

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

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Date of decision: 8th March, 2016

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W.P.(C) 4338/2015 & CM No.7855/2015 (for stay)

S.K. SEHGAL & ANR

..... Petitioners

Through: Mr. Raj Kumar Sherawat, Adv.

Versus

DELHI ADMINISTRATION AND ANR

..... Respondents

Through: Mr. Aditya Vashisth, Adv. for R-1.
Ms. Renuka Arora, Adv. for DSIIDC.

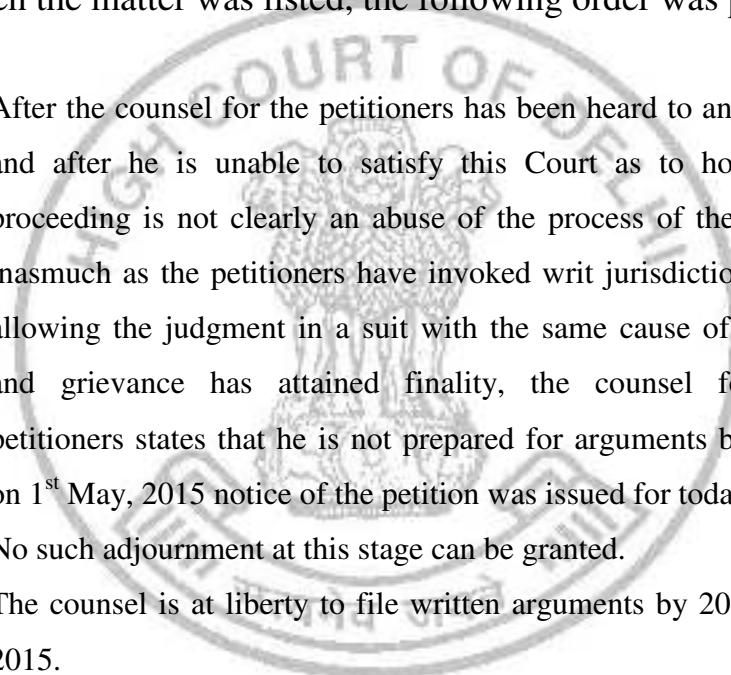
CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition i) seeks de-sealing of industrial plot bearing No.92, Block No.S, Functional Industrial Estate for Electronics, Okhla Industrial Area Phase-II, New Delhi by quashing of the order dated 30th September, 2003 of eviction with respect thereto, by declaring that Sh. C.B. Mehsram who as Estate Officer passed the said order was not notified under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) and thus the order of eviction and consequential order dated 30th October, 2009 of sealing are illegal and void; ii) impugns the order dated 24th January, 2014 of the respondents Delhi Administration and Delhi State Industrial & Infrastructure Development Corporation (DSIIDC), and iii) seeks restoration

of the lease of the land underneath the aforesaid property in favour of the petitioners.

2. The petition came up first before this court on 1st May, 2015 when on the counsel for the petitioners citing the order dated 31st October, 2012 in W.P.(C) No.6832/2012 notice of the petition was issued. Thereafter on 16th July, 2015 when the matter was listed, the following order was passed:

