
(1975) 02 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 787 of 1974

Hindaun Int Chuna Udhyog

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 21-02-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 220, 226

Citation : (1975) WLN 62

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Joshi, J.—The facts giving rise to this writ petition are : There is a lime stone plot measuring 500 feet x 500 feet situated village Hanumanpur in hill known as Reni Pahari, in Tahsil Karoli District Sawai Madhopur. The plot in question was formerly leased out to M/s Sharma Lime Company Hanumanpur of which the petitioner was one of the partner. That lease was for a period of 5years from 21-8-1963 to 20-8-1968. The petitioner applied for the grant of lease of the aforesaid plot in question on 19-11-1968. One Kadarlal had applied for the grant of lease of the same plot on 21-8-1968 i.e. some time before the petitioner had applied for the lease. The Mining Engineer rejected the application of Kadarlal on 31-12-1968 holding it premature on the ground that by that time the area was not free for grant of Mining Engineer however by his order dated 1-1-1969 sanctioned the grant of the lease in the name of the petitioner for a period of five year from the date of agreement. Pursuant to the order of the Mining Engineer a lease deed was executed in the name of the petitioner and the State on 25-3-1969 and the same was registered on 4-4-1969 In pursuance of the lease the petitioner was put in possession of the plot in question on 11-4-1969 Kadarlal feeling aggrieved by the order of the Mining Engineer rejecting his application appealed before the Joint Director Mines Udaipur. He did not implead the petitioner as a party in the appeal. The Joint Director accepted the appeal of

Kedar Lal by his order dated 11-3-1999 and directed the lease of the area be granted by auction of the plot in question. The petitioner who had gone a lease in his favour naturally felt aggrieved by the order of the Mining Engineer directing auction of the plot. He, therefore, filed a writ petition in this Court in the year 1969. In the writ petition the petitioner threw a challenge to the validity of the order of the Joint Director. This writ petition was registered as S.B. Civil Writ Petition No. 1301 of 1969. In the writ petition the petitioner obtained ex parte interim stay order on 24-9-1969 restraining the respondent in that, case from interfering with the petitioner's possession. That writ petition came to be heard by Tyagi J. In that writ petition the petitioner principally rested his case on three grounds (i) that he had a registered lease deed in his favour, (ii) the Joint Director was not competent to direct the auction of the plot in question in the fact of the subsisting lease in the petitioner's favour, and (iii) he petitioner could not be dispossessed from the plot in question in compliance of the order of the Joint Director and that the Mining Engineer's threat to dispossess the petitioner was without jurisdiction. The Single judge of this Court held that the lease in the petitioner's favour was granted in contravention of the directions of the Joint Director Mining and that the Joint Director had power to grant the lease by auction while accepting the appeal of Kedar Lal. It was, however, said in that judgment that Kedar Lal's appeal was accepted without affording opportunity to the petitioner of being heard as the petitioner was not impleaded party in that appeal and so there was violation of principles of natural justice. The Single Judge of this Court, however, refused to grant relief claimed and dismissed the writ petition No. 1301 of 1969 in view of the conduct of the petitioner in suppressing material facts. The petitioner then challenged the judgment of the Single Bench by way of Special Appeal before the Division Bench of this Court but the appeal was dismissed on 23-10-1970.

2. When the writ petition was dismissed by the Single Bench of this Court the stay order granted in that writ petition stood vacated. The petitioner thereupon in order to retain his possession filed a suit for permanent injunction restraining the Mining Authority from dispossessing him on 23-9-1969 in the court of Munsif Karoli and also obtained an interim stay order from that Court. That suit was however withdrawn in February, 1971, with permission to file fresh suit as there was a formal defect in it as no notice u/s 80 C.P.C. was given before filing of that suit. On 23-3-1971, the petitioner after complying with the provisions of Section 80 C.P.C. brought another suit for injunction restraining the State authorities to dispossess him. That suit remained pending till 7-9-1974, when, it was withdrawn by the petitioner on the ground that he had already filed a writ petition in this court and obtained the stay order. It may be stated here that the petitioner filed the present writ petition on 6-3-1974.

3. To complete the narration of facts it may be stated that while the writ petition No. 1301 of 1969 was pending it appears that the Joint Director issued a notice to the petitioner for rehearing the appeal of Kedar Lal as the petitioner was not heard in it. The joint Director, however, decided the matter after the decision in

the previous writ petition against the petitioner by observing that in view of the judgment of the High Court he was unable to rehear the appeal of Kedarlal. The petitioner being aggrieved by the order of the Joint Director appealed to the State Government and obtained stay order cot to disposes him. The State Government vacated the stay order on 24-8-1973. The appeal of the petitioner was also dismissed by the State Government on 2-1-1974.

