on the part of the authority concerned is of little avail when a dispute regarding the date of birth arises for determination. If the respondent was basing his case on these documents then it was incumbent upon him to place evidence on record, materials from which a conclusion can be reasonably drawn that the date of birth as entered in the certificate is the correct one."

(9) In the present case also, the entry of date of birth of the petitioner in the School Leaving Certificate was made on a declaration/ disclosure made by the father of the petitioner. The aforesaid entry was made in the school record without any basis and foundation. Further the petitioner has not examined his father to establish on what basis he got entered a particular date of birth in the school record. Admittedly, no enquiry about the date of birth and no authentic proof in that regard was taken by the authority who made the said entry in the school record. In that situation, such document cannot be given any evidentiary value when dispute regarding the date of birth arises for determination.

(10) In view of the aforesaid discussion, I do not find any illegality or infirmity in the impugned order, dated 20th September, 2004 passed by the trial Court.

(11) Dismissed.

R.N.R.

Before M.M. Kumar, J.

DEVI LAL,—*Appellant/Plaintiff*

versus

BALWANT SINGH,—*Respondents/Defendants*

R.S.A. No. 1911 of 2005

12th September, 2005

Code of Civil Procedure, 1908—Haryana Ceiling of Land Holdings Act, 1972—S. 26—Allotment authority cancelling allotment of surplus area in favour of plaintiff—Plaintiff not eligible for allotment—Allotment from the surplus pool was obtained by concealing

the true facts—Order of cancellation upheld upto the Financial Commissioner-Plaintiff also failing in Civil Court—Fraudulent conduct of the plaintiff—Not entitled to claim any relief—Findings of fact recorded by both the Courts below with regard to fraudulent conduct of the plaintiff-Sufficient to hold that plaintiff not entitled to any relief and orders passed by the competent authority cancelling the allotment from surplus pool liable to be upheld.

Held, that the plaintiff-appellant was not eligible for allotment because there was land measuring 154 kanals 15 marlas in the name of father of the plaintiff-appellant and 26 kanals 18 marlas in the name of his wife. The allotment from the surplus pool was obtained by concealing the aforementioned facts. It has been held that the State does not have unlimited land in surplus pool which deserves to be allotted to eligible persons. Accordingly, the allotment made in favour of the plaintiff-appellant,—vide allotment order, dated 13th March, 1981 was cancelled after the due investigation by the allotment authority on 30th January, 1990. The order has been upheld up to the Financial Commissioner. It has also been found that earlier also, the plaintiff-appellant has lost the legal battle when two Civil Suits were dismissed. Both the judgments and decrees passed in the earlier suits would be relevant. Despite the fact that the aforementioned judgments are not inter parties because both the judgments and decrees relate to the same land, same letter of allotment and same letter of cencellation. Even otherwise, the fraudulent conduct of the plaintiff-appellant has disentitled him to claim any relief. The order of cancellation passed by the authorities has to be upheld because those who are landless according to the provisions of the Act and the rules framed thereunder deserve to be allotted the surplus land. A person like the plaintiff-appellant cannot be permitted to grab the land from the surplus pool despite the fact that his wife and the father have owned huge landed property. Therefore, there is no room to interfere in the findings of fact recorded by both the Courts below holding that the allotment of surplus area obtained by the plaintiff-appellant is a fraudulent act as he was not eligible under the Act and the rules framed thereunder.

(Para 4)

L.N. Verma, Advocate, *for the appellant.*

JUDGMENT

M.M. KUMAR, J.

