

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 230 of 2020**

Vijay Kumar Gupta, S/o Beni Madhav Gupta, Aged about 50 years, R/o Village Rajouti, P.S. & Tahsil Sitapur, District Surguja, Chhattisgarh.

---Petitioner**Versus**

- 1.State of Chhattisgarh, through the Secretary, Department of Forest, Govt. of Chhattisgarh, Mahanadi Bhavan, Atal Nagar, Naya Raipur, District Raipur, Chhattisgarh.
- 2.The Appellate Authority/Conservator of Forest, Surguja, Forest Circle, Ambikapur, District Surguja, Chhattisgarh.
- 3.The Competent Authority/Sub-divisional Officer (Forest), Dhaurpur, District Surguja, Chhattisgarh.

--- Respondents

For Petitioner	:-	Mr. M.P.S. Bhatia, Advocate
For State	:-	Mr. H.S. Ahluwalia, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****01/06/2020**

- 1.Proceedings of this matter have been taken up through video conferencing.

2. Petitioner herein had a vehicle - a Max pick-up bearing registration No. C.G. 15-A/3213 which was found involved in commission of a Forest offence read under Section 420 read with Section 34 of the IPC registered as Crime No. 52/2005 and accordingly, it was subjected to confiscation proceeding bearing Forest Crime Case No. 4733/24 at the instance of respondent No. 3 herein and ultimately, by its order dated 31/03/2006 (Annexure P/3), the vehicle in question was directed to be confiscated by the authorized officer. The said order passed by the Confiscating Authority i.e. respondent No. 3 was questioned by the petitioner by way of an appeal before the Appellate Authority i.e. respondent No. 2 herein, whereby its order dated 25/09/2006 (Annexure P/2), learned Appellate Authority affirmed the order passed by the Confiscating Authority. Thereafter, the said order of the Appellate Authority was further challenged by the petitioner in a revision bearing Criminal Revision No. 234/06 in which learned Sessions Judge, by its order dated 27/12/2006 (Annexure P/1), affirmed the order of the Appellate Authority, thereby, affirmed the order of

confiscation of the vehicle passed by the Confiscating Authority.

3. The petitioner further filed Writ Petition (Criminal) No. 23/2007 before this Court which was eventually dismissed on merits vide order dated 05/09/2011 (Annexure P/4). Thereafter, it appears that the criminal case pending against the two accused persons namely Shakeel Khan and Sukhdev for offence punishable under Section 420 read with Section 34 of the IPC was decided on 29/11/2017 and they were convicted for the aforesaid offence along with a fine.

4. Now, with a delay of more than two years, the present writ petition has been filed by the petitioner again questioning the order of the revisional Court (Annexure P/1) affirming the order of the Appellate Authority (Annexure P/2) affirming the order of the Confiscating Authority (Annexure P/3), on the ground that now both the accused persons have already been convicted and the confiscated vehicle was used without the knowledge of the petitioner for which they have already been punished for offence under Section 420 read with Section 34 of the IPC, therefore, now, the order passed by

the Confiscating Authority duly affirmed by the Appellate Authority and thereafter, re-affirmed by the Court of Sessions be quashed.

5. Mr. M.P.S. Bhatia, learned counsel for the petitioner, at the outset, would submit that the confiscated vehicle was being used for Forest offence without the knowledge of the petitioner and only after the dismissal of the earlier writ petition on 05/09/2011 (Annexure P/4), the criminal case has been decided on 29/11/2017 convicting both the accused persons therein for offence punishable under Section 420 read with Section 34 of the IPC, therefore, the petitioner is competent to question the order of confiscation passed by the Confiscating Authority as well as Appellate Authority affirmed by the order of the Revisional Court and it accordingly be set aside.

6. Mr. H.S. Ahluwalia, learned State counsel, on advance copy, would submit that once the writ petition has been dismissed on merits, only on the basis of the finding of the criminal Court (if any), the order of the writ Court which has become final, would not be open for reconsideration, as such, the earlier finding of

this writ Court dismissing the writ petition on merits would operate as *res judicata* and the present writ petition, as framed and filed, is not maintainable. He further submits that the present writ petition also suffers from delay and laches as this writ petition has been filed with a delay of more than two years.