4. As stated earlier while the appeal before the State Government was pending the petitioner had brought yet another suit for permanent Injunction restraining the State from dispossessing the petitioner and applied for grant of injunction order but the Munsif Karoli rejected the application for injunction by his order dated 27-9-1973. The petitioner appealed against that order and obtained stay order from the appellate court on 3-1-1974 which was vacated on 13th of February, 1974. The petitioner did not reconcile with the vacation of the stay order and therefore moved this court in revision The revision application was, however, withdrawn on 18-4-1974 and the suit out of which the revision arose was also withdrawn subsequently on 7-9-1974.

5. The petitioner had also made an application before the Mining Engineer for renewal of his lease on 25-8-1973 on the ground that he was entitled to renewal of his lease. The renewal application of the petitioner was rejected by the Mining Engineer on 7-11-1973. He then moved the Joint Director by way of appeal for setting aside the order of the Mining Engineer refusing to renew his lease. The appeal it still pending Despite that the petitioner has filed his writ petition praying for quashing the order of the Mining Engineer rejecting the petitioner's application for renewal of lease & also for quashing the order of the Government dated 2-1-1974 whereby the order of the Joint Director refusing to reconsider the appeal of Kederlal was maintained.

6. The writ petition is being opposed by the State. The State in its reply has controverted the grounds raised in the petition. It is alleged that the petition is act maintainable as the petitioner did not disclose facts in full and in candid manner in the petition. It has been further alleged in the reply that the judgment of the Single Bench passed in the previous writ petition No. 1301 of 1969 filed by the petitioner operates in bar as res judicata because the muter in issue in the present writ petition was also directly and substantially is issue in the previous writ petition.

7. In the writ petition diverse grounds have been taken in support of that relief claimed therein but the learned Counsel for the petitioner at the time of the arguments has pressed before me the following contentions only:

(i) That the petitioner is entitled to renewal of lease as he had valid; lease under a duly executed registered agreement of lease.

(2) That the order dated 11-8-1969 of the Joint Director directing the grant of lease of the plot in question by auction while accepting Kedarlal's appeal is non est as the petitioner was not impleaded as a party in that appeal; and

(3) that the directions for granting the lease of the plot in question by auction in the judgment in S.B.C.W. 1301 of 1969 are also without jurisdiction as no such direction could have been issued in a writ of certiorari, and

(4) that in the alternative if the judgment of the Single Bench in the previous writ petition is held not to contain fresh directions for grant of lease then in that case it simply did not interfere with the order of Joint Director which being non est cannot defeat the petitioner's right to relief from this Court.

8. At the outset a preliminary objection was raised by learned Deputy Government Advocate as to the maintainability of the writ petition. Mr K.C. Bhandari learned Deputy Government Advocate urged that the petitioner being guilty of concealment of material fact the writ petition deserves to be dismissed. In order to appreciate the preliminary point it might be recalled that the petitioner challenged the order dated 11-8-1969 of the Joint Director in the previous writ petition No. 1301 of 1969. The petition was dismissed by the learned Single Judge. That appeal against the judgment of the learned single Judge did not bring better results as the Division Bench concurred with the judgment of the learned Single Judge. The petitioner did not disclose this fact in his writ petition and obtained rule nisi. In the reply filed by the State a specific objection was taken on behalf of the State that the petitioner deliberately did not disclose the material fact that the appeal before the Division Bench against the judgment of the Single Judge had been dismissed. In the rejoinder the petitioner suggested that no appeal was filed as it was not necessary for him to go in appeal against the order of the Single Judge. It will thus appear that the petitioner did not disclose the fact that his special appeal arising from the previous writ petition had been dismissed. Mr. M.M. Tiwari however, argued that there was no intention on the part of the petitioner to make any concealment so as to mislead the court, to obtain rule nisi restraining the State from dispossessing him. Learned Counsel for the petitioner submitted that he did not think it relevant to make a mention of the fact as to the dismissal of his appeal in the petition. In regard to the averment in the rejoinder in this behalf it was urged that the same was prepared by another counsel who has no knowledge of this fact. It was further contended by the learned Counsel that Tyagi J.'s judgment in the previous writ petition was of an obiter one as he did not decide the case on merits but dismissed the previous petition on the ground of suppression of material facts by the petitioner. According to the learned Counsel omission to mention this fact could not have misled the court in passing the stay order. Having given my earnest consideration I am unable to accept this contention. In the writ petition before Tyagi J. the petitioner had contended that he had a valid subsisting registered lease in his favour and the same having not been cancelled he was entitled to retain the possession of the plot in question. It was also contended before Tyagi J, that the Joint Director had no authority to issue directions for the grant of the lease by auction. Both these points were hotly contested before Tyagi J who rejected the contentions by holding that the Joint Director under the eye of law had jurisdiction to issue directions for the grant of

