restore the lands to its original position.

7.4. The Aggregators filed a Tenancy Appeal No.5 of 1986 before the Prant Officer, Gandhinagar, under Section 74 of the Tenancy Act, which was allowed by the Appellate Authority vide its order dated 08.08.1986, thereby, quashed and set aside the order dated 14.10.1985, passed by the Mamlatdar, Gandhinagar, as referred to hereinabove.

7.5. The Aggregators appear to have sold the lands to the Society by executing a registered sale deed in the year 1987, and two additional sale deeds were executed by the Aggregators in favour of the Society in the year 1996. By virtue of the execution of registered sale deeds by the Aggregators in favour of the Society, the title of the lands stood transferred in favour of the Society.

7.6. Some of the original owners, i.e., Respondent Nos. 10, 11, 12, 18, 26, and 34 (hereinafter referred to as “**Plaintiff**”), appear to have filed Regular Civil Suit No. 30 of 1998 before Civil Judge, Gandhinagar, claiming that they are in occupation of the lands and sought a permanent injunction to protect their possession. The suit was initially filed on 04.02.1998, being Regular Civil Suit No. 30 of 1998, against only two defendants, i.e., Defendant No. 1 - the Society, and Defendant No. 2 - Smt. Laxmiben.

7.7. Thereafter, the Plaintiffs filed an application on 04.04.1998, below Exhibit 17 in the suit, to delete the Society from the array of the suit, which was allowed by the Trial Court.

7.8. Simultaneously, on the very day, another application below Exhibit 18 filed by the Plaintiffs to implead one of the Aggregators, i.e., Respondent No. 9 - Vashram Bharwad, to be joined as defendant No.3 in the suit. Such application came to be allowed on 03.12.1998.

7.9. Pending the suit, the Original Owners presented one unilateral cancellation deed before Sub-registrar, Gandhinagar for its registration in regards to the Cancellation of sale deeds executed by them in favour of the Aggregators, as aforesaid, registered between 1968 to 1980. Such unilateral cancellation deed was registered on 30.06.2000, before the Sub-Registrar, Gandhinagar. It further appears that another separate document was created by the original owners, thereby, declared that Respondent No. 55 herein would be a permanent tenant of the lands.

7.10. Likewise, the Aggregators also prepared a similar type of unilateral cancellation deed, which was also registered on 10.07.2000, whereby, they unilaterally canceled the sale deeds executed by them in favour of the Society, executed and registered by them in year 1987 & 1996.

7.11. Thereafter, on 04.11.2000, an application below Exhibit 33 came to be filed in the aforesaid suit by a third parties, whereby they sought to implead themselves in the suit

as defendants. Such application appears to have been filed at the instance of the Aggregators and the Society. It is a specific case of the Society that it neither authorized the Aggregators nor, in fact, filed such application. It remains undisputed that such application was never heard and decided by the Trial Court and remained pending till consent decree passed by Trial Court. It appears that the Society, being shown as Applicant No. 3 in such application, represented by its chairman and secretary i.e., Vashram Bharwad - Respondent No. 9 – one of the Aggregators.

7.12. Thereafter, on 27.03.2002, a compromise agreement was filed below Exhibit 51 in the aforesaid suit, wherein it was agreed that the contents of the plaint were true and correct, whereby the defendants would not interfere with the possession of the plaintiff and would not question their ownership over the lands. Such consent terms/agreement appear to have been executed between the Plaintiff and the Defendants. The thumb impression of the Aggregators put on the side of the defendants, and so also, the thumb impression

of Respondent No. 9, one of the Aggregators, was also affixed on such compromise agreement, showing him as secretary of the Society.

7.13. It is required to be noted here that the Society was initially joined in the suit but deleted by the Plaintiffs vide its application below Exhibit 17, which was allowed on 04.04.1998, and as such, an application filed below Exhibit 33 till passing of the consent decree remained undecided by the Trial Court. Thus, in view of aforesaid, undisputedly the Society never in any form joined in the aforesaid suit.

7.14. Unnoticing such fact, the Trial Court accepted such compromise agreement executed between the parties to the suit and passed a consent decree on 27.03.2002. It appears that an order was passed below Exhibit 51 by the Trial Court on 27.03.2002, whereby the Trial Court recorded the subjective satisfaction of the parties to the suit and, having so observed that the parties have voluntarily executed a consent agreement and their lawyers are present, accordingly, a decree could be

drawn as per the consent terms/agreement. So, the Trial Court decreed the aforesaid suit as per the above referred consent terms/agreement.

7.15. Having come to know about such unilateral execution of a cancellation deed by the Aggregators as well as the original owners, and so also, the consent decree drawn by the Trial Court in the aforesaid suit, the petitioners herein have challenged the illegal and unauthorized action of the private respondents in form of the consent decree passed by the Trial Court in the aforesaid suit and so also, challenged the registration of unilateral cancellation deed registered by respondent - authority by way of the present petitions.

7.16. The respondents have appeared in these petitions through their respective lawyers and have also filed their replies. Private respondents, whether Aggregators or original owners as the case may be, have opposed these petitions mainly on the ground that petitioners having an alternative remedy to get relief as prayed in this petitions, these petitions

should not be entertained by this Court. Nevertheless, they are unable to dispute the aforesaid factual aspects, which emerges from the documents made available on the record. Neither the Plaintiff nor the Aggregators have been able to demonstrate before this Court that how the thumb impression of Respondent No. 9, one of the Aggregators, affixed in the consent terms, showing him as secretary of the Society. The Aggregators failed to submit any documents to show that at the time of presenting application below Exh.33 and / or consent terms/agreement in the aforesaid suit, the respondent no.9 – one of the aggregators was the chairman/secretary of the Society.

7.17. The State, through the Deputy Collector, filed a detailed reply, contending, inter alia, that the documents, which were executed and registered by the original owners and Aggregators on 30.06.2000 and 10.07.2000, respectively (hereinafter referred to as “**Unilateral Cancellation Deeds**”), were unauthorizedly and illegally executed inasmuch as the title of the lands stands in favour of the Society. It is

contended that these documents are illegal and sale deeds executed in favour of the Society in the year 1987 & 1996 can never be revoked. (*See Paras 5, 20, 26, and 36 of State's reply*).

7.18. It appears that during the pendency of the present writ petitions, the original owners appear to have filed Special Civil Application No. 464 of 2004 before this Court, seeking mutation of their name in the revenue records. The aforesaid petition came to be allowed by Co-ordinate Bench of this Court vide order dated 16.03.2004 on the basis of the aforesaid consent decree, albeit, suppressed the pendency of the present writ petitions, and interim orders passed therein.

7.19. The petitioners appear to have filed Miscellaneous Civil Application No. 482 of 2004 to recall the said order passed in the aforesaid application. After noticing the aforesaid facts and the orders passed in the present petitions, the Co-ordinate Bench of this Court has recalled its order dated 16.03.2004,

passed in Special Civil Application No. 464 of 2004, having allowed said application vide its order dated 25.11.2016.

