
(1998) 05 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 928 of 1998 (R)

Ranchi House Owners Association

APPELLANT

Vs

Ranchi Municipal Corporation

RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 11

Citation : (1998) 3 BLJR 1850 : (1998) 3 PLJR 407

Hon'ble Judges : R.A. Sharma, J;A.K. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner claims to be an Association espousing the cause of house owners of Ranchi. It has filed this writ petition seeking writ of mandamus directing the Ranchi Municipal Corporation (hereinafter referred to as the Corporation) to determine the annual rental value of the holdings in accordance with the rules framed by the Government of Bihar under the Patna Municipal Corporation Act.

2. The petitioner filed a writ petition, being C.W.J.C. No. 586 of 1996 (R), before this Court earlier seeking the same relief, which is claimed in the present writ petition. That writ petition was disposed of by the Division Bench on 26.6.1997. The judgment is reported in Social Action for Relief To The Consumer and Another Vs. Ranchi Municipal Corporation and Another, . The grievance of the petitioner is that this Court while deciding the previous writ petition did not deal with and decide the two points/grounds raised therein. Hence the necessity for filling the second writ petition. In this connection paragraph No. 2 of the present writ petition is reproduced below:

That it is stated that the petitioner had earlier moved this Hon''ble Court vide C.C.J.C. No. 586 of 1996 (R) which was disposed of by a Bench of this Hon''ble Court comprising of the Hon''ble Mr. Justice Aftab Alam and the Hon''ble Mr.

Justice N.N. Singh by its judgment dated 26.6.1997 deciding only the issue "that the annual rental value of holdings determined by the Ranchi Municipal Corporation on the basis of Memo No. 356 dated 15.2.1993 is justified whereas the "other two points/grounds" taken in the aforesaid earlier writ application with regard to the "applicability of Rule 6" of assessment of the Annual Rental Value of Holding Rules, 1993 which is effective from 13.8.1993 by which the State Govt. reduced the rate of taxes 43.75% to 6.5% on annual rental value of holdings and the "last ground" which was with regard to "the applicability of Rule 4" of the assessment of Annual Rental Value of Holding Rules, 1993 whereby the respondent Corporation was required to take measurement of "carpet area" of the holdings, though, admittedly, the respondent corporation on the contrary has taken measurement of the "plinth area" of the holding which is contrary to the Rules framed for the said purpose.

It is further stated that the "two other grounds" which "related to the applicability of Rules 4 and 6 of the assessment of Annual Rental Value of Holdings Rules, 1993" (hereinafter called as the new assessment rule) with effect from 13.8.1993 was "not decided" by this Hon"ble Court while disposing of the writ application by passing a long judgment. Probably, these points missed the notice of the Hon"ble Court while deciding the aforesaid CWJC No. 586 of 1996 (R), reported in Social Action for Relief To The Consumer and Another Vs. Ranchi Municipal Corporation and Another, .

3. We have heard the learned Counsel for the parties.

4. In our opinion this writ petition, being barred by the principles of constructive res judicata, is not maintainable.

5. Section 11 of the CPC (hereinafter referred to as the Code) contains the rule of res judicata. Explanations IV and V appended to the said section being relevant are reproduced below:

Explanation IV.-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.

Explanation V.-Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

While Section 11 of the Code contains the rule of res judicata, its Explanation IV and V contain the principles of constructive res judicata. Although Section 11 is not applicable to the writ petition under Article 226 of the Constitution, but the principles contained therein are applicable to the writ jurisdiction also. In the State of U.P. Vs. Nawab Hussain, . the Apex Court has held that Section 11 has no direct application to the petition filed under Article 226 of the Constitution, but the general principles of res judicata and constructive res judicata are applicable to the writ petition also.

6. While dealing with the principles of res judicata, the Supreme Court in the State of U.P. Vs. Nawab Hussain, has observed as under:

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 matter which have 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 actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action and that is why it is necessary for the Courts to recognition that a cause of action which results in a judgment must lose its identity and vitality 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 or 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 *Somerveil 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 that 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."

In this connection reference may also be made to *Kesho Ram and Co. and Others etc. Vs. Union of India (UOI) and Others*, .

7. In the instant case, the petitioner has claimed the same relief for which he filed the earlier writ petition, being C.W.J.C. No. 586/96 (R), which was disposed of by a Division Bench on 26.6.1997. Presuming that two points which were

raised by the petitioner in the first writ petition were not dealt with and decided, the second writ petition for getting those two points decided is not maintainable. In such a case the petition will be barred by the rule of constructive res judicata.

8. The learned Counsel for the petitioner in this connection has submitted that the rule of evidence and procedural law such as res judicata are not applicable to public interest litigation cases. In his support, he has placed reliance on Rural Litigation and Entitlement Kendra Vs. State of U. P., , and Indian Oil Corporation Ltd. Vs. State of Bihar and others, . This submission is devoid of merit and the said Supreme Court's decisions relied upon by the learned Counsel do not support his contention. In Rural Litigation and Entitlement Kendra v. State of U.P. (Supra), the Supreme Court has held that the procedural law will apply to public interest litigation cases also. While holding as such, the Apex Court did not apply the rule of res judicata because the dispute before it was not inter party.

9. In Indian Oil Corporation Ltd. v. State of Bihar and Ors. (Supra), the Apex Court held that dismissal of the SLP against the award of the Labour Court by a non-speaking order is not a bar to try the same question in the High Court under Article 226 of the Constitution.

10. This writ petition as well as the earlier writ petition, being C.W.J.C. No. 586 of 1996 (R), were filed by the same petitioner. Both these cases were filed by way of public interest litigation. The relief claimed in both these cases is almost the same, Therefore, the principles of res judicata and constructive res judicata would be fully applicable to the instant case. It is not open to any person, body or association, to file successive writ petitions for the same relief for protection of their own interest or by way of public interest litigation. Such a course of action is abuse of the process of the Court.

11. This writ petition is, accordingly, dismissed as not maintainable.