
(1973) 09 DEL CK 0016

In the Delhi High Court

Case No : C.W. No's. 564-D and 565-D of 1963

Narinder Singh

APPELLANT

Vs

Khaliquir-Rehman and Others

RESPONDENT

Date of Decision : 27-09-1973

Acts Referred:

Citation : AIR 1974 Delhi 184

Hon'ble Judges : T.V.R. Tatachari, J;B.C. Misra, J

Bench : Division Bench

Advocate : Bhagwat Dayal, for the Appellant; H.R. Dhawan, for the Respondent

Judgement

B.C. Misra, J.—This order will dispose-of two writ petitions (Civil Writs Nos. 564-D) and 565-D of 1963). They have been filed by the same parties and arise under the same circumstances aggrieved by the same order of the learned Chief Commissioner (now known as Lieutenant Governor). For the sake of convenience, the facts are taken from the first mentioned writ petition. This has been filed by Narinder Singh who is son of Bhagwan Singh deceased (hereinafter referred to as the deceased) and who is the brother of respondents Nos, 3 and 4. The main contestant in this writ petition is Khaliquir-Rehman, respondent No. 1 and Saidur-Rehman who is the contesting respondent in the second mentioned write petition along with other legal representatives of their deceased father Syed Abdul Latif. It appears that one Aziz-ur-Rehman, predecessor of the contesting respondent was the owner of the land in dispute and in 1948 he entered into a partnership with Bhagwan Singh deceased and another. Eventually on 6th May. 1953, Aziz-ur-Rehman, owner, entered into an agreement to sell the land in dispute to Bhagwan Singh deceased, Some part of the land measuring about 4300 square yards was sold to the decease by Aziz-ur-Rehman, owner, but that land Is not in dispute before us, According to the contentions of the petitioner, his predecessor, the deceased, entered into the possession of the land in pursuance of e agreement to sell and was recorded in the revenue papers after Kharif 1953 and on the enforcement of the Delhi Land Reforms Act, 1954,

Bhagwan Singh deceased was declared a Bhumidar and on 24th June, 1959 he was granted a certificate of Bhumidari. It is also mentioned in the writ petition that on Keith April, 1975, Khaliq-ur-Rehman entered into an agreement of partnership with the deceased in the respect of the land Reforms Act. It is also contended that the said Agreement was ineffectual in law. Two other facts are mentioned in the writ pehman etc. legal represents of Aziz-ur-Rehman.entered into an agreement with H.R.Mittal in respect of some land which led to litigation in a Civil Court and ended against the said transferee of land. The other fact is that Khaliq-ur-Rehman on 31 August"1959 filed a suit against the declaration of Bhumidari rights to the deceased which was still pending.

2. The material fact, however, is that on 18th September, 1959, Khaliq-ur-Rehman filed a petition for revision u/s 187 of the Delhi Land Reforms Act in the Court of the Chief Commissioner - Delhi against the order of the Revenue Assistant dated 24th June, 1959. in which he claimed one-fourth share of the land in dispute as heir of Aziz-ur-Rehman deceased owner. On 25th March, 1960 the other contesting respondent. Said-ur-Rehman also filed a similar revision petition. These revisions were disposed of by the learned Chief Commissioner by a common order dated 8th February, 1963. By this order he came to the conclusion that the entry on which reliance had been placed on behalf of the deceased Bhagwan Singh was dubious, if not altogether false and it did not show the deceased Bhagwan Singh as non-occupancy tenant and he, Therefore, set aside the order granting Bhumidari certificate to Bhagwan Singh.

3. The petitioner in the writ petition has contended that aggrieved by this order he filed a petition on 5th April, 1963 under Article 226 of the Constitution in the Circuit Bench of the High Court of Punjab at Delhi which came up for preliminary - hearing before R. P. Khosla, and I. D. Dua, JJ. and that it was dismissed in liming. Subsequently the petitioner filed a petition for review before the learned Chief Commissioner on 3rd May, 1963 which was dismissed by order dated 4th May, 1963. The petitioner in. both the writ petitions has challenged the legality and validity of the two orders of the Chief Commissioner mentioned above.

4. The writ petition has been contested by the contesting respondents. They have raised a preliminary objection that the present writ petition is barred by the rule of res judicata by the dismissal of the previous writ petition by Circuit Bench of the Punjab High Court at Delhi and on merits they have contended that the entry in dispute relied upon by the petitioner was fictitious and did not entitle the petitioner to the grant of Bhumidari rights and the orders of the Chief Commissioner in both the revisions are legal and valid.