7.20. Even the revenue authorities granting Non-Agricultural Use (NA) permission in favour of the Society for the lands questioned by the Aggregators before this Court by way of a petition being Special Civil Application No. 7612 of 2013, wherein it has been so held by Co-ordinate Bench of this Court that Respondent No. 9, Vashram Bharwad, one of the Aggregators, having already sold the lands to the Society, has no locus standi to challenge NA permission granted by the competent revenue officer in favour of the Society.

7.21. In light of the aforesaid undisputed facts and so also, the pleadings of the parties, I would now like to consider their legal submissions, on merits.

SUBMISSION OF THE PETITIONERS

8. Learned Senior Advocate Mr. R.S. Sanjanwala, with Learned Advocate Mr. Aditya Sanjanwala, would vehemently submit that the consent decree passed by the Trial Court on

27.03.2002, is not only contrary to the rule of procedure but passed exceeding its jurisdiction and in violation of the principles of natural justice. It is submitted that, as per the record of Regular Civil Suit No. 30 of 1998 filed by the Plaintiff, it would suggest that the Society never joined in the suit, inasmuch as, it was initially joined but deleted before the Court issued any notice to the defendants. It is submitted that when such would be the case, the impugned consent decree passed by the Trial Court is null and void, having obtained through practicing fraud upon the Court.

8.1. Learned Senior advocate Mr. Sanjanwala would also assiduously submit that when the Society never a party to the suit and Respondent No. 9, one of the Aggregators, unauthorisdelly affixed his thumb impression showing himself as secretary of the Society, even though the Society was never a defendant in the suit, the consent agreement itself is nothing but a fraud played by the parties before the Trial Court to obtain a consent decree by fraudulent means. It is submitted that any order or decree obtained through practicing fraud is

null and void, *non est*, and requires to be quashed and set aside.

8.2. Learned Senior Advocate Mr. Sanjanwala would respectfully submit that the impugned consent decree obtained by playing fraud on the Court by dishonestly misrepresenting the Society to be a party to the suit; in that factual scenario, such decree requires to be quashed and set aside on the ground of fraud.

8.3. Learned Senior Advocate Mr. Sanjanwala would further respectfully submit that when a party suppresses material facts and documents and obtained any order from the Court of law, it would amount to play fraud with the Court, and such illegal act of the party requires to be set at naught by this Court by taking its cognizance. It is submitted that, as per the catena of decisions of the Honorable Supreme Court, when any order obtained through fraud is brought to the notice of the Court, such order cannot be allowed to stand in the eye of law.

8.4. Learned Senior Advocate Mr. Sanjanwala, would submit that neither the Aggregators nor the original owners had, on the date of registration of the unilateral cancellation deeds in question, any authority under law to execute such deeds. It is respectfully submitted that when such deeds were executed, they have no right, title, or interest in the lands and in fact, without any authority, executed and registered such deeds. Thus, they are *non est* in the eye of law.

8.5. Learned Senior Advocate Mr. Sanjanwala would humbly submit that in unilateral cancellation deed of the sale deed, without the original purchaser (Society) being a signatory to such deed, such document is *non est* and void. It is respectfully submitted that such void documents could not have been registered by the Sub-Registrar.

8.6. Learned Senior Advocate Mr. Sanjanwala would respectfully submit that cancellation deed of any sale deed would be a reconveyance by the purchaser to the seller/vendor, which requires the signature of both parties

inasmuch as, such cancellation also amounts to transfer, as per Section 7 of the Transfer of Property Act, 1882 (hereinafter referred to as “**the Act, 1882**”). It is submitted that in unilateral cancellation deed in question dated 10.07.2000, the Society is shown as the vendee and the Aggregators are shown as the vendor. As such, undisputedly, in the year 2000, when such unilateral cancellation deed in question was executed and registered, the Society was the titleholder/owner of the lands; thereby, the Society ought to have been shown as the vendor and the Aggregators ought to have been shown as the vendee. It is further submitted that despite the unilateral cancellation deed dated 10.07.2000, was only registered at the instance of the Aggregators inasmuch as, none of the signatories of the Society signed such cancellation deed, so it becomes unilateral cancellation of sale deed dated 12.10.1987 executed by the Aggregators in favour of the Society, and the same is not permissible in law.

8.7. Learned Senior Advocate Mr. Sanjanwala would further submit that when the Aggregators once transferred the lands,

thereby, the ownership vested in favour of the Society in the year 1987, such cancellation deed without obtaining the signature of the signatory of the Society could not have been registered by the Sub-Registrar, Gandhinagar. It is submitted that as per Rule 47 of the Gujarat Registration Rules, 1970 (hereinafter referred to as “**the Rules, 1970**”), the Sub-Registrar is empowered to examine whether the documents sought to be presented by the party is a proper person, who is competent to present it or not. If it is found from such examination that the person concerned is not competent to present such deed of cancellation, the Sub-Registrar can refuse registration. It is submitted that when the Sub-Registrar, unnoticing the aforesaid facts and the incompetence of the Aggregators to present the cancellation deed, which was unauthorisdelly registered by the Sub-Registrar, such action of the Registrar, having acted dehors the rule, can always be questioned by way of the present petition.

8.8. Learned Senior Advocate Mr. Sanjanwala would further submit that the conduct of the private respondents would

clearly indicate that even after selling the lands in favour of the Society, by way of different methodologies, be it registering the unilateral cancellation deed or filing a civil suit wherein a consent decree was obtained by suppressing material facts, and also filing petitions being Special Civil Application Nos. 464 of 2004 and 7612 of 2013, would disentitle them to object the prayers made in these petitions. It is submitted that the acts and deeds of the plaintiff/original owners/Aggregators are nothing but practicing fraud upon the Court and keeping the Society busy in various litigations, which was unwarranted. It is respectfully submitted that when the aforementioned private respondents have lost their title over the lands, having sold it to the Society, filing such a frivolous litigations and also registering unilateral cancellation deeds are nothing but an unauthorized and illegal act on their part, which requires to be dealt with strictly by this Court, to maintain the rule of law in society.

8.9. Learned Senior Advocate Mr. Sanjanwala would respectfully submit that when the Society is already joined as

one of the petitioners in Special Civil Application No. 4881 of 2002, its application being Civil Application No. 2 of 2019 was allowed by this Court on 09.07.2025; as such, objections raised by the private respondents in regards to the locus standi of the petitioner – Society and its members to maintain these petitions would not survive. It is submitted that though arguments of locus standi initially raised in the first round of litigation, after the remand of the matter by the Division Bench, such arguments are now not pressed into service by the private respondents, having not so argued it.

