

(1982) 08 GAU CK 0017
In the Gauhati High Court
Case No : Civil Revision No. 170 of 1982

Sudhir Kumar Das and Others

APPELLANT

Vs

Amitava Dhar

RESPONDENT

Date of Decision : 04-08-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, 11

Citation : AIR 1983 Guw 52

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : S.K. Sen, A.R. Paul and Majumdar, for the Appellant; P. Choudhury and A.M. Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—The question of Chairmanship of Karimgani Municipal Board has been before the Court ever since 1980. It is a pity that these grass-root democratic institutions should find themselves in several rounds of litigation. There can be no denial that the question of chairmanship of such institutions being in dispute, the energy of the commissioners is diverted from constructive works to fighting of legal battles. What happened in the present case was that some Commissioners served notice u/s 43 (2) of the Assam Municipal Act, 1956 on the then chairman Sri Biseswar Das on 17-7-1980 requesting him to convene a special meeting of the Board to take up the matter of removal of Shri Das from the Chairmanship. A meeting came to be held thereafter on 6-8-1980, but it did not contain the aforesaid agenda. What happened in that meeting is a controversial issue between the parties. According to the plaintiff some members who were for removal walked out. The other version is that Shri Das with his 8 (eight) supporters left and the remaining 19 Commissioners passed resolution removing Shri Das from Chairmanship. The Deputy Commissioner in exercise of his power u/s 296 of the aforesaid Act declared the proceedings of the aforesaid meeting as void as the meeting had no agenda relating to removal of the

Chairman. This order was subsequently confirmed by the State Government. Some Commissioners however convened a special meeting on 21-8-1980 and unanimously adopted a resolution removing Shri Das from the Office of the Chairmanship and authorised the Vice Chairman Shri H. C. Das to discharge the functions of the Chairman till a new Chairman was elected. Shri Biseswar Das filed title suit No. 186/80 for a declaration that the special meeting held on 21-8-1980 was illegal, and inoperative. In the suit, a prayer for injunction was also made to restrain the defendants from interfering with the plaintiff's right in discharging his duties as the Chairman of the Board. The learned Trial Court refused such an injunction, ultimately an appeal was preferred by Shri B. Das, which was dismissed on 10-6-1981. In further approach to this court in revision (Civil Revision No. 120/81) the prayer for stay was rejected.

2. Opposite party No. 1 filed the present suit on 29-6-1981. According to him the petitioners who were arrayed as defendants had made themselves liable to be moved from membership of the Board as they had abstained from attending Board's meeting for no less than 15 times. In the suit, therefore, it was prayed that it may be declared that the defendants were not legally entitled to hold any meeting of the Board including the one which was to take place on the date of filing of the plaint, that is 29-6-1981. It may be stated that the meeting was to elect a Chairman. But as the plaint along with the petition for injunction was moved at about 2 P. M. and the meeting was to be held on 12.30 P. M., the learned Munsiff directed the defendants to maintain status quo till further orders from the Court. As to what was meant by status quo was made clear by an order passed on 6-7-1981 when it was stated "that the defendants are restrained not to disturb the status of the then Chairman of Karimgani Municipal Board headed by Shri Biseshwar Das ante 6-8-1980 till disposal of this suit." Feeling aggrieved at this order, an appeal was preferred before the learned Assistant District Judge. It was urged that the matter was hit by Section 11 of the Civil P. C. The learned Assistant District Judge has rejected this plea on the ground that the plaintiff of the present suit was not a party in the earlier proceeding and that no issue had been framed in that case. Being of this view and having taken note of the order of the Deputy Commissioner suspending the resolution adopted in the meeting of 6-8-1980 which purportedly meant restoration of status quo before 6-8-80, the appeal was dismissed.

