

\$~R-21

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

Date of Decision: 5th April, 2018

+ **RFA 360/2012**

ZILE SINGH Appellant

Through: None.
versus

MCD Respondent

Through: None.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. Matter has been called in the regular board. None appears on behalf of the parties. Trial court record has been received.
2. Suit of the Plaintiff has been dismissed as being barred by limitation. There was no appearance even on 8th September, 2016 and 11th August, 2016. As recorded in the order dated 27th August, 2012, the issue of limitation had already been determined in favour of the Appellant vide order dated 14th January, 2005 and is extracted hereinbelow:

“Arguments heard on the Issue No.1 “Whether the suit is within the limitation period.” Counsel for plaintiff refers to letter dated 09.4.01 of the Vigilance Cell of MCD Slum & JJ Department written to the plaintiff. The date of this letter is 09.4.01 of the Vigilance Cell of MCD Slum & JJ Department to the Plaintiff and the suit of the plaintiff was filed on 29.5.02. It is evident from this document that the suit of the plaintiff is well within the limitation period. Accordingly, preliminary issue no.1 is decided in favour of the plaintiff and it is held that the suit of the plaintiff is well within the

limitation period. On joint request to come up for arguments on preliminary issue no.2 on 20.4.05.”

3. Despite this order, the suit of the Plaintiff was dismissed by the trial court vide the impugned judgment dated 30th January, 2012, on the ground that it was barred by limitation. Under these circumstances, the impugned judgment on this issue is not sustainable. It has been held in ***Hope Plantations Ltd. v. Taluk Land Board, Peermade & Anr. (1999) 5 SCC 590***, as under:

“26. It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as 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 demonstrated 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 are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that 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 any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue

arises. Section 11 of the CPC 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.”

4. Issues Nos.1, 2 & 3 have already been decided in favour of the Appellant/Plaintiff as per the impugned judgment, and do not suffer from any illegality. The finding of the Trial Court qua limitation i.e., Issue No.4 is, however, set aside. There is no cross appeal by the MCD and hence the suit is decreed for declaration as prayed for. Decree sheet be drawn accordingly.

5. Appeal is disposed of in the above terms.

**PRATHIBA M. SINGH, J.
JUDGE**

APRIL 05, 2018/dk