

2. The petitioners who are tenants of the premises which are situated in a building belonging to Anusaya Co-operative Housing Society-respondent no.1 (for short 'the Society') have filed this petition apprehending demolition of the premises occupied by the petitioners. At the outset, we may observe that this is a second round of litigation. The

petitioners earlier had approached this Court by filing Writ Petition No.7695 of 2018. This Court dismissed the said writ petition by order dated 20 July 2018 by imposing cost of Rs.25,000/- by passing the following order:-

“1. Not on board. Taken on board.

2. Heard the learned counsel appearing for the Petitioners. Yesterday, the Petition was produced for grant of urgent relief. Yesterday, the contention raised by the learned counsel appearing for the Petitioners was that in the year 2016, the Petitioners were served with the notices by Thane Municipal Corporation and thereafter, the only notice served by the Municipal Corporation was a notice dated 21st August, 2017 calling upon one of the Petitioners to submit a report by VJTI / ITI. His submission yesterday was that along with letter dated 24th August, 2017, a structural audit report was submitted by Petitioners to the Respondent No.1 – Corporation. Paragraph Nos. 5, 6 and 7 of this Petition proceed on the footing that on 18th July, 2018, the officers of the Respondent No.2 – Corporation visited the premises on the ground floor which are in possession of the Petitioners and threatened that the demolition of the building will be undertaken on 19th July, 2018. The specific averment made in the paragraph 5 is that no notice since after the notices of the year 2016 was ever served upon the Petitioners, much less a notice requiring Petitioners to vacate the premises. The entire Petition proceeds on the footing that after the Petitioners submitted a structural audit report on 24th August, 2017, no written notice was served to the Petitioners. The cause of action for filing the Petition as set out in paragraph 6 is the threat given by the Municipal Officers to the Petitioners on 18th July, 2018 of demolition without giving any prior notice.

3. Today, when the Petition was called out, the learned counsel appearing for the Respondent No.2 – Corporation produced for perusal of the Court, a copy of the notice dated 7th May, 2018 which was issued to the Petitioners. On instructions of the Petitioners, the learned counsel appearing for the Petitioners states that the said notice was served to the Petitioner No.1 and thus the Petitioners were await of the said notice. The said notice refers to the structural audit report submitted by the Petitioners. The said notice records that, the report of VJTI submitted by the Petitioners is not satisfactory and therefore, the structural audit report of the entire

building is necessary to be obtained. The notice, therefore, calls upon Petitioners to stop the use of the building.

4. In our view, the notice dated 7th May, 2018 was very material and relevant and the Petitioners have indulged in suppression of material facts by not disclosing the service of the said notice. In fact, the averments made in paragraphs 5 and 6 are completely false as the Petitioners have stated that no notice after the notice in the year 2016 was ever served upon the Petitioners. Moreover, the Petitioners have not stopped the use of the premises in their possession as directed by the notice dated 7th May, 2018.

5. Writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable. In view of suppression of material facts by the Petitioners, no case is made out for entertaining this Petition.

6. The Petitioners will have to be saddled with costs which is quantified at Rs.25,000/- which shall be payable by the Petitioners to the Respondent No.2 – Corporation within a period of four weeks from today. While rejecting the Petition, we must note here that the notice dated 7th May, 2018 is not a notice of demolition under Section 264 of the Maharashtra Municipal Corporations Act, 1949. But this notice merely calls upon the Petitioner to immediately stop the user of the premises in their possession.

7. Subject to what is observed above, the Petition is rejected. The Petitioners shall pay cost quantified at Rs.25,000/- to the Respondent No.2 – Corporation within four weeks from the date on which this order is uploaded.

8. All pending applications stand dispose of.”

3. It is clear from the observations as made by the Court that the notice dated 7 May 2018 was very much available to the petitioners when the earlier petition was filed and also a plea in that regard was available to the petitioner. However, the said notice dated 7 May 2018 was suppressed, as observed by the Court in paragraph 4 of the order passed by the Court

and the Court has clearly recorded the displeasure approach of the petitioners invoking jurisdiction under Article 226 of the Constitution and dismissed the said petition with costs.

