

(1995) 12 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17459 of 1995

M/s. Deepak Grit Udyog and others etc.

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 05-12-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 48A, 51A

Citation : AIR 1996 P&H 176 : (1996) 112 PLR 609

Hon'ble Judges : R.P. Sethi, J;K.S. Kumaran, J

Bench : Division Bench

Advocate : R.S. Mittal, C.B. Kaushik and Rajiv Vij, for the Appellant;

Judgement

R.P. Sethi, J.—On the heap of corpses of the human society, the petitioners under the garb of this petition, have again made a venture to raise their wealthy glittering castles by continuing to crush stones and inflate their money bags. The present petition is an abortive attempt on the part of the wealthy section of the society, seeking the assistance of this Court to sacrifice the human health and welfare of thousands of masses, whose health, safety and life has continuously been endangered by the petitioners and the alike. Despite judgment of this Court in *Ishwar Singh v. State of Haryana and others*. Civil Writ Petition No. 74I8/1994, decided on July 10, 1995, a prayer has been made in this writ petition for restraining the respondent/State and the authorities from closing down the stone crushers of the petitioners, situated around the city of Gurgaon, near the Capital of India.

2. It is submitted that as in the earlier litigation, this Court had not taken note of the study Report on Stone Crushers at National Level, conducted by the Central Pollution Control Board and National Productivity Counsel of India, the whole of the matter required reconsideration.

In the aforesaid litigation, initiated in the public interest, this Court while allowing the writ petition filed against the owners of the stone crushers had

directed :

"1) That all the private respondents, who are owners of the stone crushers, shall close down their stone crushing business and shift them to the identified zones, positively within a period of one month from the date of this judgment;

2) The State Government shall take immediate steps for closure and shifting of stone crushers to the identified zones and issue licenses only in favour of such persons who decide to shift their business of stone crusher to the identified zones;

3) That all the stone crushers located at present locations shall be deemed to have been closed after one month and shall not be permitted to carry on business of stone crusher on any ground or pretext whatsoever;

4) That the private respondents shall not purchase and the petitioner shall not sell his land, situated in identified zones for the purposes of installation of stone crushers or any other identical and ancillary purpose.

5) That the citizens of the area are authorised to prefer their claims for grant of compensation; for those persons, who are proved to have suffered due to pollution caused by stone crushers owned and managed by private respondents. Claims for such compensation may be entertained within two months after such right is notified to the inhabitants of the area. Such claims, if preferred, shall be considered and disposed of within three months and if any of the respondents-stone crushers is found to be responsible for making compensation, the same shall be paid by him within a period of two months thereafter; failing which his license for carrying on stone crusher business shall be cancelled. It is expected that while issuing the notification inviting the claims for compensation, the respondent/State shall appoint an authority for entertainment and adjudication of such claims for compensation. It would be appreciated if the persons having judicial background is appointed as such authority;

6) That even though the State of Punjab has not been a party before us, yet copy of this judgment shall be served upon the Chief Secretary of the State of Punjab for taking up appropriate steps as per our observations made hereinabove."

3. Ishwar Singh, a public spirited person, had approached this Court on the basis of judgment of the Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, and subsequent notification of the Government of Haryana issued on 4-8-1992. The Government in the aforesaid notification had declared that the stone crusher units in the State of Haryana have been causing grave air pollution and hazards to traffic and human health, which necessitated that they be not located within the parameters as laid down in the Government notification dated 9-6-1992. The Government of Haryana on 18-12-1992 had issued a notification, amending its earlier notification, by providing new parameters. The petitioner in the earlier petition before this Court had alleged that despite judgment of the

Supreme Court and the notifications issued in consequence thereof, as the stone crushers had not been shifted from Naurangpur, district Gur-gaon, appropriate directions be issued.

4. The present writ petitioners were noticed to have, "not challenged the vires of notifications Annexures P/1 and P/2, by which the restrictions were imposed upon the stone crushers and were directed to be shifted away from the populated areas and road sides." After referring to various judgments, the position of law prevalent in the State and the report of the experts and the affidavit of the Secretary, Haryana State Pollution Control Board, this Court in Ishwar Singh's case held :--

"Despite the fact that the Supreme Court issued directions and the respondent-State had itself issued the notifications no positive step appears to have been taken for shifting of the stone crushers from the sites where they are presently located. The omission on the part of the respondents-authorities appears to have prompted the present petitioner to move this Court for the issuance of appropriate directions for preservation of the health of the citizens of the area and to secure free polluted atmosphere for the inhabitants of the village. The official respondents have themselves admitted that upon complaint made, the matter was pending with them but no effective orders so far have been passed. It has also been conceded that the licenses earlier granted for yearly basis have not been renewed in favour of the private respondents. The official-respondents, therefore, appear to have failed in the performance of their duties cast upon them by the Apex Court while issuing the directions in M. C. Mehta's case (supra) and under the provisions of Environment (Prevention) Act, the rules framed thereunder, and the notifications Annexure PI and Annexure P2 thereunder. The omission, even if not wilful, cannot be ignored by the Court while dealing with the fundamental rights of the citizen which provide them amongst others to live in pollution free area and atmosphere as held by Apex Court in AIR 1991 420 (SC) .