8.10. Lastly, Learned Senior Advocate Mr. Sanjanwala would submit that when the matters are remanded back to this Court by the Division Bench, arguments regarding an alternative remedy available to the petitioner to file an appropriate application before the Trial Court questioning the consent decree, as well as filing a civil suit for seeking declaration of unilateral cancellation deeds pales into insignificance. It is submitted that, as per the direction issued by the Division Bench of this Court, this Court is required to decide both these

petitions on its merits. It is respectfully submitted that there are no disputed questions of fact involved in the matter, inasmuch as, the documents which are on record are not disputed documents in terms of their genuineness, but the dispute is only about their mode of execution/registration and the passing of a consent decree by the Trial Court through an act of fraud. So, this Court, in its writ jurisdiction having power under Articles 226/227 of the Constitution of India, can very well examine all these issues germane in the petitions on the basis of such undisputed facts and documents.

8.11. According to learned Senior advocate Mr. Sanjanwala, this Court is required to undertake an inquiry into the allegation of fraud committed by the aforementioned private respondents having obtained the consent decree dated 27.03.2002, passed by the Trial Court and unauthorisdeley get it registered the unilateral cancellation deeds dated 30.06.2000, and 10.07.2000, respectively.

8.12. To buttress his arguments on each aspect of the issues germane in the matters, Learned Senior Advocate Mr. Sanjanwala would rely upon the following authorities:-

Suppression of material documents also amounts to fraud on the Court

1. *Commissioner of Customs, Kandla Vs. Essar Oil Ltd.- (2004) 11 SCC 364 (Para 30,31,34 to 37)*

Non-est and void documents cannot be registered by a sub-registrar

2. *Thota Ganga Laxmi Vs. Gov. of Andhra Pradesh- (2010) 15 SCC 207 (referred to full bench of SC in (2016) 10 SCC 767-Para 3)*

3. *Latiff Estate Line India Ltd. Vs. Hadeeja Ammal & Ors.- AIR 2011 Mad 66 (Para Nos.48,54 & 58)*

4. *Noble John Vs. State of Kerala 2010 SCC Online Ker 2561 (Para 1 and 21)*

Once fraud is established, no issue for maintainability survives.

5. *S.P. Chengalvaraya Naidu Vs. Jagannath & Ors. (1994) 1 SCC 1 (Para 1)*

6. *United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors.- (2000) 3 SCC 581*

7. *A.V. Papayya Sastry & Ors. Vs. Government of A.P. & Ors. (2007) 4 SCC 221-(Para 19)*

8. *Chandrasinh Khumansinh Bakola Vs. Ibrahim Suleman Narot 2023: GUHC:40927-(Para 15)*

Not deciding the petition on merits after the petition being entertained and remained pending for 22 years would lead to a failure of Justice.

9. State of U.P. Vs. Vs. Mohammed Nooh (AIR 1958 SC 86)-(Para 15)

10. Tata Chemicals Ltd. Vs. Adityana Nagar Panchayat (2001) 2 GLR 1538 (Para 5 & 6)

11. Costa & Co. Pvt. Ltd. Vs. Sales Tax Officer, Margao & Ors. (2002 (1) MHLJ 288 (Para 8)

12. Ganga Retreat and Towers Ltd. & Ors. Vs. State of Rajasthan & Ors. (2003) 12 SCC 91 (Para 18)

13. Durga Enterprise Pvt. Ltd. & Anr. Vs. Principal Secretary, Gov. of U.P. & Ors. (2004) 13 SCC 665 (Para 3)

14. Karmajot Co-Operative Hsg. Society Ltd. Vs. State of Gujarat- AIR 2023 Guj. 183 (Para 12)

8.13. Making the above submissions, Learned Advocate Mr. Sanjanwala would request this Court to allow the present petitions.

SUBMISSION OF RESPONDENT NO. 9 - ONE OF THE AGGREGATORS

9. Learned Advocate Mr. P.K. Shukla, appearing for Respondent No. 9, one of the Aggregators, would submit that the present writ petitions, filed by the petitioners herein, are required to be rejected only on the ground that there is an alternative efficacious remedy available to the petitioners to

challenge the consent decree as well as the cancellation of the sale deeds.

9.1. Learned Advocate Mr. Shukla would submit that there are several disputed questions of law and facts involved, which cannot be looked into by this Court in its writ jurisdiction under Articles 226/227 of the Constitution of India.

9.2. Learned Advocate Mr. Shukla would further submit that the agreement executed by Respondent Nos. 4 to 6 and the Society contains an arbitration clause; therefore, this Court should restrain itself from exercising its writ jurisdiction in favour of the petitioner to resolve the dispute between the parties. It is further submitted that there is an outstanding amount from members of the Society, and there are legal dues from members of the Society, being land revenue to be recovered, and there is also a deficit stamp duty to be recovered by the Deputy Collector, Gandhinagar; therefore, the present writ petitions require to be dismissed.

9.3. Learned Advocate Mr. Shukla would further submit that, as such, there is a dispute regarding members of the Society and the Society itself for allotment and administration of the Society; such dispute requires to be resolved by way of a suit to be filed before the Board of Nominees under Section 96 of the Gujarat Cooperative Housing Society Act, thereby also, the present writ petitions are not maintainable.

9.4. Learned Advocate Mr. Shukla, during the course of his oral submissions, would submit that in fact, the respondent no.9 was also be fooled by original owners and in fact, no thumb impression put by respondent no.9 in the consent terms / agreement placed before the Trial Court in the suit. It is submitted that an independent civil suit is filed by respondent no.9 against original owners questioning the cancellation deed dated 30.06.2000 in question, which is pending before the competent Civil Court. So according to him, in view of aforesaid facts and circumstances, this Court should not entertain these writ petitions.

9.5. To buttress his arguments, learned advocate Mr.Shukla would rely upon the following decisions:-

(i) *Late Chhotabhai V/s Dilipbhai Thanki, reported in 2024 (1) G.L.H. page no.114 paragraphs no.: 5.6, 5.8, 5.8.1,5.9, 5.9.1 to 5.9.5;*

(ii) *Patel Vinodbhai Kalidas V/s Patel Pravinbhai Kacharabhai reported in 2021 (3) G.L.R. 2601 paragraphs no.: 6, 6.1.1 & 6.1.2 & 9.1, 9.2;*

(iii) *Triloksingh V/s Anirudh (dead) through legal representtives and other reported in 2020 (6) S.C.C. 629 paragraphs no.: 15 TO 21, 23 & 24;*

(iv) *Ramji madir narsinhji others V/s Narsinh nagar alis tekri co-op housing society ltd & others reported in 1979 G.L.R. 801 paragraphs no.: 23 & 27;*

(v) *Jayantilal Hansraj Shah & others V/s Hemkunverben Dolatrai Dave & others, Reported in 1996 (3) G.L.R. 522 paragraphs no.: 10 to 18;*