5. Three questions arise for determination in the present writ petition namely (1) whether the present writ petition is barred be the rule of resjudicata by the dismissal of the previous writ petition in liming; (2) whether the in order of the Chief Commissioner is without Jurisdiction or contravenes the principles of natural justice or suffers from any other legal infirmity and (3), whether any manifest injustice has beer occasioned which calls for interference in exercise of

writ jurisdiction of this Court. The writ petitions came up for hearing a learned Single Judge of this Court (Dalip Kapur, J.) who has, in view the importance of the question, referred them to a larger Bench.

6. In support of the rule of *res judicata*, reliance has been placed on *Daryao and Others Vs. The State of U.P. and Others*, , *Bansi and Another Vs. Additional Director, Consolidation of Holdings and Others*, and *R.S. Sial Vs. The State of U.P. and Others*, . The law on the subject was, however, settled by the Supreme Court in *Daryao Singh's case* (*supra*) delivered on 27th March, 1961, Gajendragadkar, J. (as he then was) speaking for the Court observed in paragraph 19 of the report as follows:

"We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the Petition filed in the High Court under Article 226 is dismissed not on merits but because of the laches of the party applying for the writ or because it is held that the Party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subs petition under Article 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32. If a writ petition is dismissed in liming and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar except in cases which we have already indicated. If the petition is dismissed in liming without passing a speaking order, then such dismissal cannot be treated as creating a bar of *res judicata*. It is true that, *prima facie*, dismissal in liming even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the Petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of *res judicata* against a similar petition filed under Article 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court."

The ratio of the decision, Therefore, is that if a writ petition is dismissed on merits, it would operate as *res judicata*, but if it is not dismissed on merits, but on other grounds like laches or availability of alternative remedy, it -would not

operate as res judicata. The court specifically pointed out that if a petition was dismissed in liming without passing a speaking order, then such a dismissal could not be treated as a bar of res judicata and in the absence of a speaking order, it would -not be easy to decide what factors weighed in the mind of the Court. It may here be stated at this stage that in subsequent decisions reported as Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), and Union of India (UOI) Vs. Nanak Singh, , the Supreme Court extended the rule of express .as well as constructive res judicata by t e orders passed in the writ petitions to civil suits.

7. The High Court of Punjab in Kirpal Singh V. Union of India, 1965 Pun Amr 862 after considering Daryao's case held that a single word "dismissed" passed in liming by a Division Bench in a writ petition, precluded the petitioner from presenting another petition an the same relief on similar grounds before another Bench of concurrent jurisdiction and that it was not necessary to pass a speaking order in order to attract the bar of res judicata. This decision was approved by a Full Bench decision of the same High Court in Bansi and Another Vs. Additional Director, Consolidation of Holdings and Others, . I he High Court, of Allahabad in R.S. Sial Vs. The State of U.P. and Others, held that a petition must be treated as dismissed on merits in the absence of anything to indicate that it is dismissed on some preliminary ground when order is a non speaking order expressed in a single word viz., "dismissed" and it would operate as res judicata for a subsequent petition on some facts.

8. There is, Therefore, a strong authority in support of the proposition that the mere word dismissed, in liming is sufficient to constitute the bar of res judicata. We agree with the proposition of law that ordinarily the word "dismissed", in the absence of any other circumstance to the contrary, would indicate that the Court considered all the contentions of the party and not finding any merit in them dismissed the petition on merits. To this extent, the said decisions are in full accord with Daryao and Others Vs. The State of U.P. and Others, . However in our opinion there may be circumstances on the record which may show that even when the word "dismissed" was recorded, the writ petition was not dismissed by the Court on merits but on other grounds like laches or availability of other remedy or was dismissed as withdrawn. If these facts and circumstances are established fully to the satisfaction of the Court, the dictum of the Supreme Court would be applicable and such a petition cannot be said to have been dismissed on merits and if that be so, it cannot operate as res judicata. Even the rule as enunciated in Section 11 of the CPC envisages that the matter must have been heard and finally decided by the Court before it creates the bar of res judicata. In Union of India (UOI) Vs. Nanak Singh, the Supreme Court in paragraph 6 expressly ruled that in order that the previous adjudication between the -parties may operate as res judicata, the question must have been heard and decided or that the parties must have an opportunity of raising their contentions there on.