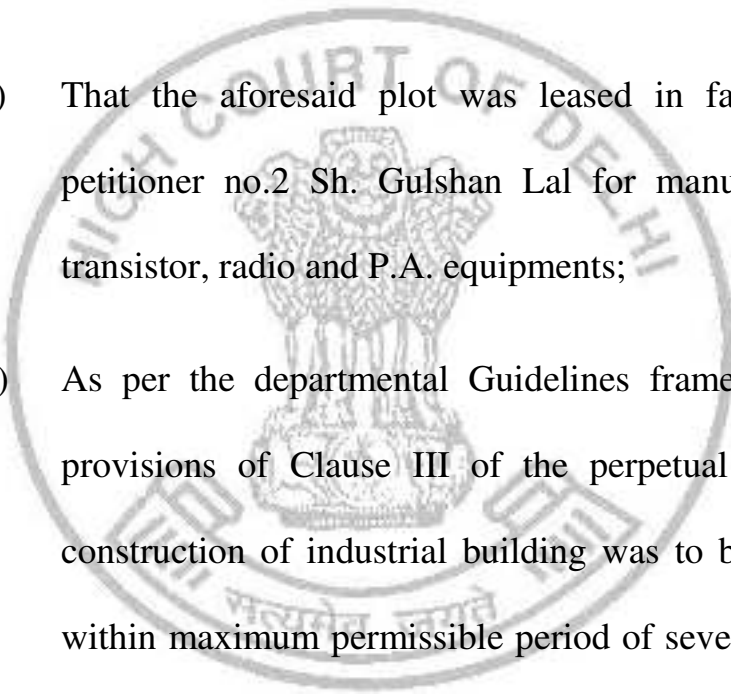
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- “1. After the counsel for the petitioners has been heard to an extent and after he is unable to satisfy this Court as to how this proceeding is not clearly an abuse of the process of the Court inasmuch as the petitioners have invoked writ jurisdiction after allowing the judgment in a suit with the same cause of action and grievance has attained finality, the counsel for the petitioners states that he is not prepared for arguments because on 1st May, 2015 notice of the petition was issued for today.
 2. No such adjournment at this stage can be granted.
 3. The counsel is at liberty to file written arguments by 20th July, 2015.
 4. Now the counsel for the petitioner requests that the time for filing the written arguments be extended till 21st July, 2015.
 5. Allowed.
 6. The counsels for the respondents have also been heard.
 7. Judgment reserved.”

3. The counsel for the petitioners has filed written synopsis and which has been perused.

4. The undisputed facts are:

- (i) The President of India vide perpetual lease dated 19th April, 1984 leased unto the petitioner No.2 Gulshan Lal, industrial plot bearing No.92, ad-measuring 307 sq. yds. in the layout of Functional Industrial Estate for Electronics, Okhla Industrial Area Phase-II, New Delhi and on the terms and conditions contained therein. One of the terms of the said lease deed was that the lessee shall within a period of two years from 19th April, 1984 and which time was specified to be the essence of the contract, after obtaining sanction to the building plan, at his own expense, erect upon the industrial plot and complete in a substantial workman like manner an industrial building for carrying on the approved manufacturing process or industry with the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan and to the satisfaction of the municipal or other body;
- (ii) The office of the Commissioner of Industries, Delhi Administration vide order dated 24th February, 1992 cancelled

the allotment of the aforesaid plot of land in favour of the petitioner no.2 Sh. Gulshan Lal and determined the perpetual lease in his favour and directed the petitioner no.2 Sh. Gulshan Lal to handover vacant possession of the plot within 30 days of the order failing which he was threatened with proceedings under the PP Act. It was recorded in the said order:

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- (a) That the aforesaid plot was leased in favour of the petitioner no.2 Sh. Gulshan Lal for manufacturing of transistor, radio and P.A. equipments;
- (b) As per the departmental Guidelines framed under the provisions of Clause III of the perpetual lease deed, construction of industrial building was to be completed within maximum permissible period of seven years from the date of execution of the lease deed on payment of composition charges;
- (c) That the petitioner no.2 Sh. Gulshan Lal was cautioned from time to time for early completion of the factory building but the petitioner no.2 Gulshan Lal tried to

mislead by stating that construction work had commenced and was in progress;

- (d) However on expiry of the maximum permissible period of seven years, progress of construction was found to be 'NIL' except that the plot was found partially dug and some "chick makers" were found doing the work of "chick making";
- (e) A show cause notice dated 9th July, 1991 was issued to petitioner No.2 Gulshan Lal but he again tried to mislead;
- (f) Another inspection was carried out which revealed that no activity for construction had been commenced;
- (g) Thereafter, the petitioner no.2 Gulshan Lal confirmed that he could not start construction due to the disputes in the family and lack of finances;
- (h) Since the maximum permissible period had expired, in exercise of powers under the perpetual lease deed, the lease was being cancelled;