lease by auction and that the lease made in favour of the petitioner was obtained in a clandestine manner in contravention of the directions of the joint Director. The findings of the learned Single Judge negated the rights of the petitioner under the lease. That is why the petitioner went in appeal to get the judgment of Tyagi J. quashed. The Division Bench, however, concurred with the judgment of the Tyagi J. and thus Tyagi J.'s judgment merged into the judgment of the Division Bench. Judgment of Division Bench was undoubtedly a material fact and the same was not mentioned in the petition & interim order was obtained. If this fact would have come to the notice of this Court the petitioner might not have been able to get the interim order at all. The petitioner has stated even minor facts in detail but did not make a mention of this fact. This leads to an irresistible conclusion that the petitioner deliberately did not mention this material fact. The petitioner has thus disentitled to get any relief in this second petition based on substantially identical facts.

9. Moreover the previous petition was dismissed by the learned Single Judge of this Court on the ground of suppression of material facts by the petitioner. In writ petition No. 1301 of 1969 the petitioner alleged that he was in possession of the plot in question in pursuance of the registered agreement of lease and obtained the stay orders. The Stogie Judge of this Court found this averment to be false and while dismissing the petition the learned Single Judge duly noticed the conduct of the petitioner in suppressing material fact and held that the petitioner by his conduct is disentitled to any relief. Now the basis for praying the relief in this writ petition is substantially the same. In this petition too the petitioner prays for the renewal of the lease on the basis of a registered lease agreement and retain his possession. The question then arises is can the petitioner now bring second writ petition substantially on same facts. A second writ application under Article 220 of the Constitution of India will not lie if the first application for a same relief has been dismissed. In this connection reference may be made to *Jai Singh v. State of Raj.* 1954 RLW 543. The Division Bench of this Court placed reliance on the *Queen v. Mayor* and extracted the relevant observations of Day J. with approval as follows:

As I read the authorities, this objection has been taken and the attention of the Court has been called to the point, that no second application for a prerogative writ will be granted when the first application has been dismissed.... They (persons seeking writ) must come prepared with full and sufficient materials to support their application & if these materials are incomplete I think it is quite right that they should not be allowed to come again.

It will thus appear that the Division Bench on the basis of above authority held down that a second writ application will not lie if the application for a similar relief has been dismissed. Now, the relief claimed in the previous petition was principally the relief against dispossession. That is the substantial relief claimed in this writ petition. The argument that the present writ petition principally concerns for the renewal of the lease has no substance in it. The foundation of

the relief for renewal of me lease is based upon the registered agreement of lease. The relief on the basis of registered agreement was refused in the previous writ petition.

10. Reference may also be made to the observations of Lord Kozy Hardy M.R. in (1917) 1 K.B. 486 while dealing with argument that second application if dismissed would debar the petitioner from getting any relief for ever. Lord Kozy Hardy observed "All I can say is if that is the rule of the crown office it is a rule which is perfectly well settled and any body who comes to the crown office, must take the consequence of that rule. We cannot & we ought not to refuse to give effect to what seems to me to be a most salutary rule of practice merely because it may prevent this lady from ever getting what she seeks.

11. I May now deal with the contentions of the petitioner en merits.

12 The first contention is that the petitioner's valid registered lease having not been concerned it was incumbent upon the Joint Director to renew his lease, Now me Joint Director had issued directions for the grant of lease of the plot in question by auction not mistanding that the registered lease was in favour of the petitioner. His order in tact indirectly had the effect of setting aside the lease to favour of petitioner. The petitioner challenged that order but the Single Judge of this Court held that the lease in favour of the petitioner was obtained the clandestine manner to contravention of the directions of the Joint Director. This finding was impeached in appeal before the Division Bench which concurred in the judgment of the learned Single Judge. The judgment of the learned Single Judge, therefore merged into the judgment of the Division Bench and as result of which for all intents and purposes the rights to the lease, if any, in favour of the petitioner stood in jeopardy by virtue of the aforesaid two judgment's of this Court. The petitioner did not appeal against the judgment of the Division Bench before the Supreme Court. As such the finding of the Single Judge that the lease was obtained by the petitioner in clandestine manner in contravention of the rule became final. The petitioner now warts me to undo the effect of those findings of the judgment which I am afraid cannot be done.

13. Learned Counsel for the petitioner urged that the judgment of the learned Single judge and so also of the Division Bench have no binding force. It is said that Tyagi J. refused to set aside the order of the Joint Director which was non tit being opposed to principles of natural justice and the same cannot have binding force even it is not quashed by this Court. The basis for the argument is two told. Firstly it is urged that both the judgments of this Court relusing to interfere with the order of the Joint Director ate contrary to the settled law laid down by the Highest Tribunal of the country and are therefore judgments per incuriam. In this connection, learned Counsel referred to me several English decisions which need not be referred here. Ail those authorities simply say that the courts are bound by the judgment of the Highest Tribunal of the country and the judgments of the other courts which are against the ratio laid down by the judgment of the Highest Tribunal are judgments per incuriam and are not binding on other courts.

