
(1966) 02 CAL CK 0013
In the Calcutta High Court
Case No : A.F.O.O. No. 397 of 1965

Azizus Subhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-02-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 32, 363(1), 366(22)
Crown Grants Act, 1885 — Section 3
West Bengal Estates Acquisition Act, 1953 — Section 3

Citation : AIR 1966 Cal 570

Hon'ble Judges : H.K. Bose, C.J.; B.C. Mitra, J

Bench : Division Bench

Advocate : Chittotosh Mookerjee and Jamini Kr. Banerjee, for the Appellant; P.K. Banerjee, for No. 2, P.N. Chunder and Indhir Kumar Mondel for No. 1, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This appeal is directed against an order of Banerjee, J. dated June 22, 1965, rejecting the appellants application for a Rule Nisi in a petition under Article 226 of the Constitution. The only question in this appeal is if in the facts hereinafter stated, a Rule Nisi should be issued.

2. The appellant is the grandson of the late Khan Bahadur Shamsul Alam, who held the office of Deputy Superintendent of Police, and who was assassinated in 1910 while appearing for the prosecution in a political case. In recognition of his services and for support of the dependent members of his family, the then Government of India granted a Jaigir in respect of certain mouzas in the District of Murshidabad. By a sanad dated June 10, 1912, the grant of the jaigir was made to the widow of me late Khan Bahadur, the grandmother of the appellant, the grant being limited to her eldest male descendant. The appellant as the eldest surviving male descendant field the said Jaigir until the happening of the events hereinafter stated. The West Bengal Estates Acquisition Act, 1953,

(hereinafter referred to as the Act) provided by Section 4 thereof, for the issue of a notification by the State Government declaring that with effect from the date mentioned in the notification, all estates and the rights of every intermediary therein situated in any district or part of a district shall vest in the estate free from all encumbrances. Under the provisions of the Act notices were issued by the respondent No. 3, who took possession of the said jaigir held by the appellant. Thereupon the appellant moved an application under Article 226 of the Constitution challenging the vesting of the jaigir and taking possession thereof by and on behalf of the respondent No. 2. On this application a Rule Nisi was obtained by the appellant which was, however, discharged by judgment and order of Sinha, J. dated January 22, 1959. The appellant thereafter moved the application, out of which this appeal arises, practically on the same ground and to the same relief. In this application, however, the appellant impleaded the Union of India as a party respondent which was not done in the earlier application. It was this application which was rejected by Banerjee, J, as hereinbefore mentioned and this appeal is for a refusal to issue a Rule Nisi on the application.

3. The first point urged by Mr. Chittatosh Mukherjee, learned Advocate for the appellant, was that this application was not barred by res judicata as the parties in the present application were not the same as in the previous application. Therefore, Mr. Mukherjee argued that although Sinha, J. held in the earlier application that the appellant's interest under the sanad was a right in land and was an "estate" as defined under the Bengal Tenancy Act and was also an interest of an intermediary above a raiyat and for these reasons the estate held by the appellant came within the purview of the Act, this conclusion of Sinha, J. would not operate as res judicata in regard to the present application out of which this appeal arises. It was also argued that the issues involved in this application were different from the issues in the previous application, inasmuch as the question raised in the present application is that the grant of the sanad to the appellant's grandmother was made under the Crown Grants Act, 1895, and this issue was not before the Court in the previous application of the appellant. Mr. Mukherjee referred to Section 3 of the Crown Grants Act and submitted that under that section the grant of the jaigir must be held to be valid notwithstanding the terms of any rule of law or Statute or enactment of the Legislature to the contrary. Mr. Mukherjee, therefore, submitted that the present application of the appellant was not barred by the doctrine of res judicata.

4. Mr. Mukherjee, however, invited our attention to a decision of the Supreme Court in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, . In that case an assessee under the Sales Tax Act challenged the validity of the tax imposed upon him by a petition under Article 226. This petition was rejected upon merits and an appeal was also dismissed by the Supreme Court upon merits. The assessee had attempted to raise two additional grounds before the Supreme Court, but this was not allowed on the ground that they were not specified in the writ petition before the High Court,

and were not raised at any earlier stage. Subsequently the assessee moved another petition under Article 226 before the High Court, and once again challenged the same assessment order on the grounds which the Supreme Court did not permit to be raised in the previous writ petition. The second petition under Article 226 was rejected by the High Court, and on appeal, the Supreme Court held that the Writ Petition was barred by constructive res judicata. Mr. Mukherjee also drew out attention to another decision of the Supreme Court in *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, in which it was again held that the provisions of Section 11 of the CPC were not exhaustive with respect to an earlier decision, operating as res judicata on the same matter in controversy, in a subsequent regular suit, and on the general principles of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunities to the parties to prove their case by a Court competent to decide, will operate as a res judicata in a subsequent suit. I should note, however, that Mr. Mukherjee very fairly drew our attention to the decisions which are against his contentions. He, however, relied upon another decision of the Supreme Court in *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, in which it was held that the general principles of res judicata applied to Writ Petitions filed under Articles 32 or 226 but the application of the principles of res judicata to petitions filed under Article 32 did not in any way impair or affect the content of the fundamental rights guaranteed to the citizen. The principles of res judicata only regulated the manner in which the said right could be successfully asserted and vindicated in Courts of Law. Relying upon this decision Mr. Mukherjee argued that the appellant was seeking to enforce his fundamental rights and, therefore, the principles of res judicata should not be allowed to bar the jurisdiction of the Court to issue appropriate Writs. Mr. Mukherjee, however, also drew our attention to another decision of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, in which it was held that the rule of res judicata had some technical aspects, for instance the rule of constructive res Judicata might be said to be technical but the basis on which the said rule rests was founded on consideration of public policy and that it was in the interests of the public at large that a finality should attach to the binding decision pronounced by Courts of competent jurisdiction and it was also in the public interests that individuals should not be vexed twice over with the same litigation. It was also held that if an application under Article 226 of the Constitution for enforcement of fundamental rights had been considered on its merits and the petition was dismissed by the High Court on the ground that no fundamental right was proved or its breach was either not established or was shown to be constitutionally justified there was no reason why such a decision should not be treated as a bar against the competence of a subsequent petition filed by the same party on the same facts and for the same relief under Article 32. This decision, therefore, makes it clear that if the same question has been decided by the High Court in a petition under Article 226 of the Constitution and the Court came to the conclusion that no relief could be granted to the petitioner and discharged the