- (iii) It appears that the petitioner No.2 Gulshan Lal did not handover possession as was required vide notice dated 24th February, 1992 aforesaid. The Commissioner of Industries filed a petition for eviction of the petitioner no.2 Gulshan Lal before the Estate officer and show cause notices dated 30th November, 1998 and 21st May, 1999 were issued under the PP Act to the petitioner no.2 Sh. Gulshan Lal;
- (iv) In response to the aforesaid show cause notices under the PP Act, the petitioner no.1 Sh. S.K. Sehgal appeared before the Estate Officer and filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) for impleadment in the eviction proceedings claiming to have purchased the plot from the petitioner no.2 Sh. Gulshan Lal vide Agreement to Sell dated 24th August, 1994;
- (v) The Estate Officer Sh. C.B. Meshram vide order dated 30th September, 2003 (impugned in this petition) rejected the application of the petitioner No.1 Sh. S.K. Sehgal for impleadment and in exercise of powers under Section 5(1) of

the PP Act directed all persons in occupation of the said property to vacate the same and authorized the Joint Director of Industries and other officers to evict all the persons in occupation of the subject property after expiry of 15 days. It is recorded in the said order:

- (a) That the cancelation of allotment and determination of perpetual lease was on the ground of non construction within the maximum permissible period of seven years;
 - (b) This charge stood established from the documents submitted by the petitioner no.1 Sh. S.K. Sehgal himself;
 - (c) That the claim of the petitioner no.1 Sh. S.K. Sehgal of having purchased the property on Power of Attorney was also in violation of the terms of the perpetual lease deed;
- (vi) The petitioner No.2 Sh. Gulshan Lal acting through Smt. Anjana Sehgal wife of petitioner no.1 Sh. S.K. Sehgal and petitioner No.1 Shri S.K. Sehgal filed CS(OS) No.1837/2003 in this Court for declaration that the order dated 24th February, 1994 supra of the Commissioner of Industries of cancellation of

perpetual lease and the consequent order dated 30th September, 2003 of the Estate Officer under the PP Act of eviction are illegal and void *ab initio*;

(vii) Vide interim order dated 30th October, 2003 confirmed on 11th February, 2008 in the said suit, the respondents i.e. the Delhi Administration and DSIIDC were restrained from taking over possession of the property;

(viii) The aforesaid suit was dismissed as not maintainable and the interim orders vacated on 31st August, 2009, recording:

(aa) that the defendants had questioned the maintainability of the suit as the order dated 30th September, 2003 of the Estate Officer was appealable before the District Judge;

(bb) Per contra, the petitioners herein who were the plaintiffs therein had contended that PP Act was not applicable and relied on *Express Newspapers Pvt. Ltd. Vs. Union of India* AIR 1986 SC 872;

- (cc) That it was not in dispute that despite perpetual lease deed dated 19th April, 1984 providing for construction to be raised within two years, even for a period of seven years thereafter there was no construction;
- (dd) That the petitioner No.2 Sh. Gulshan Lal had been given sufficient opportunity in this regard;
- (ee) That the petitioner no.2 Sh. Gulshan Lal was afforded a final opportunity of hearing before the Hon'ble the Lieutenant Governor (LG) but did not avail of the same and Hon'ble the LG, Delhi affirmed the cancellation of lease and which was communicated to petitioner no.2 Sh. Gulshan Lal vide order dated 24th February, 1992;
- (ff) The respondent no.2 Gulshan Lal did not challenge the said cancellation communicated to him on 24th February, 1992 and which has attained finality;
- (gg) Once the order of cancellation of lease had attained finality eleven years prior to the institution of the suit, the same could not be challenged belatedly;