4. In the present petition the case of the petitioners is not different from which is available to the petitioners in the earlier petition. A bare perusal of the prayers made it clear that the petitioners have again assailed the notice dated 7 May 2018 and consequent notice dated 31 July 2018 on the same plea as made by the petitioners in the earlier petition. It would be appropriate to note the prayer in this petition which reads thus:-

“a. for a writ of mandamus or in the nature of mandamus or any other writ, order or direction directing the Respondents, its officers not to take action of demolition without following the due process of law and further the Respondent Corporation may be ordered and directed to consider and follow and abide by the Structural Auditors Report by VJTI and grant necessary permission for repairs and allow the petitioners to occupy the respective premises.

b. for a writ of mandamus or in the nature of mandamus or any other writ, order or direction directing the Respondents, to withdraw and cancel respective notices dtd. 7Th May 2018 and 31st July 2018 and grant necessary permission for repairs and allow the petitioners to occupy the respective premises.

c. for a writ of certiorari or in the nature of certiorari or any other writ, Order or direction calling for the

records and proceedings of respective notices dtd. 7th May 2018 and 31st July 2018 passed by the Respondents and after examining the legality, validity and propriety thereof the said respective notices dt.7th May 2018 and 31st July 2018 be quashed and set aside.”

5. The learned Counsel for the petitioners tried to make out a case relying on the report of VJTI dated 23 March 2018 in regard to structural audit of the building and has re-urged the pleas which are available to the petitioner in the earlier petition.

6. An affidavit in reply is filed on behalf of the Municipal Corporation, categorically raising the plea in paragraph 3 of the affidavit that the present petition is not maintainable and is misconceived and has been filed for the same cause of action which had accrued to the petitioner in the earlier writ petition (Writ Petition No.7695 of 2018) filed by the petitioners which came to be dismissed. It is averred that the building was appropriately audited and is in dilapidated condition and beyond repairs and falling under the category “C-1”. The affidavit has stated that the occupants of the building had issued notices from time to time under Section 264(1)(2)(3) and (4) of the Maharashtra Municipal Corporation Act informing that the building was very dangerous and falling under

Category 'C-1' and the occupants were called upon to pull down the building. These averments are made in paragraphs 8, 9 and 12 in regard to non-acceptability of the report of the structural audit as furnished on behalf of the petitioners.

7. There is an additional affidavit filed by one Surayanat Ramchandra Rege on behalf of the members of the Co-operative Housing Society *inter alia* stating that all members of the society who have vacated their flats in June,2017 are directly affected by the delay caused by the petitioners in not vacating and not stopping use of their respective shops inspite of the notice issued by the Thane Municipal Corporation. They have expressed serious concern in regard to the delay which is being caused in undertaking re-development of the building and which is being obstructed by these three petitioners. The paragraphs 8, 9, 10, 11, 12 and 13 of the affidavit read thus:-

“8. We say that we and all other members of Said Society, who have vacated their flats in June,2017 are directly affected by the delay caused by the Petitioners in not vacating and not stopping use of their respective shops in spite of the notice issued by the Thane Municipal Corporation and now in spite the order has been passed by this Hon'ble Court in this regard.

9. We say that since June,2017 all the residential flat owners have vacated the said Society building in

accordance with notices issued by Thane Municipal Corporation, the electricity of their respective flats is already disconnected, meters are removed, water connection is also disconnected.

10. We say that we and other 10 members of the said society are staying on rent which is paid from their own pockets; because three shops owner i.e. Petitioners herein have not vacated their shops in spite of the ruinous condition of the said Society building which resulted in issuance of eviction notice issued in the year of 2016 and 2017.

11. We say that the building is built in 1973 and is more than 45 years old. The condition of the building is beyond repairs and the only solution is undertaking development for which the said society has already taken steps for.

12. We say that one of the members, Mrs.Snehal Chalke, owner of Flat No.5 of the said Society is more than 70 years old, who is staying with her ailing father and also needs medical treatment for herself and her father and has no means to survive and deal with day to day expenses. Any delay caused will only worsen the situation. She neither has funds to stay on rent nor to approach this Hon'ble Court.

