

(1982) 03 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12967 of 1981

Baljeet Singh

APPELLANT

Vs

Fourth Addl.District Judge, Budaun and another

RESPONDENT

Date of Decision : 23-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 20

Citation : (1982) 03 AHC CK 0045

Hon'ble Judges : N.D.Ojha, J

Final Decision : Dismissed

Judgement

N. D. Ojha, J.

Smt. Kokila Devi respondent No. 2 is the landlord of a shop of which one Taran Tej Singh was the tenant. Taran Tej Singh died leaving seven legal representatives including his "widow Smt. Jogendra Kaur and Baliit Singh the present petitioner as one of his sons. An application was made by respondent No. 2 for release of the said shop on the ground that the legal representatives of Taran Tej Singh had removed their effects therefrom and had allowed it to be occupied by one Room Singh who was not a member of their family as a result of which a deemed vacancy of the shop in question had occurred. Notices were issued to the seven legal representatives of Taran Tej Singh as also to Room Singh. After hearing the parties the Rent Control and Eviction Officer accepted the case of respondent No. 2 and the shop in question was declared to be vacant. A revision was filed against this order by the legal representatives of Taran Tej Singh including the petitioner Baljit Singh which was dismissed on 27th March, 1979. Thereafter the application for release made by respondent No. 2 was considered by the Rent Control and Eviction Officer, This application was, however, dismissed on 22nd April, 1981, Respondent No. 2 filed a revision against that order which was allowed on 24th September, 1981 by the IVth Additional District Judge, Budaun, respondent No. 1. Smt. Jogendra Kaur and

Room Singh, referred to above, filed a writ petition in this Court challenging this order dated 24th September, 1981 which, as is apparent from paragraph 3 (p) of the counter affidavit, was dismissed by Hon"ble Mr. Justice A. N. Varma on 14th October, 1981. The original record of this writ petition was sent for. It was writ petition No. 12566 of 1981 and was dismissed by the following order .

"Having heard learned counsel for the petitioners, I find no merits in this petition which is accordingly rejected."

After the dismissal of the aforesaid writ petition on 14th October, 1981 the legal representatives of Taran Tej Singh filed a review application before respondent No. 1. A copy of the review application has been filed as Annexure 4 to the writ petition. It indicates that the seven legal representatives of Taran Tej Singh including Smt. Jogendra Kaur as also Room Singh were the applicants in this review application. From paragraph 3 (q) of the counter affidavit it appears that this review application was filed on 21st October, 1981 i. e., after the dismissal of the writ petition filed by Smt. Jogendra Kaur and Room Singh on 14th October, 1981. This review application was dismissed on 22nd October, 1981. The present writ petition has been filed by one of the legal representatives of Taran Tej Singh with the prayer that the orders dated 24th September, 1981 and 22nd October, 1981 may be quashed.

Having heard counsel for the parties I am of opinion that present writ petition is not maintainable and deserves to be dismissed. As seen above, Smt. Jogendra Kaur and Room Singh had challenged the order dated 24th September, 1981 in the earlier writ petition which was dismissed by this Court on 14th October, 1981. That very order has been challenged in the present writ petition also, of course along with the subsequent order dated 22nd October, 1981 whereby the review application filed by the same Smt. Jogendra Kaur along with other legal representatives of Taran Tej Singh and by Room Singh was dismissed. The order dated 14th October, 1981, on the face of it, cannot be said to be a nonspeaking order. It was an order dismissing the earlier writ petition challenging the order dated 24th September, 1981 passed by respondent No. 1 on merits. It was held that there was no merit in the writ petition. It is well settled that the principle of res judicata applies even in a writ petition. If authority were needed for this proposition, reference may be made to *Daryao v. State of U. P.* (A.I.R., 1961 S.C. 1437.). Counsel for the petitioner, however placed reliance on the decision of the Supreme Court in *Hoshnak Singh v. Union of India* (A.I.R. 1979 S.C. 1328). In that case a writ petition was filed against an order dated 17th March, 1961. The writ petition was dismissed by a nonspeaking one word order "dismissed". Thereafter a revision was filed against the order dated 15th March, 1961 which was dismissed. Another writ petition was filed challenging the order whereby the revision filed against the order dated 17th March, 1961 was dismissed. The High Court dismissed the second writ petition on the ground that in view of the dismissal of the earlier writ petition the order dated 17th March, 1961 had become final and the effect of allowing the second writ petition would be to set

