

**(1964) 03 P&H CK 0026**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revn No. 638 of 1963**

Hindustan Twyford Ltd. and Others

APPELLANT

Vs

Daulat Ram and Others

RESPONDENT

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**Date of Decision :** 03-03-1964

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11  
Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 17(1)

**Citation :** AIR 1965 P&H 50

**Hon'ble Judges :** I.D. Dua, J

**Bench :** Single Bench

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## Judgement

1. These nine revisions (Civil Revisions Nos. 638, 639, 640, 641, 642, 643, 644, 645 and 646 of 1963) involve the same question and therefore are being disposed of by one judgment.

(2) The revision (Civil Revision No. 638 of 1963) is directed against an interlocutory order of the learned subordinate Judge IVth Class Rohtak rejecting the plea of res judicata based on an order learned single Judge of this Court in a writ petition filed by a number of petitioners who are now plaintiffs in the nine suits out of which these revision have arisen.

(3) It is contended by the learned counsel for the petitioners that this Court has no writ decided all the matter in controversy in the present suit and therefore under the general rule of res judicata the suit cannot proceed and the trial Court should be held to be acting without jurisdiction in the contention it is necessary to observe that certain land was sought to be acquired by the Government under the Land Acquisition Act and the petitioners came to this Court under Article 226 of the Constitution assailing the acquisition as being not for a public purpose but for the purpose but for the private purpose of a company a learned Single Judge of this Court rejected the petition. The real basis of the decision as it appears to me I is contained in the following observations:

"As a declaration u/s 6 has already been made at least a presumption must be raised that the acquisition is being made for a public purpose. The facts alleged by the petitioners to the extent they are not disputed are sufficient to rebut that presumption. I would accordingly hold that the acquisition in the present case is being made for a public purpose."

A little lower down again, the learned Single Judge made the following observations:

"It is submitted by the learned Advocate General that clause(c)(the reference is to S. 17(1) of Punjab Act No. 47 of 1956) covers the present case as noticed under S. 9 sub-section (1) as mentioned in S. 17(1) was duly published and it is implicit in the proviso to clause (c) that possession can be taken even of those lands on which buildings exist. The learned counsel for the petitioners has not been able to controvert this position. Moreover it is not possible to take any serious notice of the contention advanced on behalf of the petitioners in respect the exercise of powers under S. 17 for the simple reason that since a number of petitioners preferred the petition on behalf of these petition the number under S.17 for the simple reason that since a number of petitioners can grant relief to one petitioner whomsoever the learned counsel might have selected for pressing the claim possible to do in the absence of separating the numbers of the plots belonging to that petitioner."

In view of these observations, I find it exceedingly difficult to hold that this decision bars the plaintiffs-respondents from instituting the present suit for a decision after a proper trial. Reference to the Supreme Court decision in *The Mysore State Electricity Board Vs. Bangalore Woollen, Cotton and Silk Mills Ltd. and Others*, is of on assistance to the petitioners before me because the general rule laid circumstances of the present case, the ratio of the Supreme Court decision can hardly attract general rule of *res judicata*. I may observe that it is not section 11. C. P. C. as such applies to the case in hand. *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, to which also reference has been made by the petitioners learned counsel is equally unavailing because that decision is no authority for the proposition that refusal to grant relief which will have to be decided on fuller evidence being led by the parties.

(4) The doctrine of *res judicata* has to be applied only if it is clearly attracted because a citizen has a very valuable right in having his controversy adjudicate upon by the Courts of the State in accordance with law. It is true that there should be an end to law suits and controversies and also that no one should be vexed twice over. and except for this ancient rule which has been dictated by wisdom the rights of persons would be subjected to endless confusion and uncertainty. It is however equally important to bear in mind that the actual prior decision cannot be carried further than the circumstances warrant and it is the precise point in issue solemnly found against a party on matters which the party had no opportunity of bringing before the Court which would attract the general rule *res judicata*. In order successfully to establish a plea of *res judicata* or

estoppel by record therefore it must be shown that in a prior case a Court having jurisdiction to try the question came to a decision necessarily and substantially involving the determination of the matter in issue in a later case. The extraordinary discretionary remedy provided by Art 226 of the Constitution which merely empowers this throaty has exceeded its power or abused its power or has acted in gross violation of a law to the detriment of a citizen can hardly be placed at par with deacons by the Courts in regular trials. In the case in hand I find it very difficult as at present advised prior holding on a writ petition in the present settings could have been intended by the general approaching a civil Court irregular trails. In the case in hand I find it very difficult as at present advised to persuade myself to conclude that the kind of prior holding on a writ petition in the present principles of res judicata to debar a citizen from approaching a civil Court to have his right properly laid down by High Court in the writ petition is applicable to the facts then the Court below, I dispute in accordance with it but it is quite a different thing to shut out trial on the preliminary ground of the doctrine of res judicata.

(5) The matter also does not seem to be re integer and indeed a learned Single Judge of this Court has in Smt. Bimla Chopra v. Punjab State 1963 65 PLR 945 expressed similar views which decision is binding on me sitting singly.

(6) But this apart the matter has come before me on revision from an interlocutory order. Unless the matter is clearly concluded by a binding disinclined to interfere at this stage ad throttle the proper trial of the plaintiffs claim in the Court interference under S. 115, P. c., on the facts and circumstances of this case.

(7) In the result this petition fails and is hereby dismissed but without costs.

Petition dismissed.