9. Mr. Bhagwat Dayal, learned counsel for the petitioner, has sought to bring his case within the exceptions to the rule of res judicata and he contends that the dismissal of the previous petition was not on merits. In support of the submission he states that firstly the view prevalent in the Circuit Bench of the P Punjab High Court previous to the decision of the Supreme Court in Daryao and Others Vs. The State of U.P. and Others, was that orders -passed on petitions in exercise of writ jurisdiction did not operate as res judicata either in suits or in writ petitions in the Supreme Court or on any other remedy available to the petitioner and that petitions dismissed in liming still less created any bar. Secondly, he submits that he was present at the hearing and the learned Judges observed that the petitioner must first approach the Chief Commissioner by a review petition before he requested the Court for interference and thirdly the petitioner actually moved a review petition before the Chief Commissioner in pursuance of the observations of the Court. We are, however, relieved from the examination of the correctness or the legal effect of the afore said circumstances urged by Mr. Bhagwat Dayal. In our opinion, the plea of res judicata has not been properly taken by the respondent. Neither party has filed a Copy of the previous writ petition, nor of the order of the Court, nor have they stated under what circumstances the writ petition was dismissed and whether its dismissal in liming was on merits or otherwise. The Supreme Court in Gurbux Singh Vs. Bhooralal, dealing with the case of Order 2, Rule 2 observed in paragraph 7. "In the case of res judicata, the plea cannot be established in the absence on the record of the judgment and decree which is pleaded as estoppel." Since in the present case, the order of the Court was not a speaking order, even a copy of the petition must have been filed, but in the absence of the pleadings and judgment in the previous proceedings, it is not possible to entertain the plea and to accede to the request of the parties to the writ petition to con- as to what facts and grounds had been stated in the previous petition and what was the order of the Court. The admission in the present writ petitions do not help the respondents, since it only contains the averment that on 5th April, 1963 the writ petition had been filed against the order of the Chief Commissioner and since the several grounds raised in the writ petition had not been adjudicated upon by the Chief Commissioner, the High Court refused to entertain the petition under Article 226 of the Constitution without the petitioner first approaching the Chief Commissioner by means of a review petition and so the writ petition had been dismissed in liming. This does not show what were the facts and the grounds stated in the petition and what exactly was the order passed. It does not enable the respondents to raise the plea of res judicata and in the absence of a copy of the pleadings and order the averments contained in the writ petition do not show that the previous writ petition had been dismissed on merits. If anything it shows that the High Court refused to entertain the petition on the ground of availability of alternative remedy. If this fact were true, it could again not constitute the bar of res judicata. In this view of the matter, we hold that the plea of res judicata has not been properly raised by the respondents and there is no material placed before us to hold that the present petition is barred by the said rule. As a result,

we have allowed the counsel for the petitioner to argue the writ petition on merits.

10. This takes us to the consideration of the second contention raised in this writ petition. A copy of the revision petition has been filed as Exhibit 5. It purports to have been filed u/s 187 of the Land Reforms Act and Paragraph 31 of Part B of Appendix Vi of the Delhi Land Reforms Rules and is directed against the order of the Revenue Assistant dated 24th June, 1959 declaring the Bhumidari rights. Section 187 of the Delhi Land Reforms Act reads as follows:

"187. The Chief Commissioner may call for the record of any suit or proceed referred to in Schedule I decided by any subordinate Court in which no appeal lies, or where an appeal lies but has not been preferred, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it in law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of jurisdiction illegally or with material irregularity,

the Chief Commissioner may pass such order in the case as he thinks fit."

11. The criticism of Mr. Bhagwat Dayal is that this power of the Chief Commissioner to revise the order was conditioned by three circumstances, (1) that it should be the record of a suit or proceeding referred to in Schedule I, (2) no appeal should lie and (3) there must be an error of jurisdiction. Schedule I of the Act has its basis u/s 185 of the Act. Serial No. 4 of this Schedule provides for applications for declaration of Bhumidari rights under Sections 10; 11; 12; 13; 73; 74; 79 and 85 of the Act and such applications have to be filed in the Court of the Revenue Assistant and a first appeal lies to the Deputy Commissioner and a second appeal to the Chief Commissioner and there is no limitation prescribed for institution of these applications it is, Therefore, obvious that if either the respondents or for that matter the petitioner before us, wanted a declaration or felt aggrieved by the declaration of Bhumidari rights, had a remedy to proceed in the revenue Court as prescribed. This has not been availed of. Section 187 of the Act would Therefore not be available to revive these proceedings. This, however, does not conclude the matter.

