
(2009) 10 AHC CK 0070
In the Allahabad High Court

Zakir Husain

APPELLANT

Vs

Nagar Palika Parishad

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 AWC 17

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri Kshitij Shailendra, learned Counsel for the petitioner.

2. By means of present petition, the petitioner is challenging the order dated 1.8.2009, passed by the Additional District Judge, Moradabad in Civil Revision No. 74 of 2000 which has been filed against the order of the Judge, Small Causes Court, Moradabad dated 12.9.2000 by which the suit has been dismissed.

3. It appears that the petitioner was the Chairman of Moradabad Nagar Palika Parishad, Sambhal, Moradabad in the year 1994 and on the basis of the resolution of the Board, the Tractor Pratap Model No. 284 was directed to be auctioned. An enquiry has been set up and it was found that the tractor was sold on a lesser amount causing loss to the Nagar Palika Parishad, Sambhal, Moradabad and, therefore, the petitioner has been held liable to pay a sum of Rs. 72,000. It appears that the petitioner filed Suit No. 469 of 1995 and during the pendency of the suit also preferred a Writ Petition No. 16697 of 1995 claiming the following reliefs:

(A) to issue a writ, order or direction in the nature of certiorari quashing the impugned inquiry report (Annexure-3) and impugned order dated 24.4.1995 (Annexure-4) passed by the opposite party No. 2 and impugned order of recovery dated 6.6.1995 (Annexure-5) passed by the opposite party No. 2.

(B) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect to and to implement the impugned orders (Annexure-4) passed by opposite party No. 2 and Annexure-5.

(C) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to proceed further with recovery proceedings in pursuance of the orders Annexures-4 and 5 by the opposite party Nos. 2 and 3 respectively.

(D) to issue a writ, order or direction in the nature which this Hon''ble Court may deem fit and proper under the facts and circumstances of the case.

(E) to award costs to the petitioner.

4. The Division Bench of this Court vide order dated 20.7.1995 dismissed the writ petition and passed the following order:

After hearing the case of the petitioner no case for interference under Article 226 of the Constitution of India has been made out particularly because the responsibilities has been fixed to the effect that the petitioner has been found liable to reimburse to the Municipal Board a sum of Rs. 72,000 (Rs. Seventy two thousand only) being deposit of the Tractor said to be misappropriated. Dismissed summarily.

5. In view of the aforesaid Division Bench decision, the Judge, Small Causes Court, Moradabad has held that once the Division Bench of this Court has held that the petitioner is liable for Rs. 72,000 there is no reason to stay the recovery and to make a declaration in this regard. The order of the Judge, Small Causes Court has been upheld in revision by the impugned order.

6. Learned Counsel for the petitioner submitted that the writ petition has been dismissed summarily and not on merit and, therefore, the decision in the writ petition will not be res judicata in the suit proceeding and the issue involved in the suit should be decided on merit.

7. I do not find any substance in the argument of the learned Counsel for the petitioner. The prayer of the writ petition reveals that the relief which has been sought in the suit has also been sought in the writ petition. The Division Bench of this Court on an application of mind and on the consideration of the merit of the case has dismissed the writ petition as no case has been made out for interference. The decision of the Division Bench is on merit and, therefore, the court below has rightly held that no further decision can be given in the suit in view of the Division Bench decision.

8. In the case of Daryao and Others Vs. The State of U.P. and Others, the Constitution Bench of the Apex Court has held 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 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, then the dismissal of the writ petition would not constitute a bar to a subsequent 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 limine 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 limine 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 limine 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 case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other. It is in the light of this decision that we will now proceed to examine the position in the six petitions before us.

9. In view of the above, I do not find any merit in the writ petition. The writ petition fails and is dismissed.