

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) NO. 1660/2009**

Date of Decision : 02.06.2009

Sh.Dhenu Sewa Ashram (Regd.) **Plaintiff**
Through: Mr.K.K.Sharma, Advocate

Versus

Govt. of NCT of Delhi & Ors. **Defendants**
Through: None

CORAM :
HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. This is a suit for declaration and permanent injunction filed by the plaintiff. It has been averred in the plaint that the present suit relates to allotment of Gochar Bhumi (pasture-land) to a registered society i.e. Shree Dhenu Sewa Ashram (R) of which the plaintiff is a General Secretary. It is stated that the said land was allotted to the plaintiff's society by Government of NCT of Delhi under Delhi Agricultural Animal Preservation Act, 1994 for the protection and preservation of animals like cows and its progeny etc. It is alleged that vide order dated 15.11.1995 allotment of land measuring 279 bighas 3 biswas land in Kanjhawala Division of Kutabgarh Gram Sabha was made by the

Director, Animal Husbandry Department, Government of NCT of Delhi and the possession of the land was handed over to the plaintiff vide letter dated 17.12.1995. It is stated that people played fraud against the goshala in question and issued a letter dated 08.01.1996 in which it was stated that the work in the goshala of the plaintiff be stopped. The plaintiff is stated to have filed an application under the Right to Information Act to know whether by letter dated 15.11.1995 the allotment of the plaintiff was cancelled. The plaintiff came to know that the allotment was not cancelled. The plaintiff in para 10 of the plaint has given the details of the various petitions filed by him with regard to this very land. The details are as under:

“(a) C.W.P. No. 5515/2002 was dismissed on 02.09.2002 with liberty to pursue the remedies in the civil forum.

(b) CWP No. 3195/2003 was filed and the same was disposed off on 22.05.2003 with the direction to the respondents to supply the copy of the representation of the village people signed by them which is referred to in the letter dated 14.01.1999 and accordingly the petition was disposed of.

(c) W.P.(C) No. 1902/2006 – in view of the earlier writ petition, the writ petition was disposed of on 08.02.2006 as not maintainable.

(d) L.P.A. No. 708/2006 was dismissed on 04.10.2007.

(e) S.L.P. CC No. 11044/2008 was dismissed on 22.09.2008.”

2. It is now prayed by the plaintiff in the suit that a declaration be passed that the allotment dated 15.11.1995 and the possession of the said land on 15.11.1995 measuring 279 bigha 3 biswas of land in Kanjhawala Division of Kutabgarh Gram Sabha to the plaintiff has not been cancelled and hence the present suit for declaration and permanent injunction is filed.
3. I have heard the learned senior counsel Mr. K. K. Sharma and perused the order passed by this Court in the earlier two writ petitions. The plaintiff had filed the first writ petition bearing no. 5515/2002 wherein he had sought a prayer that the work of gosadan/goshala in respect of which the present suit has been filed be permitted and a mandamus be issued for restarting the gosadan/goshala. The second prayer was for payment of compensation. This writ petition came up for hearing before the Court on 02.09.2002 and the following order was passed:

“The learned counsel for the petitioner seeks leave to withdraw the writ petition to pursue the remedies in the civil forum. Leave granted. The writ petition is dismissed as withdrawn”
4. It seems that no action was initiated in civil forum in terms of the opportunity which was granted to the plaintiff. On the contrary, he filed a fresh writ petition bearing no 3195/2003 where Shri Dhanesh Kumar who is the General Secretary, had made a prayer for restoration of the allotment order dated 15.11.1995. The prayer is as follows:

“For restoration of allotment order dated 15.11.1995, quashing and striking down their arbitrary and discriminatory cancellation order of allotment of land of 279 bighas for gosadan at Kutubgarh village, New Delhi dated 14.01.1999.

To allow the petitioner to restart the works for gosadan on the above quoted land.”

5. On the basis of the said writ petition, this Court passed the order dismissing the writ petition on the ground of delay. The writ petition was accordingly treated as disposed of. Still not satisfied the plaintiff is purported to have filed an L.P.A. bearing No. 708/2006 which was also dismissed. Still not being satisfied a special leave petition was filed. A copy of the order of SLP has also been placed on record along with the present suit. The plaintiff was unsuccessful in the SLP also. The present suit has been filed by the plaintiff on the same cause of action practically on the basis of which he had earlier initiated three rounds of litigation. The letter of cancellation which is being challenged in the present suit is practically the same which was challenged in the earlier round of litigation where he was unsuccessful. A person cannot be permitted to rake up an issue again and again when he has been already unsuccessful, therefore, the present suit is liable to be rejected on the ground of being barred by Order II Rule 2 CPC. Even otherwise in case titled **Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior & Ors.** AIR 1987 SC 88 it has been specifically laid down

that if a party has chosen to file a writ petition challenging a particular order and the same is withdrawn then he cannot file suit on the basis of the same cause of action. The exact language of the Apex Court in the said judgment is as under:

“A petitioner after withdrawing a writ petition filed by him in the Court under Article 226 without the permission to institute a fresh petition cannot file a fresh writ petition in respect of the same cause of action in the High Court under that Article.

In order to prevent a litigant from abusing the process of the Court by instituting suits again and again in the same cause of action without any good reason the Civil P.C. insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in Order XXIII Rule 1(3). The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata. This principle underlying Rule 1 of Order XXIII should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy. That would also discourage the litigant from indulging in bench hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 since such withdrawal does not amount to res judicata, the remedy under Article 226 should be deemed to have been abandoned by the petitioner in respect of the case of action relied on in the writ.”

The observations of the Apex Court are aptly applying to the facts of the present case.

6. In the present case also I feel that repeated filing of the suit by way of the writ petition on the same cause action is a gross abuse of the processes of law.
7. Accordingly, the present suit is rejected under Order VII rule 11 CPC and the same is also barred by limitation.

V.K. SHALI, J.

June 02, 2010
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