- (hh) The order dated 30th September, 2003 was merely consequential to the order dated 24th February, 1992 of cancellation of lease;
- (ii) The petitioner no.1 Sh. S.K. Sehgal and his wife Smt. Anjana Sehgal do not have any *locus standi* to challenge the order dated 30th September, 2003 of the Estate officer;
- (jj) The petitioner no.1 Sh. S.K. Sehgal and his wife Smt. Anjana Sehgal claim title through documents dated 24th August, 1994 but by which time the lease itself stood cancelled;
- (kk) The documents dated 24th August, 1994 in favour of the petitioner no.1 Sh. S.K. Sehgal and his wife Smt. Anjana Sehgal were also in teeth of Clause II(5)(a) of the perpetual lease deed and thus illegal;
- (ll) Admittedly no permission had been obtained for the sale;

(mm) It was not in dispute that the term of the lease requiring a factory building to be erected thereupon within two years or even within the permissible period of seven years had not been complied with;

(nn) Thus the order of eviction of the Estate Officer dated 30th September, 2003 could not be found fault with;

(oo) In fact, the petitioner no.1 Sh. S.K. Sehgal could not maintain the suit challenging the order dated 30th September, 2003;

(pp) The petitioner no.2 Sh. Gulshan Lal could have challenged the order dated 30th September, 2003 only by filing an appeal under the PP Act;

(qq) Since efficacious alternative remedy is available, the suit was not maintainable at the instance of petitioner no.2 Sh. Gulshan Lal;

(rr) The petitioner no.1 S.K. Sehgal and his wife Smt. Anjana Sehgal do not have the locus to file an appeal against the order dated 30th September, 2003;

(ss) The judgment of the Supreme Court in *Express Newspapers Pvt. Ltd.* supra was not applicable inasmuch as in the present case the perpetual lease itself required construction to be raised and which had not been done and also because sale was effected without obtaining prior permission;

(ix) The aforesaid order has attained finality;

(x) That soon after the dismissal of the suit on 31st August, 2009, the respondents issued the impugned notice dated 30th October, 2009 and in pursuance whereof have on 3rd November, 2009 admittedly repossessed the property.

5. The petitioners after nearly three years, on 31st October, 2002 filed W.P.(C) No.6832/2012 supra which was disposed of *in limine* vide order dated 31st October, 2012 recording / observing i) that though the prayer in the writ petition was to quash the order dated 24th February, 1992 of

cancellation of the perpetual lease deed and the eviction order dated 30th September, 2003 of the Estate Officer but what the petitioners were required to challenge was the order dated 21st May, 2010 rejecting the representation of the petitioners in pursuance to the order in an earlier writ petition filed by the petitioners directing the respondents to dispose of the representation of the petitioners; ii) however the Deputy Commissioner of Industries (Land) instead of outrightly rejecting the representation of the petitioners ought to have referred the case of the petitioners to Industrial Land Management Advisory Committee, and iii) that the rejection of the representation was thus not by a competent authority.

6. The petitioners have now after another nearly three years of the order dated 31st October, 2012 in W.P.(C) No.6832/2012 have filed this petition pleading:

- (A) That the respondents did not comply with the order dated 31st October, 2012;
- (B) Though petitioners made representations dated 29th November, 2012, 7th January, 2013 and 18th February, 2013 but no action was taken thereon;

- (C) The petitioners have come across various other decisions of restoration of the cancelled lease deeds in favour of subsequent purchasers;
- (D) That even the website of the respondent No.2 DSIIDC provides that a plot can be restored after removal of cause of cancellation;
- (E) That the violation in the present case, of non construction was removed in the year 1996 itself when the petitioners completed the building and started industrial unit and also started paying tax with Municipal Corporation of Delhi therefor;
- (F) That the petitioners filed Contempt Petition (Civil) No.581/2013 alleging non compliance of the order dated 31st August, 2012 in W.P.(C) No.6832/2013 supra and the respondents conveyed to the Court that Industrial Land Management Advisory Committee (ILMAC) had considered the case of the petitioners on 4th March, 2013 and recommendation of the Committee had been forwarded to the Lieutenant Governor (LG) and the decision was awaited and the

contempt petition was disposed of on 31st July, 2013 with a direction to the competent authority to take necessary decision within two months;

(G) Another Contempt Petition (Civil) No.968/2013 was filed by the petitioners;

