

RESERVE JUDGMENT

Court No. - 6

AFR

Case :- WRIT - C No. - 1001366 of 2013

Petitioner :- State Of U.P. Thru Prin. Secy. Forest Govt. Of U.P. And
Anr

Respondent :- Smt. Chandrawali And Others

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Manish Kumar, Ajay Kumar Sharma, Lalit
Kishore Tiwari

Hon'ble Alok Mathur, J.

1. Heard Sri L.M. Khare, learned Standing Counsel on behalf of petitioners as well as Sri Lalit Kishore Tiwari, learned counsel appearing for respondent no. 4 and Sri Ravi Prakash Yadav, learned counsel appearing on behalf of respondent nos. 1, 2 and 5.

2. By means of present writ petition the petitioner has assailed the judgment and order dated 04.04.2012, passed by IVth Additional District Judge, Unnao whereby he has allowed the Civil Appeal No. 45 of 2011 and quashing the order dated 30.07.2003, passed by the Prescribed Authority under U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 (*hereinafter referred to as "the Act, 1972"*).

3. It has been submitted by learned Standing Counsel that notification was issued on 13.06.1961 in exercise of power under Section 4(1) of the Indian Forest Act, 1977 declaring certain lands as mentioned in the schedule in district Unnao as reserved forest. According to the petitioner plot no. 564 measuring 0.038 hectares and Plot No. 565 measuring 0.013 hectares, situated at Village – Ajgain, Tehsil – Hasanganj, District – Unnao are recorded in the name of Forest Department as per khatauni for fasli year 1403 – 1408.

4. It has been next submitted that one Rajendra Singh had encroached upon the said land situated at Gata Nos. 564 and 565 and constructed a

house there upon which according to the petitioner was illegal and consequently a notice under Section 4(1) of the Act, 1972 was issued on 15.01.1990. Despite notice Rajendra Singh failed to remove encroachment and consequently a suit was filed by the Forest Department before the Sub Divisional Magistrate under Section 4 of the Act, 1972.

5. Later on legal heirs of Rajendra Singh appeared before the Prescribed Authority and submitted that the said land was owned by them and was in their possession since their ancestors and it was further stated that a portion of the said land has been sold to one Aniruddha Singh vide Sale Deed dated 01.05.1988. It was further stated that building was constructed on the said land for which map was duly sanctioned by the Collector and denied that they had encroached upon the forest land of Gata Nos. 564 and 565.

6. Before the Prescribed Authority, the officials of Forest Department had deposed to the extent that alleged respondents had constructed a house on the said land, but neither survey report nor any map or any other material was produced by the petitioner to demonstrate that the said land was reserved as forest land. In absence of any material to show that the said land was “public premises” as defined under Section 2(e) of the Act, 1972, the Prescribed Authority rejected the suit for eviction by means of order dated 16.08.1993.

7. Against the order dated 16.08.1993, passed by the Prescribed Authority, the petitioner preferred an appeal before the District Judge, Unnao, which was also rejected affirming the order of Prescribed Authority and the appellate Court was also of the view that the petitioner had been unable to demonstrate that Gata Nos. 564 and 565 were “public premises” or part of the Reserve Forest land as per notification dated 13.06.1961.

8. Against both the aforesaid orders of Prescribed Authority as well as Appellate Authority, writ petition being Writ Petition No. 176 (M/S) of

1997 was filed before this Court by the State Government which was also dismissed by means of order dated 17.01.1997.

9. It has been further stated by the learned Standing Counsel that previous proceedings have concluded and application of the petitioner has been rejected solely on the ground that State was unable to file any documents including the Survey report or Survey map so as to identify the said land and hence failed to demonstrate that encroachment by the respondents was made on “public premises”. Faced with the prospect of losing the State land, the petitioner again had a Survey conducted and report was submitted on 23.09.1998 from which it has become evident that Plot Nos. 564 and 565 were part of reserve forest land.

10. The State armed with fresh evidence and material again proceeded against the respondents under the Act, 1972 and notices were issued to the private respondents. Proceedings were initiated against three persons out of whom against Rajendra Prasad, previously against whom the proceedings had concluded up to the stage of High Court.

11. The Prescribed Authority relying upon the fresh survey report and also taking on record the statement of the area Lekhpal was of the view that the respondents have encroached upon the “public premises” and accordingly ordered their eviction and directed them to pay Rs.6000/- as compensation by means of order dated 30.07.2003.

12. Against order of Prescribed Authority dated 30.07.2003, the respondents preferred an appeal before the District Judge, where they had submitted that proceedings before the Prescribed Authority were barred by the principle of res-judicata inasmuch as previously also notice was issued under the Act, 1972 and proceedings were concluded in favour of respondents and again on same grounds same proceedings cannot be initiated. The District Judge was impressed by the arguments of the respondents and was of the view that previously also the State has alleged that the respondents have encroached upon the land situated at Gata Nos. 564 and 565, which could not be proved by them and

consequently proceedings were dropped and again on the same grounds they cannot be permitted to raise same plea before the Prescribed Authority and allowed the appeal holding that proceedings before the Prescribed Authority were barred by the provisions of Section 11 of CPC. Against the said order the State approached this Court assailing the order of District Judge dated 04.04.2012.