12. Section 13(f) of the Act under which the respondents claim Bhumidari rights occurs in Chapter Iii of the Act and Section 105 empowers the Chief Commissioner to make rules for the purpose of carrying into effect the provisions of this Chapter. The Delhi Land Reforms Rules 1954 which came into force on 11th November, 1954, have been framed in exercise of powers u/s 105 and other provisions of the Act. Detailed directions are given for distribution of L. R. Form 5 for declaration of Bhumidars on the basis of the relevant entries. Under sub-rules (1) and (2) of Rule 53, directions have been given to the revenue Court in proceedings under Chapter Iii of the Act to follow the procedure laid down in

Appendix Vi and appeals and revisions and reviews have also been directed to be governed by the -provisions of Appendix VI. Part B of Appendix Vi deals with appeal, reference and revision and paragraph 31, which is material to the present petition, reads as follows:

"Power of Chief Commissioner to, call for files of subordinate officers and. to revise orders.- The Chief Commissioner may call for the record of

(a) any non-judicial proceeding not connected with settlement, held by any officer subordinate to him, and may pass thereon such orders as he thinks fit, or

(b) any case of a judicial nature or connected with settlement, in which no lies to the Chief Commissioner, if the officer by whom the case was decided appears to have exercised jurisdiction not vested in him by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his Jurisdiction illegally or with substantial irregularity and may pass such orders in the case as he thinks fit."

At this stage paragraph 32 may also be quoted for ready reference:-

" 32. Power of Chief Commissioner to review and alter his orders and decrees.(1) The Chief Commissioner may review, and may rescind, alter or confirm any order made by himself in the course of business connected with settlement or otherwise.

(2) No decree or order passed judicially by him shall be so reviewed except on the application of a party to the case made within a period of 90 days from the passing of the decree or order, or made after such period if the applicant satisfies the Chief Commissioner that he had" sufficient cause for not making the application within such period."

13. It would be apparent that under clause (a) of paragraph 31, the Chief Commissioner has been empowered to call for the record of any non-judicial proceeding not connected with settlement and to pass thereon such orders as he thinks fit. It is common ground between the parties that the proceedings of distribution of L. R. Form 5 and declaring Bhumidars on the basis of relevant entries are non-judicial proceedings which are not connected with settlement. It was not seriously contended before us that these proceedings were connected with settlement a-ad rightly so. Settlement is defined by clause (9) of Section 3 of the Delhi Land Revenue Act, 1954, which is an Act companion to the present Act, as settlement of the land revenue and Rule 415 framed u/s 84(2) of the Delhi Land Revenue Act has specified the .judicial and non-judicial proceedings. This rule is to the effect that proceedings, orders, appeals, revisions and reference in the following cases shall be deemed judicial for purposes of the Act, namely, (a), mutation in cases of succession or transfer under Sections 23 and 27(b) settlement of boundary disputes under Sections 28 and 36 and (c) other disputed cases relating to entries in the record of rights and annual registers under Sections 26, 27, 29 and 39. Sub-rule (2) lays down that all cases

proceedings and other matters under the Act not covered by the preceding sub-rule shall be deemed non-judicial. There is no doubt in our mind that the proceedings were non-judicial not connected with settlement and so the Chief Commissioner had jurisdiction to revise them under clause (a) of paragraph 31 of Appendix Vi which had been invoked by the petitioner in the petition of revision. This power of revision is not limited by any of the conditions that are prescribed for exercise of revisional jurisdiction u/s 187 of the Act. Should these proceedings be assumed to be of judicial nature, but not originating by a revenue suit or application, the power of revision simple and clear. The Provisions of the Act contained in Sections 5, 11 and 13 have specified the Persons who are to be declared Bhumidars and that has to be done on the basis of revenue entries for a particular year which are to be presumed to be correct. In accordance with the said entries, R. 7 directs indication of the persons and gives to them the forms, particularly L. R. Form 5 to be filled and when they have filled it, the Bhumidar or his authorized agent is identified by the Patwari, under counter-signatures of Naib-Tahsildar and the Revenue Assistant. As soon as this has been done the Revenue Assistant orders filing of the foil of the form which is a declaration of the Bhumidar under the Act. This process seems to be a non-judicial Proceeding. If any party feels aggrieved by a declaration or non-declaration of a Bhumidar or contests the correctness of the revenue entries, he has to initiate judicial proceedings in a revenue Court in accordance with Schedule 1 and other Provisions of law. Under clause (2) of paragraph 23, the provision is that no appeal shall be allowed from a non-judicial order not connected with settlement and they are subject to a revision under clause (a) of paragraph 31 of Appendix VI. There is a good reason in support of these provisions as the Legislature did not intend the declaration of Bhumidari rights to wait for Prolonged proceedings for determination of legal rights in any judicial proceedings. The process of declaration has Therefore, been made expeditious and non-judicial but ultimately subject to judicial review. In view of these observations, we find that the order Passed by the Chief Commissioner did not suffer from any lack of jurisdiction on his part.)