So far as this preposition goes there is nothing to say against it. But this is a rule in regard to the binding nature of the precedents. The judgments of this Court before me are not being cited as precedents but are sought to be availed as a plea in bar to preclude the petitioner from, bringing the second application grounded on substantially identical facts and reliefs.

14. The next argument of the learned Counsel is that the order of Tyagi J. issuing direction to grant the lease by auction of the plot is illegal. If we look at the judgment of the learned Single Judge it will appear that he refused to interfere with the order of the Joint Director who had issued directions for that grant of lease by auction of the plot. Tyagi J. only reiterated the result of the impugned order and has not issued any fresh directions.

15. It has then urged that the order of the Joint Director refusing to reconsider & rehear the appeal of Kedarlal & so also the order of the State Government in that behalf are bad as they are based on the judgment of the Single judge passed in the previous writ petition. It is said that that the Joint Director and the State Government under the rules, were under the obligation to decide the matter, independently without reference to the judgment of this Court passed in the previous writ petition. I do not see any force in this argument. The petitioner challenged the order of the Joint Director before this Court in previous writ petition but this court refused to interfere with that order. In such circumstances it was superfluous for the Joint Director and the State Government to again rehear the appeal of Kedarlal. The matter was closed by the judgment of the Single Judge which was confirmed by the Division Bench. In the circumstances the Joint Director rightly refused to rehear the appeal of Kedarlal over again. Likewise the State Government was equally bound by the judgment of this Court. No valid exception, therefore, can be taken against the decision of the Joint Director and the State in not rehearing the appeal of Kedarlal by giving opportunity to the petitioner of being heard.

16. Lastly it was contended that the petitioner had obtained a right in property by virtue of a registered-deed. It was said that unless the registered-deed was cancelled the petitioner's guaranteed constitutional right to property cannot be allowed to be trampled with. It is true that the lease is a transfer of interest in the immovable property and is a property right. Property right of course is a right guaranteed under the Constitution of India and is a fundamental right within the meaning of Chapter III of the Constitution. But the question is whether the petitioner has now an enforceable right under the lease. The petitioner agitated this matter in his previous writ petition but this Court refused to enforce the lease on merits as well as in view of the petitioner's conduct. The Division Bench of this Court also put a seal of approval and the same has become final. It is a salutary rule based upon sound public policy that there must be end to litigation based on same facts and the courts will not allow the same controversy agitated to ward against under harassment of the parties.

17. Above all the petitioner has not come with clean hands. He retained the

possession under the stay order in writ petition No. 1301 of 1969 by suppressing material facts. That writ petition was dismissed. Thereafter the petitioner managed to retain the possession by obtaining temporary injunction in a suit for permanent injunction which was withdrawn on the ground of a formal defect of omission to give notice u/s 80 C.P.C. He then retained the possession by Obtaining stay order from the Government in appeal against the order of the Joint Director which was vacated on 24-8-1973. During the pendency of the appeal before the State Government the petitioner had brought yet another petitioner permanent injunction restraining the State Government from dispossessing the petitioner When the appeal was dismissed by the State Government the petitioner moved an application in that suit for temporary injunction out the Munsif Karoli rejected the application for temporary injunction by his order dated 29-7-1973. The petitioner then appealed against the order refuting the injunction by the Munsif and obtained say order from the appellate court on 3-1-1974. which was vacated on 13th of February, 1974. The petitioner then moved this court in revision against the order vacating the temporary injunction by the appellate court. The revision application was, however, withdrawn on 18-4-1974 and the suit out of which the revision arose was also withdrawn as the petitioner did not see any worth in it on account of the vacation of the stay order in that suit. Thereafter the petitioner has moved this writ petition although the suit was withdrawn subsequently on 7-9-1974 and has obtained the state order for retaining the possession. All these facts go to show that the petitioner had been pursuing the remedy by way of suit for purposes of getting stay order and when the stay order was vacated he moved this Court by way of this writ petition although the suit was then pending. He took recourse to a course which suited him with a views to retain possession some how or the other. All these facts go to show mat the petitioner's conduct had not been upright in coming to this Court. The writ of certiorari does not issue as a matter of course. It is discretionary with this Court to issue such writ in appropriate cased. Looking to the totality of the facts and also the way in which the petitioner conducted himself, this Court is not inclined to invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India.

18. In the result, there is no force in this writ petition and the tame is dismissed with costs.