7. I have heard learned counsel for the parties on the question of admission of this writ petition, considered their rival submissions made herein-above and went through the records with utmost circumspection.

8. It is correct to say that the order dated 31/03/2006 (Annexure P/3) passed by the Confiscating Authority was challenged by the petitioner which was affirmed by the Appellate Authority by order dated 25/09/2006 (Annexure P/2) and the said order was then re-affirmed by the revisional Court by order dated 27/12/2006 (Annexure P/1), and further substantive writ petition filed by the petitioner has already been dismissed on merits and once, it has been dismissed on merits, the petitioner is not entitled to question the order of the Confiscating Authority which has merged into the

order of the Appellate Authority and thereafter, into the order of the Revisional Court by maintaining second writ petition, as the finding of the earlier writ petition would operate as *res judicata* for this proceeding and this writ petition is barred by the principle of *res judicata*.

9. It is well settled that principle of *res judicata* applies to all proceeding under Section 11 of the CPC, and the provisions of the CPC do not apply to miscellaneous (writ) petition by virtue of Section 141 of the CPC. (See : **G.K. Dudani and Ors. v. S.D. Sharma and Ors.**¹). However, the principles of *res judicata* apply to writ proceedings. (See : **G.K. Dudani and Others v. S.D. Sharma and Others**²).

10. In **Daryao and Others v. State of U.P. and Others**³, the Constitution Bench of Supreme Court has held that the decision rendered in the writ petition on merits would be binding upon the parties unless it is set aside. The Constitution Bench held as under :-

1 1986 (Supp.) SCC 239 (para 18)

2 AIR 1986 SC 1455

3 AIR 1961 SC 1457 (1)

"If a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution..."

11. Thereafter, again, the Constitution Bench in Gulabchand Chhotalal Parikh v. State of Gujarat⁴, held that the decision in earlier writ petition on merits would operate as *res judicata* in subsequent suit involving the same question and the same reliefs. The Constitution Bench held as under :-

"... Art. 226 or 32 of the Constitution from operating as *res judicata* in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. Consequently on the general principle of *res judicata* the decision of the High Court on a writ petition under Art. 226 on the merits on a matter after contest will operate as *res judicata* in a subsequent regular suit between the same parties with respect to the same matter..."

12. The aforesaid principle has been followed in Union of India v. Nanak Singh⁵. It is held therein as under :-

"This Court in Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153 observed that the provisions of s. 11 of the Code of Civil Procedure are not

4 AIR 1965 SC 1153

5 AIR 1968 SC 1370

exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit, and on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decision after full contest. The Court in Gulabchand's case, AIR 1965 SC 1153 left open the question whether the principle of constructive res judicata may be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceeding but was not so raised therein, must still be deemed to have been decided."

13. The aforesaid principle has been followed in

Smt. Pujari Bai etc. v. Madan Gopal (dead) L.Rs.

Viz. Smt. Jaiwanti and others⁶. It is held

therein as under :-

"24. It thus becomes clear that when a writ petition after contest is disposed of on merits by a speaking order, the question decided in that petition would

6 AIR 1989 SC 1764

operate as *res judicata*, but not a dismissal in limine or dismissal on the ground of laches or availability of alternative remedy..."

14. In Ashok Kumar Shrivastav v. National Insurance Company Ltd. And others⁷, the Supreme Court clearly held that an issue heard finally and decided by a High Court in a petition under Article 226 and/or 227 of the Constitution of India would operate as *res judicata* when the matter again comes before the High Court by way of an appeal under Section 100 of the CPC and carved out an exception that *res judicata* does not operate to detriment or impairment of functional rights.

"14. Though the said explanation may not *stricto sensu* apply to the trial stage, the principle couched in it must gain application thereto. It is immaterial that the writ petition was filed only subsequently because the findings made therein became final as no appeal was filed against the judgement. The basic idea in the rule of *res judicata* has sprouted from the maxim "*nemo debet bis vexari pro una at eadem causa*" (no man should be vexed twice over for the same cause). In *Y.B. Patil & ors vs. Y.L. Patil* [1976 (4) SCC 66] a three-Judge Bench of this Court considered the effect of a decision rendered in a writ petition at subsequent stages of the same *its*. It held :

" The principles of *res judicata* can be invoked not only in separate subsequent proceedings, they also get attracted in

7 (1998) 4 SCC 361

subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding.""

