

(2013) 07 P&H CK 0644

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No's. 2050 and 1862 of 1991 (O and M)

State of Haryana

APPELLANT

Vs

Shanti Parshad and Others
 Kapoori Devi through L.Rs
and Others Vs State of Haryana

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 80, 9
Constitution of India, 1950 — Article 136, 226, 32
Land Acquisition Act, 1894 — Section 16, 18, 4, 48, 54
Punjab Municipal Act, 1911 — Section 192

Citation : (2013) 07 P&H CK 0644

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Shubhra Singh, DAG, Haryana in RSA Nos. 2050 and 2051 of 1991 O and M, Mr. Sanjeev Gupta and Mr. Harsh Bungar in RSA Nos. 1862, 1861 of 1991 O and M and Mr. A.P.S. Sandhu in RSA No. 2065 of 1991 O and M, for the Appellant; Sanjeev Gupta, Advocate and Mr. Harsh Bungar, Advocate in RSA Nos. 2050, 2051 and 2065 of 1991 (O and M) and Ms. Shubhra Singh, DAG, Haryana in RSA No. 1862 and 1861 of 1991 (O and M), for the Respondent

Judgement

Hemant Gupta, J.—This order shall dispose of 5 regular second appeals arising out of Civil Suit No. 758-C of 1981 titled as Kapoori Devi and others Vs. State of Haryana and Civil Suit No. 757-C of 1981 titled as Shanti Parshad and others Vs. State of Haryana. The challenge in the aforesaid suits was to the acquisition of land owned by the plaintiffs in these suits vide notification dated 30.01.1973 u/s 4 of the Land Acquisition Act (for short "the Act") followed by the notification dated 24.07.1973 u/s 6 of the Act. The Plaintiff invoked the jurisdiction of the civil Court primarily with the grievance that they were not given any opportunity of hearing to the objections filed by the plaintiffs u/s 5-A of the Act in pursuance of the notification u/s 4 of the Act.

2. The learned trial Court decreed the suit on 07.03.1983. Aggrieved against the decree, the State filed appeals against both the suits whereas another appeal

was filed in a suit filed by Shanti Parshad by the Resident Welfare Association. All the three appeals were dismissed but the learned first Appellate Court modified decrees so as to make the decree subject to the condition of the plaintiffs depositing the compensation amount. The State filed Regular Second Appeal No. 2051 of 1991 arising out of Civil Suit No. 758-C of 1981 aggrieved against the decree passed by the learned first Appellate Court, whereas the plaintiffs' appeal is RSA No. 1862 of 1991. The Regular Second Appeal No. 2050 of 1991 is preferred by the State arises out of Civil Suit No. 757-C of 1981, whereas the appeal of the plaintiffs bears RSA No. 1861 of 1991 and that of the Resident Welfare Association bears RSA No. 2065 of 1991.

3. The plaintiffs have earlier filed writ petition before this Court challenging acquisition initiated vide notification u/s 4 of the Act and followed by declaration u/s 6 of the Act by way of Civil Writ Petition No. 3327 of 1973. The said writ petition along with other numerous writ petitions challenging the same notification were decided by learned Single Bench of this Court on 26.07.1977. The writ petition filed by the present set of the Plaintiffs was dismissed with the following order:-

It is contended by the learned counsel for the petitioners that the petitioners had set apart the entire area for the purpose of setting up a colony for residential purposes. In pursuance thereof, the Town Planner, Hissar, prepared a scheme covering Khasra Nos. 5698 to 5704 and 5693 at their request. The scheme was accepted by the Municipal Committee, Hissar, on November 13, 1969, u/s 192 of the Punjab Municipal Act. The counsel further contends that even some of the plots were auctioned after advertisement and some were sold by private negotiations. According to the counsel, the purpose for which the land had been acquired is the same, that is, for making plots for residential and commercial use. In the circumstances, the counsel forcefully submitted that the property of the petitioner should not have been acquired. I regret my inability to accept the contention of the learned counsel for the petitioners. It is admitted by the petitioners themselves that approval of the Government was required for the sanction of the aforesaid scheme and the same had not been obtained by them. In the aforesaid circumstances, it could not be said that it was a duly sanctioned scheme. If prior to the coming into force of the scheme, the land was acquired by the State Government, no fault can be found with the acquisition proceedings. Moreover, even if the scheme had been sanctioned by the Government, there was no bar for the State Government to acquire the land.