(1) This is plaintiff's appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity, 'the Code') challenging concurrent findings of fact recorded by both the Courts below holding that the order of allotment authority, dated 30th January, 1990 cancelling allotment of the suit land did not suffer from any legal infirmity. It is appropriate to mention that order dated 13th March, 1981 cancelling allotment of the surplus area was cancelled by the allotment authority,—vide order, dated 30th January, 1990 on the ground that the plaintiff-appellant was not eligible to the allotment of surplus area and the allotment was obtained by making misrepresentation of facts ; and also by concealment of true and material facts. Order, dated 30th January, 1990 was upheld by the Commissioner when the appeal filed by the plaintiff-appellant was dismissed on 15th December, 1991 and the revision petition also failed before the Financial Commissioner on 22nd May, 1992. The plaintiff-appellant has also filed two suits being Civil Suit Nos. 1516-C and 1518 of 1990—1993. The first suit was filed against the State of Haryana and other challenging the aforementioned orders of the revenue authorities which was dismissed by the Additional Senior Sub-Judge, Sirsa on 18th November, 1995. The other suit was filed against Shanker etc. by making the State of Haryana as respondent in respect of land measuring 86 Kanals 12 Marlas which has also been dismissed on 18th January, 1995 by the same Subordinate Judge at Sirsa. The defendant-respondents had sold the suit property,—vide sale deed, dated 27th October, 1988 and a Civil Suit from which the instant proceedings have arisen was filed on 20th November, 1994 seeking a declaration to the effect that the plaintiff-appellant is owner of land measuring 16 Marlas as per jamabandi for the year 1987-88. It was further claimed that the revenue record showing to the contrary that the defendant-respondents were owners, was wrong, against law and facts and that they were in unauthorised possession. A decree for permanent injunction as a consequential relief has also been sought restraining them from raising any construction of a service station etc. As the plaintiff-appellant has already lost litigation in respect of the other allotment,—vide order, dated 30th January, 1990 as upheld by the Financial Commissioner on 22nd May, 1992, both the Courts below have held that the judgments

and decrees, dated 18th November, 1995 have attained finality inasmuch as the civil court had upheld that the allotment authority has rightly cancelled the allotment of surplus area in favour of the plaintiff-appellant. The argument with regard to lack of power to review has been rejected on the ground that the plaintiff-appellant obtained allotment of surplus area by playing fraud on the allotment authority which has been considered as fraud on the State and the general public.

(2) Learned counsel for the plaintiff-appellant has raised the argument that there was no power of review with the allotment authority and, therefore, the orders cancelling the allotment, dated 30th January, 1990, 15th December, 1991 and 22nd May, 1992 are liable to be set aside. Learned counsel has further submitted that suit of the plaintiff-appellant could not be considered beyond the period of limitation nor it could be concluded that merely because of the allegations of fraud, the civil court would acquire jurisdiction. Learned counsel has further argued that once the Civil Court has recorded the findings that on account of Section 26 of the Haryana Ceiling of Land Holdings Act, 1972 (for brevity, 'the Act'), the jurisdiction of the civil court is barred, then the suit should have been decided on merits and the plaintiff-appellant should be granted an opportunity to challenge the impugned order at an appropriate forum.

(3) It is well settled that fraud transcends all barriers and no technical rules concerning jurisdiction etc. would come in the way of pronouncing against such an act. In this regard reference may be made to the observations made by the Supreme Court in the case of **S.P. Chengalvaraya Naidu (Dead) By L. Rs.** versus **Jagannath (Dead) by L. Rs. and others (1).** It has been held that the fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by causing loss to another. It is a cheating intended to get an advantage over the other. Referring to the celebrated observations of Chief Justice Edward Coke, their Lordships observed as under :—

> "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about

(1) (1994) 1 S.C.C. 1

three centuries ago. It is the settled proposition of law that 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 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."

(4) In the present case, it has come on record that the plaintiff-appellant was not eligible for allotment because there was land measuring 154 Kanals 15 Marlas in the name of father of the plaintiff-appellant and 26 Kanals 18 Marlas in the name of his wife Smt. Chando. The allotment from the surplus pool was obtained by concealing the aforementioned facts. It has been held that the State does not have unlimited land in surplus pool which deserves to be allotted to eligible persons. Accordingly, the allotment made in favour of the plaintiff-appellant,—vide allotment order dated 13th March, 1981 was cancelled after due investigation by the allotment authority on 30th January, 1990. The order has been upheld upto the Financial Commissioner. It has also been found that earlier also, the plaintiff-appellant has lost the legal battle when two Civil Suit Nos. 1516-C (Exs. D4 and D5) and Civil Suit No. 1518 of 1990-1993 were dismissed. Both the judgments and decrees passed in the earlier suits would be relevant as has been held by the Supreme Court in the cases of **Sahu Madho Das and others** versus **Mukand Ram and another, (2) and Virupakshayya Shankarayya** versus **Neelakanta Shivacharya Pattadadevaru, (3).** Despite the fact that the aforementioned judgments are not inter parties because both the judgments and decrees relate to the same land, same letter of allotment and same letter of cancellation. Even otherwise, the fraudulent conduct of the plaintiff-appellant has dis-entitled him to claim any relief. The order of cancellation passed by the authorities has to be upheld because those who are land-less, according to the provisions of the Act and the rules framed thereunder deserve to be allotted the surplus land. A person like the plaintiff-appellant cannot