(vi) *Ghanshybhai Trikamlal promoter of Proposed Kaltaru V/s State of Gujarat, Reported in 2017(4) G.L.R. 2749 paragraphs no.: 5 to 9, 12 & 13;*

(vii) *Satya pal Anand V/s State of Madhya Pradesh & others reported in 2016 (10) S.C.C. 767, paragraphs no.: 25 to 27, 29 to 32, 34, 36, 41, 44 & 47;*

(viii) *Roshina T V/s Abdul Azeez K.T. & others reported in AIR 2019 S.C. 659. Paragraphs no.: 15;*

(ix) *State of Bombay V/s Purushottam jog naik reported in AIR 1952 S.C. 317 para-16 & 17;*

(x) *Mahesh s/o Murigeppa V/s Ishar s/o basappa & others decided on 4/3/2024 by the Hon'ble High Court of Karnataka at Dharwad bench. Paragraphs no.: 10 to 19;*

(xi) *Bhikhubhai Somabhai Patel V/s State of Gujarat & others reported in 2001 (1) G.L.H. 538, paragraphs no.: 6 to 15;*

(xii) Batchu suba Laxmi & others V/s Sannidhi Srinivasulu & others decided on 8/12/2009 by the Hon'ble High Court of Andhra Pradesh Paragraphs no.: 12 to 14;

(xiii) Chandpasha s/o Amirsab Ansari V/s Ejaz s/o Amirsab Ansari & others decide on 29/01/2024 by the High Court of Judicature as bench at Aurangabad. Paragraph no.: 7 to 18.

SUBMISSION OF RESPONDENT NOS. 13, 36 TO 39, 50, 51 AND 53 – ORIGINAL OWNERS - PLAINTIFF

10. Learned Advocate Mr. M.J. Parikh would submit that these writ petitions are required to be dismissed solely on the ground that there are disputed questions of facts and law involved in them, and as such, the petitioners have an alternative remedy available under law to agitate their grievance before the competent Civil Court.

10.1. Learned advocate Mr. Parikh would submit that assuming without admitting that the petitioner - Society was not made a party to the consent agreement executed between the plaintiff and defendant of the suit, whereby a consent decree was drawn by the Trial Court, has an alternative efficacious remedy available to file a review application before the Trial Court or to file a regular civil appeal under Section

96 of the Civil Procedure Code, 1908 (hereinafter referred to as “CPC”) with the leave of the Court.

10.2. Learned Advocate Mr. Parikh would rely upon the decision of the Full Bench of this Court in the case of *Sakina Sultanali Sunesara (Momin) vs. Shia Imami Ismaili Momin Jamat Samaj* reported in 2020 (1) GLR 586, which was later on confirmed by the Supreme Court of India vide its decision dated 23.04.2025, reported in 2025 INSC 570.

10.3. Learned Advocate Mr. Parikh would further submit that this Court should not enter into factual controversy germane in the matters and relegate the petitioners to avail the alternative efficacious remedy which is available to them in law.

10.4. To buttress his argument, Learned Advocate Mr. Parikh would rely upon the following decisions:-

(i) *Navratan Lal Sharma vs. Radah Mohan Sharma and Others* reported in 2024 INSC 970;

(ii) *Jogendrasinhji Vijaysinghji vs. State of Gujarat and Orders* reported in (2015) 9 SCC 1;

(iii) *State of U.P. and Another vs. Ehsan and Another reported in 2023 INSC 906;*

(iv) *Sakina Sultanali Sunesara (Momin) vs. Shia Imami Ismaili Momin Jamat Samaj reported in 2020 (1) GLR 586;*

(v) *Sakina Sultanali Sunesara (Momin) vs. Shia Imami Ismaili Momin Jamat Samaj In Civil Appeal No.6681 - 6682 of 2023 dated 23.04.2025 reported in 2025 INSC 570.*

10.5. Making the above submissions, learned advocates appearing for the respondents request this Court to dismiss the present petitions.

SUBMISSION OF RESPONDENT NOS. 1, 2, AND 3 – STATE AND ITS AUTHORITIES

11. Learned AGP Mr. Shivam Parikh would submit that, as such, the dispute germane in the petitions would be inter se between the petitioners and private respondents.

11.1. Nonetheless, Learned AGP Mr. Parikh would submit that, as per the affidavit submitted by the Deputy Collector in the matter, the cancellation deed executed by the private respondents unilaterally without obtaining the signature of the petitioner Society, at the time of registration, amounts to creating fraudulent documents, not sustainable in law.

11.2. Learned AGP Mr. Parikh would submit that on the basis of such fraudulent documents, any order obtained by the private respondents by way of a consent decree, such order requires to be interfered with by this Court while exercising its power under Articles 226/227 of the Constitution of India.

11.3. Learned AGP Mr. Parikh would further submit that the State would never recognize any such fraudulent deed, inasmuch as it would not be in favour of suppressing such unauthorized and illegal acts of the private respondents, thereby legally allowing the cancellation deeds to be registered on its record.

11.4. Learned AGP Mr. Parikh would humbly submit that an appropriate order be passed by this Court in the interest of justice.

SUBMISSION OF RESPONDENT NOS. 4 AND 7 - DEVELOPERS

12. Learned Advocate Mr. P.S. Champaneri, appearing for Respondent Nos. 4 and 7, would submit that, as such, his client would not justify any of the acts of the original owners

and Aggregators in the execution/registration of unilaterally registered cancellation deed and a consent decree obtained by playing fraud.

12.1. Learned Advocate Mr. Champaneri would submit that Respondent Nos. 4 and 7 are more or less concerned with their documents which are in the custody of this Court and documents which are at Serial Nos.6 to 9, shown at Page 30E of Civil Application No. 3 of 2025; if allowed to be taken back by Respondent No. 4 - firm, they have no objection if other documents be handed over to the petitioners herein.

12.2. So, Learned Advocate Mr. Champaneri would request this Court to pass an appropriate order in regards to returning/handing back the documents seized and in the custody of this Court.

13. Heard learned advocates appearing for the respective parties at length.

14. No other and further submissions made by the learned advocates appearing for the respective parties.

POINTS FOR DETERMINATION

(i) Whether, in the facts and circumstances of the case, the petitioners are required to be relegated to any other alternative remedy available to them under law for questioning and setting aside the consent decree as well as the registered unilateral cancellation deed?

(ii) Whether, in the facts and circumstances of the case, the consent decree passed by the Trial Court can be held to be obtained by practicing fraud?

(iii) Whether, in the facts and circumstances of the case, the registered unilateral cancellation deed in question can be quashed and set aside by this Court while exercising its power under Articles 226 of the Constitution of India?

(iv) If the answer to the above questions is in affirmative, are the petitioners entitled to the relief as prayed in the petitions?