It is then contended by the learned counsel for the petitioners that the Land Acquisition Collector, respondent No. 3, did not afford proper opportunity to the petitioners to prove their objections u/s 5-A of the Act. In the circumstances, he submitted that the acquisition proceedings were liable to be quashed. I am not impressed with this contention of the learned counsel for the petitioners. The said respondent has denied the aforesaid allegations and categorically stated that adequate opportunity was given to the petitioners to substantiate their

objections. This Court does not decide disputed questions of fact in proceedings under Article 226 of the Constitution of India. It has also not been shown to me what evidence the petitioners wanted to produce before the Collector and its non-production has caused prejudice to them. Normally such objections are taken to delay the proceedings. For the reasons recorded above, I do not find any substance in the contention of the learned counsel for the petitioner.

4. Aggrieved against the said order of the learned Single Bench, the plaintiffs filed LPA Nos. 334 and 335 of 1977 which were dismissed on 11.10.1979. Still aggrieved, the plaintiffs filed SLP No. 852 of 1981 before the Supreme Court, which was dismissed on 16.04.1981. Having remaining unsuccessful in the writ proceedings, the plaintiffs filed the present suit for declaration on 20.08.1981 challenging the acquisition proceedings after serving a two months' notice u/s 80 of the Code of Civil Procedure.

5. In view of the undisputed facts noticed above, I find that the following substantial questions of law arises for consideration:-

1. Whether the suit for declaration challenging the acquisition proceedings is maintainable before the Civil Court?

2. Whether the civil suit for declaration can be filed by the plaintiffs after the writ petition challenging the acquisition proceedings remain unsuccessful?

3. Whether the plaintiffs have abused the process of law by filing the present suit for declaration before the Civil Court?

6. In respect of the first substantial question of law, the matter stands concluded against the plaintiffs by recent judgment reported as The Commissioner, Bangalore Development Authority and Another Vs. Brijesh Reddy and Another, . It has been held as:

15. In State of Bihar Vs. Dhirendra Kumar and others, , the core question was whether a civil suit is maintainable and ad interim injunction could be issued where proceedings under the Land Acquisition Act, 1894 was taken pursuant to the notice issued u/s 9 of the Act and possession delivered to the beneficiary. On going through the entire proceedings initiated under the Land Acquisition Act, this Court held as under: (SCC p. 230, para 3)

3...We are, therefore, inclined to think, as presently advised, that by necessary implication the power of the civil court to take cognizance of the case u/s 9 CPC stands excluded, and a civil court has no jurisdiction to go into the question of the validity or legality of the notification u/s 4 and declaration u/s 6, except by the High Court in a proceeding under Article 226 of the Constitution. So, the civil suit itself was not maintainable.

After holding so, this Court set aside the finding of the trial court that there is a prima facie triable issue. It also held that the order of injunction was without jurisdiction.

16. In *Laxmi Chand and others Vs. Gram Panchayat, Kararia and others*, , while considering Section 9 of the Civil Procedure Code, 1908 vis-?-vis the Land Acquisition Act, 1894, this Court held as under: (SCC p. 220, paras 2-3)

2...It is seen that Section 9 of the Civil Procedure Code, 1908 gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The procedure contemplated under the Act is a special procedure envisaged to effectuate public purpose, compulsorily acquiring the land for use of public purpose. The notification u/s 4 and declaration u/s 6 of the Act are required to be published in the manner contemplated thereunder. The inference gives conclusiveness to the public purpose and the extent of the land mentioned therein. The award should be made u/s 11 as envisaged thereunder. The dissatisfied claimant is provided with the remedy of reference u/s 18 and a further appeal u/s 54 of the Act. If the Government intends to withdraw from the acquisition before taking possession of the land, procedure contemplated u/s 48 requires to be adhered to. If possession is taken, it stands vested u/s 16 in the State with absolute title free from all encumbrances and the Government has no power to withdraw from acquisition.