(H) During the pendency of the aforesaid contempt petition, the petitioners also filed W.P.(C) No.6267/2013 seeking de-sealing of the property; however the said writ petition was withdrawn with liberty to file afresh as Contempt Case (Civil) No.968/2013 was pending;

(I) During the pendency of the aforesaid contempt case, the respondents on 18th September, 2014 handed over a copy of the decision dated 24th January, 2014 of the approval by the LG of recommendation of ILMAC;

(J) That the decision dated 24th January, 2014 has been taken without application of mind and in violation of the principles of natural justice;

(K) That the petitioners through replies to queries under the Right to Information Act, 2005 have learnt that at the contemporaneous time only one Sh. Prabhat Kumar and one Sh. S.C. Batra of respondent no.2 DSIIDC were authorized to pass eviction order and Mr. C.B. Meshram who passed the eviction order 30th September, 2003 was not authorized to do so;

(L) That the order dated 31st October, 2012 in W.P.(C) No.6832/2012 has not been complied with;

(M) That the petitioners have spent huge monies on the property;

(N) That once there is a provision for compounding / regularizing, cancellation / eviction should not be resorted to.

7. The reason for the order dated 16th July, 2015 quoted hereinabove would become obvious from the narration of the facts aforesaid.

8. The counsel for the petitioners responding to the query in the order dated 16th July, 2015, in his written submissions has contended i) that the suit earlier filed by the petitioners was dismissed not on merits but on account of lack of jurisdiction and though the petitioners had assailed the

order of the learned Single Judge of dismissal of a suit by filing a Regular First Appeal but the same was withdrawn in view of the writ Court order; ii) hence there was no finality to the decision in the suit; iii) though the petitioners in W.P.(C) No.6832/2012 had disclosed of the previous proceedings (the petitioners have not filed copy of this writ petition) but still the Court granted an order in favour of the petitioners and which order remains uncomplied; iv) that the issue in the suit and the issue in the present writ petition are entirely different; v) the issue in this writ petition is whether respondents / ILMAC has complied with the order dated 31st October, 2012 and whether Sh. C.B. Meshram was empowered to act as an Estate Officer and both of which issues were not subject matter of the suit; vi) reliance is placed on ***Smt. Isabella Johnson Vs. M.A. Susai*** AIR 1991 SC 993 to contend that the principles of *res judicata* do not apply to a pure question of law; vii) reliance is placed on ***Rajendra Kumar Vs. District Judge, Jaunpur*** AIR 1996 Allahabad 178 and ***The State of Haryana Vs. The Haryana Co-operative Transport Ltd.*** AIR 1977 SC 237 to contend that *res judicata* is not attracted if there is a wrong decision on point of jurisdiction; viii) that the order dated 31st August, 2009 of dismissal of the suit is in ignorance of the statutory provisions and thus cannot constitute *res judicata*.

9. I am afraid the contentions aforesaid of the petitioners are as misconceived as the petition itself, which is also an abuse of the process of the Court being by way of re-litigation.

10. The cancellation on 24th February, 1992 of the lease occurred more than 23 years prior to the institution of the present petition. In fact, this Court has as far back as on 31st August, 2009 while dismissing the suit earlier filed by the petitioners held the challenge therein also to the said cancellation of lease to be barred by time. It is not and it cannot be the contention of the petitioners that this Court exercising Ordinary Original Civil Jurisdiction, as this Court was in CS(OS) No.1837/2003, not entitled to go into the challenge to the cancellation of the lease. The petitioners failed in the said challenge and which order has attained finality. It is not understandable as to how the petitioners after six years therefrom can again rake up the same controversy. Not only is the challenge to the order of the cancellation of the lease barred by laches, acquiescence and waiver but also by way of re-litigation which in ***K.K. Modi Vs. K.N. Modi*** (1998) 3 SCC 573 has been held to be abuse of the process of the Court. As far as the challenge to the order dated 30th September, 2003 of eviction under the PP Act is concerned, the challenge thereto in this petition i.e. after nearly 12