ANALYSIS**POINT NO. (i)**

15. Learned Advocate Mr. Shukla and learned Advocate Mr. Parikh, appearing for the Aggregators/original owners of the lands, have vehemently submitted that the petitioners have an alternative efficacious remedy available under law; thereby, the petitioners can question the consent decree by filing an appropriate application before the Trial Court either under Order XLVII read with Section 114 of CPC or filing appeal under Order XLI read Section 96 of CPC seeking leave of the Court, and so also, can file a civil suit for cancellation of the registered cancellation deeds in question. According to them, this Court should not exercise its writ jurisdiction under Articles 226/227 of the Constitution of India to interfere with such consent decree and registered unilateral cancellation deeds in question.

16. As such, the entire thrust of their arguments canvassed would center around only one aspect: that an alternative

remedy is available to the petitioners and this Court should not entertain the present writ petitions.

17. Per contra, Learned Senior Advocate Mr. Sanjanwala has vehemently submitted that once the Division Bench of this Court quashed and set aside the common judgment passed by a Co-ordinate Bench of this Court on 01.05.2024, and remanded the matter back to this Court for rehearing of these petitions on their merits, such arguments made by the original owners and Aggregators are not available to them and as such are required to be rejected.

18. Having heard learned advocates appearing for the respective parties on this issue, I would like to state that an argument of alternative remedy would no longer be available to the respondents, especially the original owners and Aggregators, inasmuch as, such argument was in terms negated by the Division Bench of this Court, whereby it not only quashed and set aside the oral judgment dated 01.05.2024, passed by Co-ordinate Bench of this Court dismissing both

these petitions on the ground of having an alternative remedy to the petitioners, but also remanded the matter back to this Court to decide both these petitions on its merits.

19. The relevant observations and directions issued by the Division Bench in these regards reads as under:-

“25. In our considered opinion, the petitioner society had no option but to challenge both, the consent terms which was the basis of the consent decree allegedly obtained by fraud and collusion, as also the cancellation deeds registered allegedly in collusion between the respondents, in the same petition by invoking the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India.

27. The fact remains that the writ petitions were filed in the year 2002. The parties have exchanged affidavits and at one stage of the proceedings, as informed to us, the writ court had also summoned the original record of the Regular Civil Suit No. 30 of 1998 to examine the contention of the petitioners society of the consent decree being outcome of fraud and collusion between the respondents. Thus, after about more than 22 years of the pendency of the writ petition, at the stage of final hearing, there was no justification for the learned single Judge to relegate the petitioners to file a Civil Suit without making a proper inquiry into the material on record. The decision of the learned single Judge in relegating the petitioners society to file a Civil Suit without adverting to the issues of collusion and fraud and wrongful registration of the cancellation deeds by the Sub-Registrar, causes serious prejudice to the petitioners society, namely the appellants herein, whose rights in the lands-in-question have come under cloud because of the consent decree and the cancellation deeds.

28. In view of the above, while setting aside the impugned order dated 1.5.2024 passed by the learned single Judge, both the Special Civil Application No. 4881 of 2002 and Special Civil Application No. 12559 of 2002 are restored to their original

numbers. *With due respect, it is provided that the learned single Judge is required to adjudicate both the writ petitions on merits after making due inquiry into the allegations of fraud and collusion committed by the respondents in obtaining the cancellation deed dated 27.03.2002 and the consent decree dated 30.06.2000 and 10.06.2000, registered by the Sub-Registrar.*"

(emphasis supplied)

20. So, in view of the aforesaid clear observations and directions issued by the Division Bench, I am not at all impressed by the submissions so canvassed by Learned Advocate Mr. Shukla and Learned Advocate Mr. Parikh that both these petitions be dismissed on the ground of an alternative efficacious remedy available to the petitioners including Arbitration and or to approach Board of Nominees.

21. As such during course of arguments, it is not even whispered by learned advocate Mr. Chapaneri appearing for the Developer that any dispute exist between developer & the society, except collection of documents, it even no longer remained, inasmuch as, there appears broad consensus between them to get back documents seized by the Court Commissioner. Thus, in view of aforesaid, there is no question of relegating the Society for arbitration. Likewise, there appears no dispute

between the members and the Society, thereby there was no need to file any suit before Board of Nominee as alleged.

22. There is no cavil on the point that any consent decree passed by the Trial Court can be questioned by way of either filing an appropriate application before the Trial Court either under Order XLVII read with Section 114 of CPC, or filing an appeal with leave to appeal under Order XLI read with Section 96 of CPC, as decided by the Full Bench of this Court in the case of *Sakina (supra)*, confirmed by the Honorable Supreme Court of India.

22.1. At the same time, this would be an alternative remedy available to the petitioners, but in light of the aforesaid judgment/direction issued by the Division Bench of this Court, now such plea would not be available to the original owners and Aggregators that the petitioners may be relegated to the aforesaid remedy to question the consent decree passed by the Trial Court and so also to file civil suits seeking cancellation of the unilateral cancellation deed.

22.2. It is a settled legal position of law that irrespective of any position of law, any issue earlier decided between the parties by a competent Court of law would bind them on such issue unless challenged before a higher forum. (See Section 11 of CPC). It is remained undisputed that neither original owner nor aggregators have challenged the aforementioned judgment passed by division bench in said appeal before higher forum, at this stage, they cannot be allowed to agitate such issue i.e., alternative remedy.

23. Even otherwise, it is settled legal position of law that relegating party to avail an alternative remedy by not exercising writ jurisdiction by High Court is a rule of self-restraint. Nonetheless, there are well defined exceptions to such rule, which carved out by Hon'ble Supreme Court in its various decisions.

24. In the case of *PHR Invent Educational Society v. UCO Bank*, reported in (2024) 6 SCC 579, it has been held thus:-

“37. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the

Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.”

(emphasis supplied)

25. Thus, in view of the aforesaid judgment passed by the Division Bench in the earlier round of litigation, which is not questioned by the original owners and Aggregators before the Honorable Supreme Court, it is now no longer a ground available to them to argue again and again the same point, which has already been rejected by the Division Bench. Having so observed and keeping in mind the law laid down by Hon'ble Supreme Court in the case of UCO Bank (Supra), I am of the view that this is fit case, in which this Court must exercise its power under Article 226/227 of the Constitution of India. So, Point No.(i) is answered accordingly.

POINT NO. (ii)

26. The facts, which are observed hereinabove, are not in dispute. The original owners, having executed seven registered sale deeds between 1968 to 1980 in favour of the Aggregators in relation to the lands, thereby, transferred titles of the lands to the Aggregators. Likewise, the Aggregators, having so executed registered sale deeds and sold the lands in the year 1987/1996 by way of registered sale deeds in favour of the Society, in turn, lost their title over the lands. By virtue of registered sale deeds, the Society became the owner of the lands, holding title.