13. It has been submitted by the Ld Standing Counsel that before the Prescribed Authority on the previous occasion no issue was decided but merely on the basis lack of evidence the State could not demonstrate that the respondents have encroached upon “public premises” and consequently the suit was rejected. It has been submitted that firstly provisions of Section 11 of CPC are not applicable to the proceedings under the Act, 1972 and even if it is admitted that principles of *res judicata* would be applicable on quasi judicial proceedings there was no issue decided by the Prescribed Authority between the parties from which it can be established that the proceedings on the second occasion were barred by the principles of *res-judicata*.

14. I have heard the counsel for the parties and perused the record. The dispute in the present case revolves around the question as to whether proceedings under the Act, 1972 initiated against the respondent for the second time, were barred by the principles of *res judicata* or not. Reference in this regard may be made to Wade and Forsyth on Administrative Law, (9th Edition, page 243) wherein it is stated:

“One special variety of estoppel is res judicata. This results from the rule which prevents the parties to a judicial determination from litigating the same question over again, even though the determination is demonstrably wrong. Except in proceedings by way of appeal, the parties bound by the judgment are estopped from questioning it. As between one another, they may neither pursue the same cause of action again, nor may they again litigate any issue which was an essential element in the decision. These two aspects are sometimes distinguished as ‘cause of action estoppel’ and ‘issue estoppel’.

Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum.

A judicial decision is deemed final, when it leaves nothing to be judicially determined or ascertained thereafter, in order to render it effective and capable of execution, and is absolute, complete, and certain, and when it is not lawfully subject to subsequent rescission, review, or modification by the tribunal which pronounced it...”

15. In the case of **Swamy Atmananda v. Sri Ramakrishna Tapovanam** [(2005) 10 SCC 51, the Hon’ble Supreme Court had observed as follows:

“26. The object and purport of the principle of res judicata as contended in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute-book with a view to bring the litigation to an end so that the other side may not be put to harassment.

27. The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment.”

16. In **Swamy Atmananda v. Sri Ramakrishna Tapovanam (supra)** the Apex Court further noticed:

“42. In Ishwardas v. State of M.P., 1979) 4 SCC 163

‘In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim.”

17. Yet again in **Arnold v. National Westminster Bank Plc. [(1991) 3 All ER 41 : (1991) 2 AC 93 : (1991) 2 WLR 1177]** the House of Lords noticed the distinction between cause of action estoppel and issue estoppel:

“Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been litigated between the same parties or their privies and having involved the same subject-matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be reopened. ... Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue.”

18. Here also the bar is complete to re-litigation but its operation can be thwarted under certain circumstances. The House then finally observed:

“But there is room for the view that the underlying principles upon which estoppel is based, public policy and justice have greater force in cause of action estoppel, the subject-matter of the two proceedings being identical, than they do in issue estoppel, where the subject-matter is different. Once it is accepted that different considerations apply to issue estoppel, it is hard to perceive any logical distinction between a point which was previously raised and decided and one which might have been but was not. Given that the further material which would have put an entirely different complexion on the point was at the earlier stage unknown to the party and could not by reasonable diligence have been discovered by him, it is hard to see why there should be a different result according to whether he decided not to take the point, thinking it hopeless, or argue it faintly without any real hope of success.”

19. The Apex Court in the case of **Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993**, as observed as under :

“11. That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make the provisions Section 11 of the Civil Procedure Code, applicable in terms. That the scope of the principle of res judicata

is not confined to what, is contained in Section 11 but is of more general application is also not in dispute. Again, *res judicata* could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were ‘referred to what this Court said in *Satyadhan Ghosal v. Smt Deorajin Debi* [(1960) 3 SCR 590] where Das Gupta, J. speaking for the Court expressed himself thus:

“The principle of *res judicata*—is based on the need of giving a finality, to judicial decisions. What it says is that once *resjudicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question, of fact or on a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again.... The principle of *res judicata* applies also as between the two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.”

Mr Pathak — laid great stress on this passage as supporting him in the two submissions that he made : (1) that an issue of fact or law decided even in an interlocutory proceeding could operate as *res judicata* in a later proceeding, and next (2) that in order to attract the principle of *res judicata* the order or decision first rendered and which is pleaded as *res judicata* need not be capable of being appealed against.”

20. The Apex Court in the case of **Vaish Aggarwal Panchayat vs Inder Kumar & Ors** has observed as follows :

“11. In this context, we may profitably refer to the decision in *V. Rajeshwari v. T.C. Saravanabava*. In the said case, a two-Judge Bench while dealing with the concept of *resjudicata* has held:- “11. The rule of *res judicata* does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.

12. The plea of *res judicata* is founded on proof of certain facts and then by applying the law to the facts so found. It is, therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal.