3. It would thus be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional courts viz. the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the civil court.

(Emphasis in original)

17. In *Commissioner, Bangalore Development Authority Vs. K.S. Narayan*, which arose under the Bangalore Development Authority Act, 1976 and which was similar to the case on hand, this Court held that a civil suit is not maintainable to challenge the acquisition proceedings....

18. It is clear that the Land Acquisition Act is a complete code in itself and is meant to serve public purpose. By necessary implication, the power of the civil court to take cognizance of the case u/s 9 CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification u/s 4, declaration u/s 6 and subsequent proceedings except by the High Court in a proceeding under Article 226 of the Constitution. It is thus clear that the civil court is devoid of jurisdiction to give declaration or even bare injunction being granted on the invalidity of the procedure contemplated under the Act. The only right available for the aggrieved person is to approach the High Court under Article 226 and this Court under Article 136 with self-imposed restrictions on their exercise of extraordinary power.

7. Thus, in view of the aforesaid pronouncements of the Hon'ble Supreme Court, the civil Court has no jurisdiction to entertain the suit for declaration challenging the acquisition proceedings under the Land Acquisition Act, 1894.

8. Coming to substantial question of law No. 2, the plaintiffs relied upon an observation made by the learned Single Judge that this Court does not decide disputed questions of fact in proceedings under Article 226 of the Constitution of India. But I find that after observing so, the Court proceeded to return a finding that plaintiffs had not been able to show as to what evidence they wanted to produce before the Collector and their non-production has caused prejudice to them. It has also been observed that normally such objections are taken to delay the proceedings. In fact, the concluding line of the order passed by the learned Single Judge of this Court way back in 1977 was prophetic. Even in the year 2003, the plaintiff is in Court objecting to the acquisition proceedings. I find that observation that the disputed question are not examined was to decline the request of the Plaintiff to dispute the acquisition proceedings. This Court has not granted any liberty to the Plaintiff to avail the remedy of the Civil Suit in view of such observation. Thus, once the writ petition for the same relief and on the same cause of action has been dismissed by this court, the Plaintiff could not invoke the jurisdiction of the Civil Court to dispute the acquisition proceedings.

9. A Constitution Bench examined the question of the decision in the writ proceedings as bar to the Civil Suit on the principal of res-judicata and other wise came up for consideration in *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, . The majority view is as follows:

25. It cannot therefore be disputed that if the decision which had been given in a writ petition had been given in a regular suit that decision would have operated as res judicata in the later suit. The question which arises for consideration is whether such a decision in a writ petition can also bar a later suit on account of its operating as res judicata.

27. The contention that a decision on a writ petition even on merits should not operate as res judicata as it is discretionary for the Court to pass any order it considers fit on a writ petition and not to decide it after considering all the points urged by the parties, was negatived in *Daryao and Others Vs. The State of U.P. and Others*, . With regard to the point that the issue of a writ by a High Court was discretionary as it may refuse to exercise its jurisdiction under Article 226 as for instance when the party applying for the writ was guilty of laches but the Supreme Court could not refuse to issue the appropriate writ once it was shown that a fundamental right had been infringed, it was said, at p. 589:

53. In *Daryao v. State of U.P.* this Court had again dealt with the question of the applicability of the principle of res judicata in writ proceedings. The matter was going through very exhaustively and the final conclusions are to be found at p. 592. We may summarise them thus:

1. If a petition under Article 226 is considered on the merits as a contested

matter and is dismissed, the decision would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution.

2. 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.

3. If the petition under Article 226 in a High Court is dismissed not on the 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, the dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 32.

4. Such a dismissal may however constitute a bar to a subsequent application under Article 32 where and if the facts thus found by the High Court be themselves relevant even under Article 32.

5. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend on the nature of the order. If the order is on the merits, it would be a bar.