26.1. It remains undisputed that some of the original owners (plaintiff) filed Regular Civil Suit No. 30 of 1998. Initially, the Society was joined as Defendant No. 1, but before issuance of any notice, it was deleted from the array of the suit on 04.04.1998, whereas Respondent No. 9, one of the Aggregators, came to be joined in the suit on 03.12.1998, on the basis of an application below Exhibit 18, on 04.04.1998.

26.2. It also remains undisputed on record that an application for joining party was filed below Exhibit 33 in the aforesaid suit wherein Applicant Nos. 1 and 2 were Aggregators, and applicant no.3 shown as Society represented through respondent no.9 – one of the aggregators, showing him as Chairman/Secretary of Society. Although, there is nothing on record that can be confirmed that on the date of filing of the aforesaid application, Respondent No. 9 happens to be the Chairman/Secretary of the Society. Learned advocate Mr. Shukla is not in a position to show any document, whereby, it can be confirmed that respondent no.9 was in fact Chairman/Secretary of society.

26.3. Be that as it may, such application filed below Exhibit 33 remained pending till the consent decree was drawn by the Trial Court. So, in view of the aforesaid, neither the Society nor one of the Aggregators - Respondent No. 8 - Sangrambhai Ghelabhai Bharwad joined in the suit, till the time of passing of consent decree. As such, respondent no.9 one of the

applicant of aforesaid application Exhibit 33, already joined in the suit proceeding at the instance of plaintiff.

26.4. Surprisingly, consent terms executed between the Plaintiff and Defendants of the aforesaid suit came to be submitted on the record of the suit below Exhibit 51. Wherein, it can be noticed that on the side of the defendants, the thumb impressions of both the Aggregators were found, and so also, the thumb impression of Respondent No. 9 was found as a Secretary of the Society.

26.5. As per such consent terms/agreement executed between the parties, the defendants accepted the claim of the Plaintiffs made in the plaint and agreed that they will not question the ownership of the Plaintiffs in future in regard to the lands.

26.6. Even it is a matter of surprise that the Trial Court, without ascertaining the basis facts and unnoticing the pending applications, more particularly Exhibit 33 (joining party application), not only accepted the consent agreement executed between the parties but clearly recorded the subjective

satisfaction of the parties, who appeared to have been presented before Trial Court through their advocates, so on that basis, passed a consent decree in question.

27. When the Society was never made a party to the suit and neither Respondent No. 9 was its Chairman/Secretary, nor, in fact, the Society being one of the applicant in the joining party application filed below Exhibit 33 before the Trial Court, the thumb impression of Respondent No. 9, showing him as Secretary of the Society in the consent terms, is nothing but a clear misrepresentation on the part of Respondent No. 9, who seems to have appeared before the Trial Court when such consent terms/agreement was accepted by the Trial Court.

28. It is a settled legal position of law that any order passed on false representation, wherein a party making such representation knowing fully well that he is making a false representation, any order obtained through such practice of misrepresentation amounts to fraud. Whenever fraud is established on record, any order obtained by a party through

practicing fraud requires to be set at naught, being nullity and *non est* in the eye of law. It is cannot be gainsaid that fraud vitiates everything.

29. At this stage, it would be apt to refer and rely upon the recent Full Bench Decision of Hon'ble Supreme Court in the case of ***Vishnu Vardhan alias Vishnu Pradhan vs. State of Uttar Pradesh and Others reported in 2025 SCC OnLine SC 1501***, wherein it has been observed thus:-

“2. At the end of the last century, this Court in S.P. Chengalvaraya Naidu v. Jagannath noticed the growing trend of abuse of the process of law by dishonest litigants playing fraud on courts. Fraud was held to be an act of deliberate deception with the design of securing something by taking unfair advantage of another: a deception in order to gain by another's loss. The opening paragraph of such decision reads as follows:

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

This Court then warned that:

5. 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. Propertygrabbers, 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.

3. "Fraud unravels everything" was famously said by Lord Denning in Lazarus Estates Ltd. v. Beasley, emphasising that fraud can invalidate judgments, contracts and all transactions. The principle highlights the importance of honesty and transparency in legal proceedings and transactions. However, it is a cardinal principle of law that fraud has to be pleaded and proved. Order VI Rule 4, of the Civil Procedure Code, 1908 may be referred to ordaining that particulars, inter alia, of fraud have to be stated in the pleadings.

4. From the multiple decisions of this Court on 'fraud', what follows is that fraud and justice cannot dwell together, the legislature never intends to guard fraud, the question of limitation to exercise power does not arise, if fraud is proved, and and even finality of litigation cannot be pressed into service to absurd limits when a fraud is unravelled.

60. Be that as it may, obtaining of the impugned order by Reddy in his favour by playing fraud on the High Court is conspicuous by its presence. Thus, we find Vishnu's core argument to be creditworthy and compelling for us to hold that judicial orders procured by Reddy by subverting the judicial process through fraud and concealment of material facts cannot be permitted to stand.

61. In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:

a. In United India Insurance Co. Ltd. v. Rajendra Singh, this Court reiterated that fraud unravels everything:

3. *“Fraud and justice never dwell together” (fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that “no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” (Lazarus Estates Ltd. v. Beasley, [[1956] 1 Q.B. 702 : [1956] 1 All ER 341 : [1956] 2 WLR 502 (CA))*.

b. In *Shrisht Dhawan (Smt) v. Shaw Bros.*, it was held:

20. *Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, ‘wing me into the easy-hearted man and trap him into snares’. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.....*

c. In *A.V. Papayya Sastry v. Govt. of A.P.*, this Court held:

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 the 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. ***

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).*

d. The judgment by Denning, L.J. in *Lazarus Estates Ltd.* (supra), which has since been quoted with approval by this Court in a catena of decisions including *Nidhi Kaim* (supra), asserted intolerance for fraud in legal proceedings in the following words:

No court ... will allow a person to keep an advantage which he has 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....

(emphasis supplied)

30. Having so considered the peculiar facts of the case on hand and applying the ratio of the aforesaid decisions of Full Bench of Hon'ble Supreme Court to the aforesaid facts of the present case, which are not in dispute, according to my view, the consent decree in question passed by the Trial Court on the basis of consent terms/agreement executed between the Plaintiff and Aggregators would nothing but a fraudulent decree obtained by aforesaid persons on making false and incorrect representation before the Court of law.

31. According to my view, such fraudulent decree obtained by plaintiff and aggregators would neither bind the Society nor sustainable in law.

32. The authorities cited by Learned Senior Advocate Mr. Sanjanwala on the issue of fraud would also squarely applied to the facts of the present case, inasmuch as, they hold the field. No other and contrary citations were pressed into service by the respondents in this regard.