(2) AIR 1955 S.C. 481
(3) AIR 1995 S.C. 2187

be permitted to grab the land from the surplus pool despite the fact that his wife and the father have owned huge landed property. The view of the Supreme Court in **S.P. Chenngalvaraya Naidu's case** (supra) would fully apply to the facts of the present case. The aforementioned principle has also been followed and applied by the Supreme Court in its later judgment in the case of **Ram Chandra Singh** versus **Savitri Devi, (4) and Rampreet Yadav** versus **U.P. Board of High School, (5).** Therefore, there is no room to interfere in the findings of fact recorded by both the Courts below holding that the allotment of surplus area obtained by the plaintiff-appellant is a fraudulent act as he was not eligible under the Act and the rules framed thereunder.

(5) The argument of the learned counsel that there was no power of review has not impressed me because the allotment authority before passing the order of concellation has taken precaution of obtaining the orders from the Financial Commissioner, Revenue who enjoys suo motu powers of review etc. under Section 18(6) of the Act. Moreover, the State Government has also issued clear instructions conferring powers of cancellation to the allotment authority in the cases of fraud. Therefore, there is no substance in the argument that the authorities under the Act did not enjoy any power of reviewing the allotment order dated 13th March, 1981.

(6) The other argument that the suit is in fact within limitation does not require to be gone into. If the aforementioned argument is accepted, then the findings of fact with regard to fraudulent conduct of the plaintiff-appellant is sufficient to hold that he is not entitled to any relief and that the orders passed by the competent authority cancelling the allotment from the surplus pool is not open to any challenge. It cannot be accepted that the civil court could not have recorded findings with regard to correctness of orders cancelling allotment of the land from the surplus pool to the plaintiff-appellant because there is no such blanket bar contemplated by Order XIV of the Code that the Court has to pronounce judgment on the preliminary issues alone. On the

(4) (2003) 8 S.C.C. 319
(5) (2003) 8 S.C.C. 311

contrary, under order XIV Rule 2 of the Code, it has been postulated that in cases where issues both of law and fact arise in the same suit, the Court is under an obligation to pronounce judgment on all the issues, unless it records an opinion that the case or any part thereof could be disposed of on an issue of law alone. In the present case, it has been found that the authorities under the Act has to be given free hands as long as the conduct of the plaintiff-appellant has been found to be fraudulent and, therefore, the civil court would not enjoy jurisdiction to interfere with such an order of cancellation of allotment because under Section 26 of the Act, the civil court has no jurisdiction to try a civil suit. Had the Civil Court arrived at a conclusion contrary to the fraudulent conduct of the plaintiff-appellant, then it might have been held that the authorities have not acted within the statutory limits resulting into acquisition of jurisdiction which would go beyond the bar created by Section 26 of the Act. Therefore, there is no substance in the argument raised by learned counsel for the plaintifff-appellant.

(7) For the reasons aforementioned, this appeal fails and the same is dismissed with costs which is determined at Rs. 10,000. The prayer of the learned counsel to grant permission to the plaintiff-appellant to challenge order dated 30th January, 1990 passed by the allotment authority cancelling the allotment made on 13th March, 1981, order dated 15th December, 1991 passed by the Commissioner, Haryana and the order dated 22nd May, 1992 passed by the Financial Commissioner before any other forum cannot be accepted because there is no justification and substantial justice has been done to the parties. The plaintiff-appellant shall deposit the costs awarded by this Court with the Legal Services Authority, Haryana within a period of two months from today. An intimation with regard to realisation of costs be sent to the concerned authority and in case the costs is not deposited, then the case be listed in the Urgent List, subject to any contrary orders from the Supreme Court.

R.N.R.