6. If the petition is dismissed in limine without a speaking order, such dismissal cannot be treated as creating a bar of res judicata.

7. 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 had been no decision on the merits by the Court.

54. In arriving at the above quoted conclusions the Court made certain observations which are helpful in determining the question in this case about the decision on a writ petition operating as res judicata in a subsequent regular suit. The basis for the rule is described thus at p. 582:

But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in Section 11 of the CPC has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

Again, it was said at p. 584:

The binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law, and the rule of law obviously is the basis of the administration of justice on which the Constitution

lays so much emphasis.

XXX

It can be said with equal force that a regular suit for the determination of the matter which had been decided on merits by the High Court or this Court on a writ petition cannot be given the status of a de facto appeal against the order of the High Court or of this Court. A solemn declaration and order by the Court in its extraordinary jurisdiction is not to be set at nought by a Court of ordinary jurisdiction whose decisions are subject to the appellate or revisional jurisdiction of that Court.

60. As a result of the above discussion, we are of opinion that the provisions of Section 11 CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial.

61. We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under Articles 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We therefore hold that, on the general principle of res judicata, the decision of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same matter.

10. A Full Bench of this Court in Teja Singh Vs. Union Territory of Chandigarh and Others, has examined the question of maintainability of a civil suit after the writ petition is dismissed. It has been held that civil suit is not maintainable. The relevant extract of the judgment reads as under:-

17...Thus it is quite evident that the principles of res judicata are attracted only when a writ petition is dismissed after contest by passing a speaking order as in that event the decision would operate as res judicata in any other proceeding such as suit or a petition under Art. 32 etc. But where a petition is dismissed only on the ground of laches or the availability of an alternate remedy or on a ground analogous thereto, then any other remedy by way of suit or any other proceeding will not be barred on principles of res judicata. Further where a petition is dismissed on the ground of laches or on the ground of alternate remedy or on a ground analogous thereto, a second petition on the same cause of action under Art. 226 would be barred. But again, it may be observed that

where a petition is dismissed on the ground that alternate remedy under the Act has not been availed of, then, after availing of the statutory remedy, a second petition would be maintainable on the principle that the same has been filed on a cause of action which has arisen after the decision of the appropriate authority under the Act. Further, a second petition on similar facts and in respect of the same cause of action by the same party would not be maintainable even if his earlier petition has been disposed of by one word "dismissed".

11. In view thereof, after dismissal of the writ petition, the Letters Patent Appeal and the Special Leave Petition, the invocation of jurisdiction of civil Court is mischievous, mala fide, flagrant abuse of process of law. Consequently, the second substantial question of law is answered accordingly.

12. In respect of the third substantial question of law, suffice it to state that after the dismissal of the writ petition, Letters Patent Appeal and Special leave Petition, the plaintiff has not lost any time to initiate proceedings before the Civil Court after serving a notice u/s 80 of the Code of Civil Procedure. It is because of this kind of mischievous suits which are filed to abuse the process of the Court, the work in Courts get clogged so as to delay the decision of even bona fide disputes. The plaintiffs by filing suits have wasted precious public time of the Court for almost two years before the suit came to be decided. After the suit were decided, another 8 years has been taken by the learned first Appellate Court to decide the first appeals and thereafter another 22 years before decision of this Court. In a nutshell, more than 32 years of public time have been taken by the plaintiffs by instituting frivolous, mala fide and mischievous suits. In view thereof, RSA No. 2050 of 1991 and 2051 of 1991 preferred by the State are allowed with costs of Rs. 25000/- in each case to be paid to District Legal Services Authority, Hisar, within one month. Consequently, both the suits are dismissed. The proof of deposit of cost be furnished to this Court within next one month, failing which contempt proceedings will be initiated against the plaintiffs. As a consequence of the decisions on the questions of law, aforementioned the appeals, RSA Nos. 1861 of 1991 and 1862 of 1991, filed by the Plaintiff are dismissed. The RSA No. 2065 of 1991 is also allowed in the above terms.