After so stating, the Court further observed that:-

“Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the

previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in Syed Mohd. Salie Labbai v. Mohd. Hanifa the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata.”

21. By means of the impugned judgement dated for 04/04/2012 the Learned District Judge noticed that on the previous occasion also a suit was filed by the State against the respondent for eviction from the premises situated at Plot No. 564 measuring 0.038 hectares. situated at Village - Ajgain, District Unnao on the ground that the said land belonging to the U.P. Forest Corporation and the decision to convert it into reserve forest has also been taken by issuance of a notification under Section 4 of the Indian Forest Act. When the proceedings were initiated against the respondent under the Act 1972, before the Prescribed Authority, the officers who appeared on behalf of the petitioner to prove their case could not produce the survey report or the survey map from which it could be established that the disputed house made by the respondents was on plot No. 564 or 565, while on the other hand the respondent had disputed the fact that as house was built on plot No. 564 or 565 which have been declared to be a reserve forest land. The respondent himself never files any documents or disclosed the details and location of his land on which his house had been built, and in the aforesaid circumstances the Prescribed Authority discharged the notice after recording his satisfaction that the petitioner was not able to establish beyond doubt that the house of the respondent was built on the forest land, and on the other hand the respondent had built the house after obtaining due approval of the authorities.

22. A perusal of the impugned appellate order dated 04/04/2012 would indicate that the District Judge while allowing the appeal of the respondent has recorded a finding that *“the house of Rajendra Prasad*

has not been constructed on plot No. 564 or 565". He was of the view that once a finding has been returned in favour of the respondents then the proceedings cannot be re-initiated again to re-agitate the same issue which has once already been concluded by the Prescribed Authority in his order dated 16/08/1993. To test the aforesaid reasons recorded in the order of the District Judge dated 04/04/2012, we have gone through the order of the Prescribed Authority dated 16/08/1993 and find that no such finding was returned by him in favour of the respondents to the effect that their house was existing on the plot No. 564 or 565. On the contrary the Prescribed Authority has rejected the case filed by the petitioner as they were unable to prove that the respondents have constructed the house on plot No. 564 or 565 as neither the survey report nor the survey map was filed. The findings of the District Judge are clearly contrary to the record and is accordingly perverse and consequently the impugned order is clearly arbitrary and deserves interference on this ground alone.

The principles of *res judicata* is a principle of public policy based on the principle of giving finality to judicial decisions. The principle would have application in quasi judicial matters also subject to the condition that the question of fact or on law should have been decided between the parties, and the plea has to be substantiated by producing the copy of the pleadings, showing judgement in the previous case.

23. For application of the principle of *res judicata* in the present case it is to be ascertained as to whether on a question, of fact or a question of law has been decided between the parties in the proceeding before the Prescribed Authority which can be said to be final and conclusive. As already dealt by us, the Prescribed Authority while deciding the proceedings initiated by the petitioner previously, had dismissed the case as the petitioner as he could not demonstrate that the respondent had constructed the house on plot No. 564 or 565 which was notified as a reserve forest. No finding could be returned in this regard in favour of the petitioner, and even otherwise there was no assertion by the

respondents with regard to the plot on which their house was made. The respondents only said that the house was not made on plot No. 564 or 565. Accordingly, the Prescribed Authority could not determine the plot on which the house of the respondents was made and therefore had dismissed the case instituted by the petitioner.

24. In the aforesaid circumstances of the present case, this Court of the considered view that no finding was recorded either in favour of the petitioner of the respondent, and merely in absence of cogent material and evidence, the location of the disputed house could not be ascertained, which led to dismissal of the application preferred by the petitioner. Therefore, no finding of fact was recorded by the Prescribed Authority in the previous proceedings, with regard to the location of the disputed property and therefore, in our considered opinion the principle of *res judicata* would not be applicable, in as much as there is no previous decision of the Prescribed Authority which has attained finality which can be binding between the parties. In absence of any finality given to any issue between the parties, the subsequent proceedings are not hit by the principles of *res Judicata*. Even otherwise the principle of the *res Judicata* is a principle of public policy that there should be an end to litigation. The principle of public policy cannot be utilised to its detriment and to take possession of public lands. The petitioner was unable to produce relevant records and documents in support of the claim that the respondent was encroacher upon the public lands. The second application was filed along with the survey report and survey map to demonstrate that the respondent was encroaching upon public land, and consequently it was incumbent upon the Prescribed Authority to adjudicate the said case based on merits and consider the evidence filed by the petitioner. In absence of any categorical finding recorded previously, the Prescribed Authority could not be bound by the previous finding order, hence it was open for him to have heard and decide the case on merits.

25. In light of the above discussion this Court is of the considered view that the order of District Judge dated 04/04/2012 is arbitrary and requires interference and is accordingly set aside. The matter is remitted to the District Judge to decide the appeal on merits.

26. The writ petition is **allowed**.

Order Date :- 19.01.2024

A. Verma

(Alok Mathur, J.)