Learned counsel appearing for the respondents, however, submitted that the issuance of the directions for shifting of the business of the private respondents would amount to put restrictions on their fundamental rights to carry on business and trade according to their choice. The argument, though attractive on the face of it, is without any substance. The enjoyment of fundamental rights is subject to reasonable limitations. One can enjoy his right to carry on business and trade according to his wishes and desires till the time such enjoyment does not interfere with the lives and property of others. In a developing society like ours, a balance has to be maintained with ecology and environment on the one hand and industrial growth on the other, paramount being the service of the society and protection of the lives of the citizens. Only for the purpose of profit making, the private respondents cannot be permitted to adopt means and resort to methods which are irritable, irrational and uncontrolled resulting in health hazard to the citizens as noticed by the project Entitled Health Effects of Environment

Pollution Committee, The Government is required and in fact has actually decided to protect and save the lives of the citizens of the area by issuance of appropriate notifications directing shifting of the stone crushers away from the populated area. The Supreme Court in *Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others*, took note of consciousness for environment protection which is of recent origin. It also referred to the United Nations Conference on World Environment held in Stockholm in June, 1972 and follow-up action thereafter.

Dealing with the ecological imbalance, administrative action involving environmental problems, directive principles and fundamental duty and industrial growth despite exploitation of the natural resources the Supreme Court in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, held as under :--

"Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind An. 48A of the Constitution, the Directive Principle which enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country", and Article 51A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures". When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court go further but how much further must depend on the circumstances of the case."

The Supreme Court also referred to the circumstances under which the Court was expected to interfere for the purpose of providing pollution free atmosphere by keeping in mind the circumstances of the case before it. It was held that if the State Administration omits to take action or if its action actuated by consideration which are irrelevant, the Court may interfere in order to prevent likelihood of prejudice to the public.

Shri B. D. Sardana, Member Secretary, Haryana State Pollution Control Board in his affidavit dated 6-12-1994 has admitted that the instructions issued by the State Government were sent to the Regional Officer, Gurgaon, for reverification of the sites of the stone crushers which were exempted from shifting. He has further submitted that in view of the abovesaid instructions, the regional officer Gurgaon had revealed that the distance of stone crushers from the village abadi was less than I kilometer. After receipt of the abovesaid report from the Regional Officer, Gurgaon, the matter was referred to the Government vide letter dated 24-5-1994 giving all the facts. Under these circumstances, the matter is pending before the Government for taking further decision. "The respondent-Government has not assigned or disclosed any reason for not taking effective steps in

pursuance of its notifications issued and receipt of report referred by Sh. B. D. Sardana in his affidavit. While dealing with the rights of the citizen, we cannot ignore the report of the Project Entitled Health Effects of Environment Pollution due to Stone Crushers in Haryana State Annexure P3. The Committee consisting of eminent scientists have opined that due to stone crushing a lot of thick dust is generated polluting the environment. Visible dust contained particles more than 50 μ indiameter, which settledown in the nose and pharynx. Smaller particles of 5-10 μ size remain suspended in air and are inhaled deeper which are deposited in tracheo-bronchial tree and lung parcnchyma and may induce fibrosis. They have further opined that such a process causes lung function impairment and debility which may also reactive the old tubercular foci in the lungs, The Committee have noted the problems faced in the populated area and conciuuded that lungs are the major organs effected by the air pollution because of the direct contact of the respiratory tract with outside atmosphere. The spectrum of functional and pathological reactions of the lungs to various exposures in wide. Chronic bronchitis and airways obstruction is the result of long term exposure to air pollution. Exposure to many of the occupational and environmental pollutants can precipitate and/or aggravate asthma. Organic matter/dusts can also cause other allergic reactions producing allergic alveo-litis. Inorganic dusts may get deposited in the lungs and produce fibrosis. This produces respiratory disability and decreases work efficiency. While anthracosic is common in coal miners, silicosis occurs in those exposed to the silica dust namely the workers involved in mining, pottery work and sand blasting. Exposure to dust may lower the lung defences and clearing mechanism, resulting in infections particularly tuberculosis. Some such occupational exposures may cause lung cancer as well.