years is again barred by laches, acquiescence and waiver. The challenge now is on the ground of the order of officer who purporting to be the Estate Officer, passed the said order having not been notified as the Estate Officer. This Court in order dated 31st August, 2009 of dismissal of the suit has already held that the order of eviction is merely consequential to the order dated 24th February, 1992 of determination of lease. The same reasoning holds good here also. Once the petitioners are not entitled to challenge the order of cancellation of lease, it matters not whether the order of eviction was passed by a duly authorized person or not inasmuch as the petitioners upon cancellation of lease have been left with no right in the property. Though undoubtedly the order of dismissal of suit has not gone into the merits of the order of eviction but if the petitioners in the suit had also raised the same challenge as made today, may be the suit would have been held to be maintainable. The challenge on all grounds has to be made at the same time and if it were to be held that challenge to the same provision or order can be repeatedly made as long as it is on different grounds, it would not allow any provision or order to attain finality and keep a dispute and lis alive in perpetuity. Not only so, it is not open to a party / litigant to at his sweet will make enquiries which may disclose a ground of challenge available to

him and to at any time on the basis of the said disclosure make a challenge. The petitioners thus today after 12 years cannot be heard to say that the Estate Officer who passed the order of eviction was not duly appointed.

11. As far back as in ***Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam*** AIR 1965 SC 1150 it was held that the general principle underlying the doctrine of *res judicata* is ultimately based on considerations of public policy; one important consideration of public policy is that the decisions pronounced by Courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. Considerations of public policy and the principle of finality of judgments were held to be important constituents of the rule of law which cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity by filing one writ petition after another. It was further held that if the doctrine of constructive *res judicata* is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds

every time, which is plainly inconsistent with considerations of public policy. In *M. Nagabhushana Vs. State of Karnataka* (2011) 3 SCC 408, such as an exercise was labelled as “litigative adventure” and again held to be against the principles of *res judicata*, constructive *res judicata* and principles analogous thereto.

12. The order dated 31st October, 2012 in W.P.(C) No.6832/2012 preferred by the petitioners also in my view does not create any rights in favour of the petitioners. The said order notices that in writ petition earlier filed by the petitioners, the respondents had been directed to dispose of the representation filed by the petitioners. The petitioners along with their written submissions have filed copies of the orders dated 29th January, 2010 and 15th February, 2010 in W.P.(C) No.580/2012 and which show that the petitioners withdrew that petition stating that they would be satisfied if the respondents considered their representations dated 12th June, 1997 and 22nd October, 2008 in accordance with law. In the light of the said statement of the petitioners, this Court disposed of that writ petition with a direction for disposal of the representations of the petitioners. Though the petitioners have not filed copy of W.P.(C) No.580/2010 also but it can reasonably be assumed that the challenge therein also must have been to the orders dated

24th February, 1992 and 30th September, 2003. In my view, if a litigant so unconditionally withdraws a challenge made, even if seeking a direction for disposal of its representation, that litigant cannot make the same challenge again unless has reserved the liberty to again make the challenge made in that petition in the challenge to the order on the representation. The petitioners herein are not found to have reserved any such right.

13. Coming back to the order dated 31st October, 2012 in W.P.(C) No.6832/2012, as appears therefrom, the petitioners therein definitely assailed the orders dated 24th February, 1992 and 30th September, 2003. However this Court held that the said challenge was not maintainable and what was required to be challenged was the order dated 21st May, 2010 of rejection of representation of the petitioners. Again no right was reserved by the petitioners or reserved for the petitioners to again challenge the orders dated 24th February, 1992 and 30th September, 2003 as have been challenged in this petition. What this Court however directed was reconsideration of the representation.