14. We shall now examine whether there is any force in the contention of the counsel for the petitioner that the impugned order of the Chief Commissioner is repugnant to rules of natural justice or suffers from any error apparent on the face of the record. The basis for infringement of the rule of natural justice is contained in paragraph 12 of the writ petition where it is submitted that the revision had been adjourned on more than 18 occasions by the Chief Commissioner when the counsel Mr. Kishan Chand was present to argue the case. It was, however, finally fixed for 8th February, 1963 and that date was declared a holiday by the High Court of Punjab on account of birth day of Guru Ravi Das and so the petitioner's counsel, Shri Kishan Chand believing that the Central Government had also declared it a holiday went away to his village and was not available in Delhi on the date fixed. The petitioner, however, later found out that the offices of the Courts of revenue were open on that day and so he

went to the office of the Chief Commissioner and made a request for adjournment on account of absence of his counsel . The learned Chief Commissioner refused to grant adjournment, but waited only till the end of the cause list for the counsel to appear and in default of his appearance, called upon the party to argue the matter. The party did not address arguments and the Chief Commissioner ultimately decided the revision Petition, allowing it. It is unfortunate that the revision petition which had been pending since September, 1959 and had been adjourned many a time, could not once again be adjourned on 8th February, 1963 to give the petitioner before us a last Peremptory opportunity on Payment of costs or otherwise to obtain the assistance of a counsel to argue the matter and assist the Chief Commissioner particularly when he was inclined to allow the revision and decide it against the petitioner before us. Be that as it may, no party is entitled to an adjournment on the ground of absence or convenience of the counsel; when 8th February, 1963 had been fixed as the date for hearing to the knowledge of the party and the counsel, it was the duty of the party as well as his counsel to be Present at the hearing or have other arrangements made for their representation and addressing arguments, but the Court was not bound to adjourn the hearing. The discretion whether or not to grant adjournment on that occasion rested with the learned Chief Commissioner and we are unable to sit in judgment over him and interfere with the exercise of the discretion in accordance with law in the fit and proper case. The petitioner did have an opportunity to address arguments and he was unable to avail of the same for no fault of any body else. The Supreme Court in *R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid*, observed that no party had a right to insist upon an adjournment of the case on account of the convenience of his counsel which must observe the larger interests of the administration of justice and that the conduct of a case was a matter ordinarily for the Court hearing it and the refusal to adjourn the case did not amount to violation of the principles of natural justice. We are, Therefore, unable to hold that the impugned order suffers from any violation of rule of natural justice and we do not find any cogent ground for interference.

15. The last contention of the learned counsel is that the order is erroneous in law. The relevant entry is to the following effect:

"The entry in the crucial year 1954 reads as follows:

"Bhagwan Singh son of Kirpal Singh, Ghair Mauroosi Bila, Lagan Bawaja TaBavya."

The Revenue Assistant considered that the meaning of this entry was that Bhagwan Singh was recorded as non-occupancy tenant of the land, and that, Therefore, he was entitled to be declared as a Bhumidar."

The learned Chief Commissioner held that what the entry really meant was that Bhagwan Singh claimed to be a non occupancy tenant paying no, rent by purchase of the property and he observed that Bhumidari certificate could not be

granted on its basis and if Bhagwan Singh claimed to step into the shoes of the proprietor by purchase of the property, he could not be regarded as non occupancy tenant at the same time and the entry was obviously dubious, if not false and so did not entitle Bhagwan Singh to be declared a Bhumidar. In our opinion, the interpretation of the learned Chief Commissioner on the entry seems to be perfectly correct and sound. Bhagwan Singh never was, nor had ever claimed to be a non-occupancy tenant. Even in the present writ petition he has claimed his rights under an agreement to sell which will not confer any rights on the -parties in the property and in any view of the matter, will not make him a tenant. Section 13(f) under which the certificate has been granted to the petitioner entitles only non-occupancy tenants and it is difficult to find the status of a non occupancy tenant conferred on the petitioner by the said entry. The order of the Chief Commissioner is, Therefore, not erroneous and really advances justice particularly respondents were Muslims. We hold that the contentions of the learned counsel for the petitioner have no force and they are rejected. We find that in this case substantial justice has been done and there is even otherwise no ground to interfere in exercise of our discretion in writ jurisdiction of the Court,

16. As a result the writ petition& are dismissed but under the circumstances the parties will bear their respective costs.

17. Petitions dismissed.