33. In light of the above peculiar facts and circumstances of the case, I am of the view that the consent decree in question, having been obtained by practicing fraud on the Court, requires to be quashed and set aside by this Court by exercising its power under Article 227 of the Constitution of India, inasmuch as, the consent decree is nothing but a nullity and *non est* in the eye of law obtained by practicing fraud.

34. In the latter portion of the judgment, this Court would like to make suitable observations/directions to be given to Civil Courts in regards to take appropriate safeguard before passing the consent decree, on basis of such type of consent agreement. So, Point No. (ii) Answered accordingly.

POINT NO. (iii)

35. So far as the registration of the unilateral cancellation deed in question, thereby it cancelled the sale deed in favour of the Society is concerned, it remains undisputed on record that the unilateral cancellation deed so registered by the Aggregators on 10.07.2000, undisputedly, the Society, though shown as the vendee, but in fact, it ought to have been shown

as the vendor in a case of cancellation of a sale deed. This would be an apparent and inherent defect remained in the deed, unnoticed by the registering authority, when registered the unilateral cancellation deeds.

36. Likewise, it is so apparent and undisputed on record that such unilateral cancellation deed was not signed by any of the signatories of the Society. Such cancellation deed was only signed by the Aggregators, having been unilaterally registered by them with Sub-Registrar, Gandhinagar.

37. Similarly, the cancellation deed so registered on 30.06.2000, by the original owners, having the same pattern as observed hereinabove, when also, the vendor ought to have been the Aggregators but was shown as the vendee, the signatures of the Aggregators were not obtained in such cancellation deed.

38. At this stage, it is required to be taken note of the affidavit in reply by the State filed through its Deputy Collector, Gandhinagar in this matter, that such cancellation

deeds, though registered, would not stand in the eye of law, inasmuch as, none of the signatories of such cancellation deeds had title as on the date of execution/registration of such cancellation deeds. It pointed out in the affidavit in reply by the State that these documents are fraudulent documents and neither the original owners nor the Aggregators had any right in law to present such cancellation deeds for their registration. (See Paras 5, 20, 26, and 36 of Reply).

39. So, the State – Authorities are also of the view that the documents executed / registered by the Aggregators dated 10.07.2000 and original owners dated 30.06.2000, thereby, unilaterally cancelled their respective sale deeds, including the sale deed executed by the Aggregators in favour of the Society, are fraudulent documents and do not stand as per law.

40. At this stage, I would like to refer the Rule 45 of the Gujarat Registration Rules, 1970, which reads as under:-

“45. Regarding the verification of a document before accepting it for registration

(1) Before accepting any document for registration, the Registering Officer is not required to consider its legality. However, the officer must ensure that:

(a) The appropriate stamp has been affixed and used on it;

(b) It has been presented within the prescribed time and at the correct office;

(c) It has been presented by the proper person;

(d) If it relates to immovable property, it is not subject to objections under Sections 21 or 22;

(e) If the document is in a language unknown to the officer, the provisions of Section 19 have been complied with;

(f) Any interlineations, blank spaces, erasures, or alterations in the document have been signed or initialed by the person or persons who made them, as required under Section 20;

(g) It does not violate the provisions of sub-section (1) of Section 5 of the Foreign Exchange Regulation Act, 1947;

(h) If it relates to the change in government-allocated land, the original sale certificate and the written prior permission of the relevant authorities have been presented.

(2) If, at the time of presentation of the document, the fee prescribed under Section 78 is demanded but not paid, the Registering Officer shall refuse to register the document.”

(emphasis supplied)

41. As per the aforesaid Rule, more particularly, Rule 45(1)(c) of the Rules, 1970, it was incumbent upon the Registering officer to verify the fact that the person who is presenting the deed is proper person or not.

42. As observed hereinabove, none of the presenters of the aforesaid cancellation deeds dated 30.06.2000 and 10.07.2000

respectively, were proper person having competence to present such cancellation deed before the Sub-Registrar, Gandhinagar, inasmuch as, they were not holding any title over the lands, when such deed registered.

43. These aspects remained unnoticed rather escaped from noticed by the Registering Authority, which is one of the mandatory obligations and requirement of law, when registered the unilateral cancellation deeds. So, when the authority failed in its statutory duty and did not act in accordance with the rules framed under the Rules, 1970, such an act of the State requires to be corrected by this Court while exercising its power under Articles 226 of the Constitution of India by issuing a Writ of Mandamus. **[See UCO Bank (supra) Para 37(i)]**

44. Apart from the aforesaid non-compliance with the statutory rules framed under Rule 45(1)(C) of the Gujarat Registration Rules, 1970, another crucial and legal aspect regarding validity of execution and registration of the

unilateral cancellation deeds also needs to be examined by this Court.

45. As per Section 62 of the Indian Contract Act, 1872 whenever parties agree to rescind or alter the original contract, it can be permitted by way of substitution of a new contract, thereby, the parties may not perform the original contract.

Section 62 of the Indian Contract Act, 1872 reads as under:-

“62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

Illustrations

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.”

(emphasis supplied)

46. The deed of cancellation amounts to rescission of contract. Therefore, when a party having executed the document seeks its cancellation, it needs to be viewed in light

of Section 62 of the Indian Contract Act, 1872 and thus, the cancellation of such original contract (in the present case, a sale deed) must be done bilaterally and not unilaterally. Thus, a registered sale deed cannot be unilaterally cancelled by its executants.

47. It is so argued by Learned Advocate Mr. M.J. Parikh, appearing for some of the original owners, that the petitioners are required to file a civil suit questioning the cancellation deeds, as according to him, as per Section 31 of Specific Relief Act, 1963, the only remedy to cancel such deed is to file civil suit.

48. Such argument is not only fallacious but has no legal basis, inasmuch as, when at the first instance, the Registrar could not have registered such unilateral cancellation deed in relation to the cancellation of the sale deed, to get it cancelled by civil suit is not always required. As noticed hereinabove, to execute any cancellation deed, it should be done bi-parte and

not ex-parte, otherwise, such an ex-parte execution of cancellation deed has no value in the eye of law.

49. According to my view, when the Sub-Registrar failed to discharge its statutory duty cast upon him under law, thereby, unnoticing, and overlooking the crucial aspect in regards to the legal status of person presented unilateral cancellation deed, might have registered the deeds, this Court should not relegate the petitioners to file a civil suit that too after about 22 years, especially, when the facts, as observed hereinabove, are not in dispute. Hence, in view of the aforesaid, the decisions, so cited by learned advocate Mr. Parikh and Mr. Shukla on relegating the petitioners to file civil suit, would not be applicable to the facts of present case, thus, not helpful to them.

50. As a word of caution, the Registering authority should always keep in mind that once, any documents / deeds are registered by them, as such there is no power of cancellation available with them. In a case of wrong registration of any document/deed, it causes great inconvenience and hardship to

citizens. It leads to several litigations, which can easily be avoided if the authority examines minutely the documents sought to be presented for its registration.