13. We say that we along with other members are eagerly waiting for our reconstructed houses in redeveloped building.”

8. On the above backdrop, we have heard the learned Counsel for the parties. Having perused the record, we have not persuaded to accept the submissions as urged on behalf of the petitioners. It is clear

that the building is constructed in the year 1963. It is forty five years old and is in dilapidated condition. The Corporation has repeatedly attempted to get the building vacated and except the petitioners, all the occupants of the building have vacated their premises and are waiting rehabilitation in newly constructed premises. The petitioners who are occupying the commercial premises have shown their litigious tendency in earlier approaching this Court and having failed, have again filed the present petition. The nature of the contentions as also the reliefs are not different from what the petitioner urged in the earlier petition. These are not different pleas. There cannot be multiple petitions on the same cause of action. This would certainly amount to abuse of the process of the Court and that too invoking equitable and discretionary jurisdiction of this Court under Article 226 of the Constitution. It is quite clear to us that the whole intention of the petitioners is to some manner to delay the redevelopment of the building for some reasons or cause hurdles in the proposed redevelopment. It is certainly affecting the other occupants who have already vacated their premises and are staying in temporary alternate accommodation. The petitioners who are only three in numbers, certainly cannot withhold the development, by dragging the authorities and the society in successive litigation of such nature.

9. In the case ***Devilal Modi VS. Sales Tax Officer, Ratlam & Ors.***¹ the Supreme Court has held that the principles of *constructive res judicata* are applicable to writ proceedings. Gajendragadkar, C.J., speaking for the Bench has observed thus:-

“(8) It may be conceded in favour of Mr. Trivedi that the rule of constructive res judicata which is pleaded against him in the present appeal is in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred.....

10. Further in ***“Hope Plantation Ltd. vs. Taluk Land Board, Peermade & Anr.”***² the Supreme Court has reiterated that the principles of *constructive res judicata* are founded on public policy and justice, and its aim is to prevent the parties to file litigation on same question over and again. It is held that when the proceedings have attained finality, the

1 AIR 1965 SC 1150

2 (1999)5 SCC 590

parties are bound by the judgment. They cannot litigate on the same cause as gone into in the earlier litigation. In this context their Lordships have made the following observations:-

17. In *Devilal Modi Vs STO* the question before this Court was whether the principle of constructive res judicata could be invoked against writ petition filed by the appellant under Article 226 of the Constitution. The appellant had been assessed to sales tax for the year 1957-58 under the Madhya Bharat Sales Tax Act, 1950. He challenged the validity of the order of assessment by a writ petition which was dismissed by the High Court of Madhya Pradesh. The appellant's appeal by special leave to this Court was also dismissed. At the hearing of the appeal before this court, the appellant sought to raise two additional points, but he was not permitted to do so on the ground that they had not been specified in the writ petition filed before the High Court and had not been raised at an early stage. On those points which were not allowed to be raised, the appellant filed another writ petition in the High Court challenging the validity of the very same assessment for the year 1957-58. The High Court considered the merits of the additional grounds urged by the appellant but rejected them. The appellant again came to this Court. This Court dismissed the appeal on the ground that the principle of constructive res judicata was applicable in the circumstances and referred to its earlier decision in *Daryao vs State of U P* (AIR 1961 SC 1457) holding 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.

....

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of

action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms of common law origin. Again, once an issue has been finally determined, parties cannot be subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in many subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suit between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

... ..

31. Law on res judicata and estoppel is well understood in India and there are ample authorities 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. But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule 1) review is not permissible on the ground.

“that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior in any other case, shall not be a ground for the review of such judgment”.

11. We accordingly see no merit in the petition. It is dismissed.

12. We would not be justified in simplicitor dismissing the petition. We therefore, dismiss the petition with costs of Rs.50,000/- to be paid by the petitioners to respondent no.1 on or before 24th November 2018.

(G.S. KULKARNI,J.)

(ACTING CHIEF JUSTICE)