aside that order. It was held by the Supreme Court that since the earlier writ petition was dismissed by a nonspeaking one word order "dismissed", it could not operate as res judicata inasmuch as the High Court may as well dismiss the petition in limine on the ground of delay or laches or on the ground or alternative remedy. As seen above, in the instant case the earlier writ petition was not dismissed by a nonspeaking order but by an order holding that there was no merit in the writ petition. The decision in Hoshnak Singh's case (supra) is therefore, clearly distinguishable. On the other hand, in Daryao Singh's case (supra) it was specifically held that if a writ petition was dismissed even in limine on the merits, the order operated as res Judicata. For the petitioner it was then urged that since on the death of Taran Tej Singh his heirs become tenantsincommon and the earlier writ petition had been filed by only one of the tenantsincommon the order dismissing the writ petition was not binding on the other tenantsincommon. I find it difficult to accept this submission either. Firstly, a Full Bench of this Court in Smt. Ram Devi Sakhya and another v. First Addl. District Judge and another(1981 A.R.C. 305.) has held that ""the heirs of a tenant become tenantsincommon inter se but are joint tenants as explained above qua the landlord." In that case it was further held that the effect of such cotenants acquiring another building as mentioned in subsection (3) of Section 12 of U. P. Act XIII of 1972 has the effect of all the cotenants to be deemed to have ceased to occupy the building under tenancy. Secondly, on the facts of the instant case as will presently be shown the general principles of res judicata will apply and when the mother of the petitioner challenged the order dated 24th September. 1981, in the earlier writ petition she will be deemed to have challenged it representing the entire body of the tenantsincommon. In Daryao's case (supra) it was pointed out:

"Now, the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice ever with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article. 32."

The principle in this behalf is contained in two wellknown maximsinterest republicae ut sit finii litium", and " nemo debie bii vexari proeaden causa."" The same principle was reiterated by the Supreme Court in Devilal v. Sales Tax Officer Reverting to the facts of the instant case on the basis which I am of the view that general principles of res judicata will apply itwould be seen that the earlier writ petition had been filed by the mother of the present petitioner. It is not the case of the petitioner that he was in collusion with the landlord or that the decision in the earlier writ petition was vitiated on account of fraud or

misrepresentation. On the other hand the petitioner has all along been contesting the matter along with the other legal representatives of TaranTej Singh including Smt. Joginder Kiur who was one of the petitioners in the earlier writ petition. Even the review application which was filed on 21st October, 1981, i. e, subsequent to the decision of the earlier writ petition by this Court on 14th October, 1981. and which application was dismissed on 22nd October, 1981, had been filed by the petitioner jointly with Smt. Joginder Kaur. In this view of the matter it cannot be said that the petitioner is entitled to challenge the same order dated 24th September, 1981 in the present writ petition notwithstanding the challenge to that order at the instance of his mother in the earlier writ petition having failed. if such a challenge is permitted the rule of finality of litigation and the public Policy underlying the said rule will be set at naught and there will be no end to litigation. For these reasons I am of opinion that the writ petition in so far as it challenges the order of respondent No. 1 dated 24th September, 1981, is not maintainable.

Coming to the subsequent order dated 22nd October, 1981, whereby the review application filed by the petitioners along with Smt. Joginder Kaur has been dismissed, suffice it to say that no such error in the said order has been brought to my notice which may justify interference under Article 226 of the Constitution. The writ petition for this relief also, therefore, deserves to be dismissed.

As regards the findings that the legal representatives of Taran Tej Singh had permitted the shop to be occupied by Room Singh to carry on his own business and that these legal representatives had no interest in the business carried on by Room Singh also the finding recorded by respondent NO 1 that the need of the landlord was bonafide I am of opinion that these findings are findings of fact based on appraisal of evidence and do not suffer from any such error which may justify interference under Article 226 Constitution.

In the result I find no merit in this writ petition, It is accordingly dismissed with costs.