Rule, such a decision would operate as a *res judicata* in a subsequent petition for the same relief. In our opinion the mere addition of the Union of India as a party respondent would not exclude the operation of the principles of *res judicata*, nor could the application of the principles be avoided by addition of a new ground which might and ought to have been raised in the earlier petition, but was not raised. In this case the principles of constructive *res judicata* must be held to apply with full force and for these reasons the first contention of Mr. Mukherjee fails and is, accordingly, rejected.

5. The next contention of Mr. Mukherjee was that the terms of Section 3 of the Crown Grants Act, 1895, under which the Sanad was granted, had overriding effect and there could be no derogation from a grant made u/s 3 of the said Act, by any other statutory provision. In order to appreciate this contention it is necessary to set out Section 3 of the Crown Grants Act, 1895, which runs as follows:

"All provisions, restrictions, conditions and limitations contained in any such grant or transfer as aforesaid, shall be valid and take effect according to their tenor, any rule of law, statute, or enactment of the Legislature to the contrary notwithstanding."

6. Mr. Mukherjee argued that having regard to this provision in the Crown Grants Act, Section 3 of the West Bengal Estates Acquisition Act, 1953, which provided that the provisions of that Act should have effect notwithstanding anything to the contrary contained in any other law or contract or instrument or usage or custom to the contrary, could not have the effect of derogating from the grant made to the appellant's grand mother under the Sanad.

7. The question of the effect of Section 3 of the Crown Grants Act, 1895, was considered by the Judicial Committee in AIR 1946 127 (Privy Council) . In that case, it was contended that having regard to the terms of Section 3 of the Crown Grants Act, the Legislature or at any rate a provincial Legislature, had no power to make any law which would curtail the rights of a grantee of an earlier Crown Grant and create new rights, because to do so would be to affect the prerogative of the Crown by derogating from a grant made by it and also to affect the provisions of a Central Act. The Judicial Committee, however, repealed this contention and held that there was no warrant in principle to support the proposition that a competent Legislature could not, even in the absence of express prohibition, legislate so as to vary the effect of a Crown grant. Further it was held that the effect of Section 3 of the Crown Grants Act could not extend so far as to limit the statutory competence of a provincial Legislature to legislate on a subject assigned to it by a Constitution Act. In this case, Mr. Mukherjee has not challenged the competence of the Legislature to enact the provisions in Section 3 of the Act and that being so, we must hold that Section 3 of the West Bengal Estates Acquisition Act, 1953, must take effect, the provisions of the Crown Grants Act, 1895, notwithstanding.

8. This contention of Mr. Mukherjee, therefore, fails and is accordingly rejected.

9. The next contention of Mr. Mukherjee was that his client as the successor-in-interest of the guarantee of a Sanad was a Ruler and therefore, under Article 363(1) of the Constitution the dispute between his client and the State of West Bengal could not be entertained by Sinha, J., because of the bar imposed by that Article. It appears that the appellant submitted a representation dated January 2, 1964, to the President of India in which it was contended, inter alia, that the appellant was a Ruler as contemplated by Article 363(1) of the Constitution. This representation was answered on January 23, 1964, by the Deputy Secretary to the Government of India, who pointed out in the answer that the appellant's contention was not tenable since he had not been recognised by the President as a Ruler under Article 366(22) of the Constitution. In our opinion a claim by a party to be treated as a Ruler under Article 363(1) of the Constitution must be preceded by a recognition by the President of India that such a claimant was a Ruler as provided in Article 366(22) of the Constitution. This contention of Mr. Mukherjee, therefore, also fails.

10. Mr. P.K. Banerjee, learned advocate for the respondents, raised objection, which in our opinion, is fatal to this appeal. It appears that the appellant had received a sum of Rs. 20,724 by way of ad interim interest on the compensation money on the ground that the Jaagir in question had vested in the State. This payment has been alleged in paragraph 4 (c) of an affidavit affirmed by Kalipada Ghose, Additional Collector (Estates Acquisition) on July 27, 1965. It also appears that in paragraph 8 of the affidavit-in-reply affirmed by the appellant on August 24, 1965, receipt of the sum of Rs. 20, 724.00 has been admitted. It is quite clear that the appellant has taken full benefit of the vesting of his Jaagir in the State of West Bengal. The acceptance and receipt of the said sum of Rs. 20,724.00 can only be on the basis that the appellant accepted the vesting of the Jaagir in the State of West Bengal under the terms of the Act. It is, therefore, not open to the appellant now to contend that the West Bengal Estates Acquisition Act, 1953, would not apply to the Jaagir held by him and therefore the Jaagir would not vest in the State of West Bengal under the terms of the Act.

11. In our opinion, the trial Court was right in rejecting the appellant's application for a rule nisi.

12. For the reason mentioned above, this appeal falls and is accordingly dismissed with costs. Hearing fee is assessed at three gold mohurs.

Bose, C.J.

13. I agree.

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