14. I have wondered whether a petitioner, challenge by whom to the orders dated 24th February, 1992 and 30th September, 2003 has become

barred by time and law as aforesaid, by making a representation and by filing a writ petition and obtaining an order therein for disposal of his representation, can again revive the challenge which had become barred by time and law. The answer to the said question, in my opinion, has to be sought in reality and not in abstract. The Courts today are facing docket explosion with each Bench of the Court having several times more cases listed before it daily than it can possibly deal with. In such circumstances, if the petitioners confine the relief in the petition to an innocuous relief of disposal of his representation and the Court disposes of the writ petition by granting the said relief, without applying its mind to whether the claim in the representation was already barred by time and law and without hearing the other side, certainly such an order cannot revive or furnish a cause of action which had extinguished. A cause of action, to invoke the principles of CPC is a bundle of facts entitling a person to a relief. In my view neither an order of the Court, without going into the merits, directing disposal of a representation nor a disposal of the representation in compliance therewith, reiterating the earlier decision, can bring alive what was already dead and buried. Only if a Court, after going through the facts and finding that instead of the Court itself deciding the lis, a case for the respondents to

consider the same, directs so and keeps the original cause of action alive, can it be said that an order in pursuance thereto would itself constitute a cause of action. An order of the Court otherwise furnishes a cause of action for appealing thereagainst and cannot revive a dead cause of action.

15. Supreme Court in ***C. Jacob Vs. Director of Geology and Mining Indus. Est.*** (2008) 10 SCC 115 held as under:

“6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets

a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. *Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.*

8. *When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.*

.....

10. *We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation*

is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."

(emphasis added)

Supreme Court again in *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59 cautioned against directing consideration of a claim or representation and directed that before issuing any such direction, it must be ensured that the same is with reference to a live issue and not with reference to a dead or a stale issue. Recently, it was again so reiterated in *State of Uttaranchal Vs. Sri Shiv Charan Singh Bhandari* (2013) 12 SCC 179 and in *Dwipendra Nath Mukherji Vs. The Board of Trustees for the Port of Kolkata* (2015) 13 SCC 573.

16. The petitioners here have as aforesaid been abusing the process of the Court. The petitioners first filed the suit for the same reliefs as claimed herein and which was dismissed. The petitioners thereafter filed RFA(OS) No.95/2009 (order of which has been filed along with the written submissions) impugning the order of dismissal of the suit but during the pendency thereof also filed W.P.(C) No.580/2010 for the same reliefs as were claimed in the suit and which was withdrawn by confining the relief therein to disposal of representation. Citing the said order, RFA (OS)

No.95/2009 was also withdrawn on 24th February, 2010. Thereafter W.P.(C) No.6832/2012 was filed and in which it was clearly observed that the challenge therein to the orders dated 24th February, 1992 and 30th September, 2003 was misconceived. The said order was also allowed to attain finality and the petitioners were satisfied with the order for reconsideration of their representation. Thereafter yet another writ petition being W.P.(C) No.6267/2013 is disclosed in the written submissions to have been filed and which was also withdrawn on 1st October, 2013 with liberty to approach the Court which had passed the order dated 31st July, 2013 in Contempt Petition (Civil) No.581/2013. I absolutely fail to see as to how the petitioners can file this petition for the same relief.

17. As far as the challenge in the present petition to the order dated 24th January, 2014 is concerned, the same, in compliance of the order dated 31st October, 2012 in WP(C) No. 6832/2012 merely reiterates the order of determination of lease and cannot furnish a fresh cause of action to challenge the orders dated 24th February, 1992 and 30th September, 2003.

18. The petitioners by their actions deprived the industrial use of the property for over 30 years to the serious prejudice of the society as a whole and the country.

19. Not only thus the petition is dismissed but the petitioner no.1 Sh. S.K. Sehgal is also burdened with cost of Rs.1,00,000/- for abusing the process of this Court. In fact, it is not even known whether the petitioner No.2 Sh. Gulshan Lal as whose attorney Smt. Anjana Sehgal is filing this petition is alive. Unless the petitioner no.1 Sh. S.K. Sehgal pays the cost of Rs.1,00,000/- to the respondent no.2 DSIIDC within one month of today, the respondent No.2 DSIIDC would be entitled to take appropriate proceedings for recovery thereof.

RAJIV SAHAI ENDLAW, J.

MARCH 08, 2016

‘gsr’