In view of this grave situation brought to our notice, we cannot remain silent spectators particularly when the State has shown inaction in the matter and failed to perform their statutory obligation. The respondents themselves have not taken any step in shifting their business despite issuance of the directions to them by appropriate authority and non-renewal of licenses in their favour for carrying on the business of stone crushers. The respondent-State appears to have not taken any action against private respondents who have been operating stone crushers, even without the grant of licence. The grant of licence in favour of some of the respondents did not confer any absolute right upon them to carry out the business at the places which were declared not safe for the said business. The issuance of a license has been held to be a fresh grant every year. The licensee is under an obligation to comply with such directions and conditions which are imposed at the time of renewal of the licence as per provisions of law.

The reliance of the learned counsel for the respondents upon M.C. Mehta Vs. Union of India (UOI) and Others, , does not in any way help them or persuade us to dismiss the petition on the ground that as the petitioner had not approached the respondents before coming to this Court, his petition was required to be dismissed. In that case, the Court observed that the protection and improvement of health environment was major issue, which affected well being

of the people and economic development throughout the world. It was the urgent desire of the people of whole world and duties of all the Governments. The Court further found that "we see around us growing evidence of man-made harm in many regions of the earth; dangerous levels of pollution in water, air, earth and living being; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of ir-replacable resources and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment; particularly in the living and working environment." In that case, the Court held that to achieve the goal of free and unpolluted environment, this environmental goal would demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. It was expected by the court that individuals in all walks of life as well as organisation in many fields, by their values and the sum of their actions, would shape the world environment of the future. Wherever, it is found that atmosphere and environment was being polluted, the Court would not hesitate to issue appropriate directions for preservation of pollution free atmosphere. In the light of the aforesaid judgments and the facts of the case, it cannot be said that the action, sought to be taken against the private respondents on the basis of expert report, referred hereinabove is not in public interest. Similarly reliance of the learned counsel for the respondents on M.C. Mehta and Another Vs. Union of India (UOI) and Others, is also misplaced in as much as in that case the Apex Court has nowhere held that in the absence of a report of Expert Committee by the Government, no relief can be granted in a petition filed in public interest. Otherwise on facts, as noted earlier in the case, references have been made to the report of the Experts Committee (Annexure P/3).

It is thus established that the petitioner has bona fide filed the present petition for the grant of appropriate relief on the basis of the directions issued by the Supreme Court, the mandate of the Environment (Protection) Act and the notifications issued thereunder. It is further established that despite issuance of the directions and mandate of law, respondents Nos. 1 and 2 have failed to perform their duties. It is proved that private respondents are carrying on the business of stone crushers in the areas which have been held to be prohibited area and have failed to shift their business to the areas specified for that purpose as detailed in Annexure P5. The business carried on by the private respondents is also proved to be health hazard requiring immediate preventive measures to be adopted. If the stone crushers located near the village abadi are not directed to be immediately shifted to safer places, there is immediate apprehension and danger to the life of the inhabitants of the area."

5. The facts narrated hereinabove clearly and unambiguously lead us to the conclusion that the present writ petition is barred by the principle of res judicata. The said principle has been acknowledged to be founded on equity, justice and good conscience, intended to give conclusiveness of judgments as to the points decided, in every subsequent suit between the same parties. The principle of res

judicata is based partly on the maxim of Roman Jurisprudence, "interest reipublicae ut sit finis litium -- it concerns the State that there be an end to law suits -- and partly on the maxim nemo debet bis vexari pro una et eadem causa -- no man should be vexed twice over for the same cause." In the absence of such a rule, there is every likelihood of the multiplicity of litigation, with no end to it and rights of the persons would be involved in endless confusion and great injustice done under the cover of the law. The principle of res judicata is intended not only to prevent a new decision, but also to prevent a new investigation so that the same person cannot be harassed again and again in various proceedings upon the same question of law.

6. The Supreme Court in *Narayana Prabhu Venkateswara Prabhu Vs. Narayana Prabhu Krishna Prabhu (Dead)* by L. Rs., , referred to Section 11 of the Code of Civil Procedure, incorporating the rule of res judicata and held :--

"the principle embodied in the statute is not so much the principle of "estoppel by record", which the British Courts apply as one of the public policy, based on two maxims derived from Roman Jurisprudence : firstly, interest reipublicae ut sit finis litium -- it concerns the State that there be an end to law suits; and, secondly, "nemo debet bis vexari pro una et eadem causa" -- no man should be vexed twice over for the same cause."