51. According to my view, the Unilateral Cancellation deeds so registered by Sub-Registrar in contravention of provision of law and as such, the unilateral cancellation deeds are executed contrary to provisions of Contract Act, 1872, cannot stand as per law.

52. Thus, in light of aforesaid, such registered cancellation deed requires to be quashed and set aside, having been presented/registered in flagrant violation of provisions of law as observed and notice hereinabove. So, Point No. (iii) is answered accordingly.

POINT NO. (iv)

53. The conduct of the private respondents, namely, original owners and Aggregators, would clearly indicate that having sold the lands by them to the Society in the year 1987/1996, for any reasons best known to them, they not only instituted

false, frivolous, and vexatious litigations noticed herein above, but presented/registered unilateral cancellation deeds and, under the guise of such deeds, obtained a fraudulent consent decree, on the basis of which, tried to take undue advantage in the matter.

53.1. Such unauthorized and illegal act of the original owners/Aggregators requires to be deprecated by all means, and to give quietus to the dispute between the parties, and as such, misdeed of them requires to be nipped in the bud.

54. Considering all these aforesaid unauthorized and illegal acts of the original owners/Aggregators and the Society/its members required to enter into litigations as referred herein above, I am of the view that the petitioners are entitled to receive costs from them, which are quantified to Rs.1,00,000/- to be paid equally by the original owners/Aggregators to the petitioners.

55. The aforesaid observations, discussions, and reasons would only lead to one conclusion that the consent decree as

well as the unilateral cancellation deeds obtained by the original owners/plaintiffs/Aggregators by practicing fraud require to be quashed and set aside, as fraud has no place in court of law.

56. In view of forging reasons, petitioners are entitled to get reliefs as prayed in the petitions. So, Point No. (iv) is answered accordingly.

57. Before parting with this judgment, I would like to issue direction to the Civil Courts and Registering Authorities to take appropriate/necessary steps and safeguard to overcome such issues in future. Therefore, I deem it necessary to issue suitable directions to the Civil Courts as well as the Registering Authorities as follows:-

DIRECTIONS TO CIVIL COURTS

57.1. *Whenever any consent term/agreement is submitted before the Civil Court by parties to the suit, the Civil Court is required to see the contents of all such consent*

terms/agreement executed between the parties including such agreement is lawful or not.

57.2. The Civil Court needs to check the status of the parties to the suit and claim made in the suit before it accepts such consent terms/agreement.

57.3. The Civil Court also requires to see the previous orders passed in the suit proceedings and/or any application of a third party for joining or any other applications are pending or not in the suit.

57.4. If such application is found to be pending, and such consent terms/agreement are going to affect such party, the Civil Court should draw the attention of such party by issuing notice to such party.

57.5. If any of the parties to the suit is a legal entity/juristic person, a signatory to such party needs to submit its authority to represent such entity/juristic person to the satisfaction of the Court, which shall have to be verified by the Civil Court and on satisfying itself, allow such person

to execute the consent terms agreement on behalf of such party.

57.6. The Civil Court, if so required, may call upon all executants of consent terms/agreement and any of the parties so left out from it. On satisfying itself in all respects, the Civil Court may pass appropriate order on such consent terms/agreement.

57.7. In any case, the Civil Court should not mechanically accept the consent terms/agreement executed between the parties but needs to safeguard the interest of all the parties to the suit and also require to see that such consent terms/agreement are not presented by applying any fraud/misrepresentation.

DIRECTIONS TO REGISTERING AUTHORITY

58. The Sub-Registrar, who is, under law, required to register any documents, including sale deed/cancellation deed etc., is required to adhere to the procedure outlined in Rule 45 of the Gujarat Registration Rules, 1970.

58.1. *The Registering Authority needs to verify the status of the presenter of documents/deeds including his identity before registration of any such documents.*

58.2. *A unilateral cancellation deed only signed by one of the signatories to such deed is not recognized in law (See Section 62 of the Indian Contract Act). In that case, the Registering Authority may not straightaway register such unilateral cancellation deed, unless the presenter fulfills all legal requirement under law to present such cancellation deed.*

59. These are the broad directions issued to safeguards the interest of the party to any lis, whose interest requires to be protected by the Court and the State respectively. Such directions issued to avoid any similar type of fraud/misrepresentation played by mischievous litigant before the Civil Court/Registering Authority; it may not be an exhaustive one, but directions shall be followed/adhered to by Civil Courts and Registering Authorities as and when required to follow.

CONCLUSION

60. The upshot of the aforesaid observations, discussions, and reasons, and considering the aforesaid facts and circumstances of the present case, and so also, case law discussed herein above on the issues germane, the petitioners cannot be and should not be relegated to an alternative remedy.

60.1. It is held that the aforesaid consent decree obtained by way of fraudulent means, and likewise, the unilateral cancellation deeds are registered in violation of provisions of law, and as such, it is a fraud committed by the original owners and Aggregators upon the Society.

60.2. In view of the aforesaid, the consent decree dated 27.03.2002, passed by the Civil Judge (Junior Division), Gandhinagar, in Regular Civil Suit No. 30 of 1998, is hereby quashed and set aside having held to be obtained through fraud.

60.3. Likewise, the unilateral cancellation deeds dated 30.06.2000 and 10.07.2000 executed and registered by the

original owners and Aggregators of the lands respectively, are hereby quashed and set aside.

60.4. Consequently, both these petitions are required to be allowed, which are hereby allowed in terms of Paragraphs 26(A) and 26(B) of Special Civil Application No. 4881 of 2002 and Paragraphs 6(A) and (B) of Special Civil Application No. 12559 of 2002 respectively.

60.5. The Petitioner - Society is entitled to receive a cost of Rs.1,00,000/- from the original owners and Aggregators, to be paid by them in equal proportion within a period of one month from the date of receipt of the copy of this order. In case of failure, it is open for the petitioner – society to recover it from them in accordance with law.

60.6. The Registry is hereby directed to send back the Records and Proceedings of Regular Civil Suit No. 30 of 1998, to the concern Trial Court, forthwith.

60.7. In view of the foregoing conclusion, both these petitions are hereby allowed to the aforesaid extent with costs as aforesaid. Rule is made absolute accordingly.

60.8. The Registry shall circulate a copy of this order to all Civil Courts across the State of Gujarat for their perusal and compliance.

60.9. Likewise, the learned AGP should see to it that the State bring aforesaid direction to notice of all concerned Sub-Registrars across the State, so they shall follow such directions in its true letter and spirit.

MOHD MONIS

(MAULIK J.SHELAT,J)

FURTHER ORDER

After pronouncement of judgment, learned advocate Mr.M.J.Parikh requests for suspension of this judgment.

In light of what is held in the judgment, request is refused.

MOHD MONIS

(MAULIK J.SHELAT,J)