3. In support of the revision Shri Sen has mainly urged that the present injunction proceeding was hit by the principle of res iudicata and as such the courts below had no jurisdiction to pass any order on the injunction petition. It is submitted that Section 11 of the C?de is not exhaustive in this regard and the general principles of res iudicata can also be applied where the requirements of this sections are not satisfied. Reference has been made to a number of decisions emanating from the highest court of the land wherein it has been pointed out that the rule of res iudicata is founded on considerations of public policy. namely, that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction and that individuals should not be vexed

twice over the same kind of litigation. This view was expressed inter alia in Daryao and Others Vs. The State of U.P. and Others, wherein it was also observed that the binding character of judgements pronounced by courts is an essential part of the rule of law. Though the parties to the litigations are not the same. Shri (sic) (Sen?) regarded that the plaintiff in the present case has to be regarded as the person set up by Shri Biseshwar Das who did not succeed in obtaining an order of injunction in the suit filed by him. According to Shri Sen Explanation VI of Section 11 would be attracted in the present case, and in any case the present plaintiff has to be regarded as privy of Shri Das.

4. Shri Choudhuri counters and submits that Explanation VI has no application inasmuch as the right of chairmanship cannot be said to be a right which is common between the present plaintiff and Shri Biseshwar Das, He refers to Jujjuvarapu Kotamma Vs. Pappala Simhachalam and Others, and to Chameli Bibi Vs. Kanhaiyalal Agarwalla and Others,

5. For the case at hand. I have not deemed it necessary to express any opinion whether Explanation VI is attracted or not. This is so because according to me the very principle of res iudicata has no application. I have come to this conclusion because of the following enunciation of law in para 13 of Arjun Singh Vs. Mohindra Kumar and Others, which dealt with this question qua interlocutory orders passed during the course of a suit.

"It is needless to point out that interlocutory orders are of various kinds) some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part, Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res iudicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of, the court would be justified in rejecting the same as an abuse of the process of Court."

From what has been stated above, it is clear that res iudicata would not have stood in the way even of Shri Biseshwar Das to file a fresh petition for injunction. Of Course, if the application would have been made on the basis of the same facts which had been alleged in the earlier petition, the same would have been an abuse of the process of the court. I would take the same view as regards Prayer (F) in the present plaint. That prayer is for a declaration that status quo ante 6-8-1980 is still in existence." As already noted, that was the heart of the prayer in the injunction petition filed by Shri Biseshwar Das in T. S. 186/80.

Rightly or wrongly that prayer was not conceded. To allow the same matter to be

agitated, may be in the name of a different person, would definitely be an abuse of the process of the court as the attack is founded on same facts. In the present suit, however, the prayer for status quo as prevailing before 6-8-1980 was one of the reliefs claimed. The thrust of the case was about the disqualification which the defendants had incurred according to the plaintiff, which disentitled them to hold the meeting due on 29-6-1981. Somehow this aspect of the matter totally missed the courts below, and to be frank, the counsel of the parties also up to this level. I do not think if the prayer for preventing holding of the meeting on 29-6-1981 would have meant restoration of status quoexisting prior to 6-8-1980 as observed by the learned Asstt. Dist. Judge inasmuch as it cannot be forgotten that after 6-8-1980 a meeting had taken place on 21-8-1980 which had authorised the Vice Chairman to discharge the functions of the Chairman till a new head was elected. Despite what had happened in the earlier proceeding, it would have been open to the plaintiff of the present case to urge that the defendants had rendered themselves disqualified to hold the post of commissioner and as such they could not transact any business of the Board. But this aspect was not pressed before the Courts below and instead effort was made to restore the position of Shri Biseshwar Das as Chairman which has been denied to him so far in the earlier proceedings. aS already stated, I would regard this effort as an abuse of the process of the Court, more so when the revision of Sri Das for the same relief is pending before this court.

6. The result is that the petition is allowed and the order of injunction as passed by the learned Munsiff on 6-7-82 which was affirmed by the learned Assistant District Judge is set aside. As the two Title Suits are related to functioning of a public body, it is hoped that the trial court would give them priority.