7. In *Pujari Bai Vs. Madan Gopal*, , it was held (at page 1769) :--

"When a writ petition after contest is disposed of on merits by a speaking order, the question decided in that petition would operate as res judicata....."

8. Res judicata in its strictest term is defined in Section 11 of the Code of Civil Procedure, which includes principles of constructive res judicata as well. Where, however, the strict principles of Section 11, CPC are not applicable, and the Court feels, for the purpose of putting the litigation to an end, it can be achieved only by discouraging the subsequent litigation and the Court can have resort to the general principles of res judicata, which are admittedly based upon the principles of equity, justice and good conscience. A person can be deprived of his right to prefer his claim afresh on the same cause of action with respect to the same matter, which stands already adjudicated under the general principles of res judicata. Particularly in writ jurisdictions, resort to the strict compliance of the provisions of Section 11 of the CPC may not be insisted upon and the matter can be disposed of and adjudicated on application of principle of res judicata.

Explanation IV to Section 11, CPC provides, "any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

9. This explanation has been held to mean the constructive res judicata. Rule embodied in Explanation IV is admittedly part of the general principles of law of res judicata. An adjudication of the rights of the parties is conclusive and final not only as to the actual matter determined, but also in every subsequent

matter, which the party might or ought to have agitated with respect to the subject-matter of litigation.

10. The Supreme Court in *State of U.P. Vs. Nawab Hussain*, dealt with the general principles of and the scope of *res judicata*. It was held :--

"The principle of estoppel per *res judicata* is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* (1939) 2 KB 426 , it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action."

This doctrine is based on two theories; (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore serves not only a public but also a private purpose by obstructing the reopening of matters, which has once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of action and bring the administration of justice into dispute. It is the cause of action which gives rise to an action and that is why it is necessary for the Courts to recognize that a cause of action which results in a judgment must lose its identity and vital ity and merge in the judgment when pronounced. It cannot, therefore, survive the judgment or give rise to another cause of action on the same facts. This is what is known as the general principle of *res judicata*.

But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have, therefore, treated such a course of action as an abuse of its process and *Somervell L.J.*, has answered it as follows in *Greenhalgh v. Mallard* (1947) 2 All ER 255 :--

"I think that on the authorities to which I will refer it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the Court is actually asked to decide but it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them."

This is, therefore, another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of *res judicata* by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive *res judicata* which in reality, is an aspect or amplification of the general principle."

11. After referring to the earlier litigation and the provisions of law, it has to be

held that the present writ petition is not maintainable, being barred by the general principles of res judicata and constructive res judicata, as incorporated in Explanation IV to Section 11, CPC. This is more apparent from the fact that this Court in Ishwar Singh's case (supra) had found on facts that,

"It may not be out of place to mention that the private respondents have not challenged the vires of notifications Annexure P/1 and Annexure P/2 by which the restrictions were imposed and stone crushers directed to be shifted away from the populated area and road sides."

12. Otherwise also, the arguments of learned counsel for the petitioners based upon the study report on Stone Crushers at National Level conducted by Central Pollution Control Board and National Productivity Council of India, cannot be accepted. This Court in Ishwar Singh's case (supra) had referred to the experts' report and found on facts that appropriate directions were required to be issued. The reliance of learned counsel for the petitioners again is misconceived inasmuch as the experts have nowhere opined that the stone crushers be located within 500 meters of the inhabited areas. We have perused the aforesaid report and found that this Court had already taken sufficient precautions while upholding the action of the respondent/State of Haryana in providing the demarcated zones at a well defined and well reasoned distance. Similarly, reliance of learned counsel upon Annexures P/3 is again the subject-matter of a pending litigation and secondly, the notification relied upon is an interim arrangement made by the State of Punjab. Annexure P/4 is also not based upon any scientific study and the mere mentioning of the fact that "the distance of the stone crushing units from the nearest dwelling should not be less than 250 meters" does not help the petitioners inasmuch as in the same annexure it is mentioned, "that minimum distance should be 2 Kms. from temples, schools, highways and rivers."

13. The writ petition even on merits is misconceived, filed malafidely with the object of frustrating the earlier judgment of this Court in Ishwar Singh's case (supra) and intended to prolong the agony of polluting the atmosphere near Gurgaon and around the Capital of India. No fundamental or legal right of the petitioners has been violated as they have been given liberty to shift their stone crushers to the demarcated zone subject to availability of the land, Permitting to continue the profession at a specified place, which admittedly affects the health and safety of the people in general cannot be held to be equated with any fundamental right as enshrined in part III of the Constitution of India. The writ petition, being totally misconceived, is dismissed in limine.

14. Petition dismissed.