15. The Constitution Bench of Supreme Court, in the matter of Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Others⁸, authoritatively laid down the principle of law that principles of *res judicata* are applicable to writ petitions. It was held as under :-

"35. Writ Petition No. 1327 of 1982 was argued by J.H. bhatia, the petitioner, in person. He was directly recruited as Deputy Engineer Class II in July 1959 and has challenged the constitutional validity of the 1978 Rules. Mr. Shinghvi, the learned counsel for the respondents, took a preliminary objection to the maintainability of the writ application on the ground that his claim stands barred by principles of *res judicata*. Admittedly, he was represented in W.P. No. 672 of 1981, filed before the Bombay High Court which was dismissed on September 7, 1981, upholding 1978 Rules. An application under Article 136 of the Constitution being numbered as S.L.P. No. 8064 of 1981 was filed from this judgment in representative capacity and was dismissed by this Court on December 29, 1981. These facts were not denied by the petitioner before us, and it was therefore contended on behalf of the respondents that so far the validity of the 1978 Rules is concerned, it must be held to be binding on the petitioner in respect of identical relief now pressed by him in the present writ case. The objection appears to

be well founded. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in *Daryao v. State Of U.P.*⁹ held that where the High Court dismisses a writ petition under subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is founded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed at SCR p. 595 of the reported judgment, thus : (SCR p. 595)

"We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the

9(1962) 1 SCR 574 : AIR 1961 SC 1457

present writ petition are directed against the same statute and the grounds raised by the petitioner in that behalf are substantially the same."

The decision in *Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri*¹⁰, further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

16. The principle of law enunciated by their Lordships in Direct Recruit Class II Engineering Officers' Association (supra) extending the doctrine of *res judicata* was then followed by the Supreme Court recently in the matter of P. Bandopadhyaya and Others v. Union of India and Others¹¹ by holding as under :-

"8.11....Albeit the decision of the Constitution Bench was in the context of a writ petition filed under Article 32, it would apply with greater force to bar a writ petition filed under Article 226, like the one filed by the present appellants, by the operation of principle of *res judicata*"

10 (1986) 1 SCC 100 : 1985 Supp 3 SC 1457

11 (2019) 13 SCC 42

17. Thus, it is authoritatively held by their Lordships of the Supreme Court that principle of *res judicata* would apply to bar a writ petition filed under Article 226 of the Constitution of India and once an issue has been heard finally and decided by a High Court in a writ proceeding under Article 226 and/or 227 of the Constitution of India on merits after full contest, the said finding would operate as *res judicata* in a subsequent proceeding involving the same issue between the same parties.

18. Reverting to the facts of the case, in light of the principle of law enunciated by their Lordships in the judgments noticed herein-above, it is quite vivid that W.P.(Cr.) No. 23/2007 preferred by the petitioner questioning the revisional order affirming the appellate/confiscation order was dismissed on merits by this Court after full hearing by order dated 05/09/2011 (Annexure P/4) by recording the following finding :-

"10.... the petitioner has not examined his substantial and star witness Shakeel Khan. In absence of such evidence, while passing the order of confiscation and dismissing the revision filed on behalf of the petitioner, the Court below has not committed any illegality requiring any

interference in exercise of supervisory jurisdiction. Consequently, the petition is dismissed. No order as to costs."

19. From the above-stated finding, it is quite vivid that petitioner's substantive writ petition questioning the revisional order affirming the appellate and confiscation order has already been dismissed on merit after full-fledged hearing way back in the year 2011 and that order/finding has attained finality in absence of challenge before the higher forum, therefore, this writ petition filed by the petitioner questioning the order of confiscation and other two orders is fully barred by the principle of res judicata as enunciated by the Supreme Court in the above-stated judgments including the recently rendered judgment in P. Bandopadhyaya (supra). Furthermore, the criminal case was decided on 29/11/2017 and after completion of more than two years, this writ petition has been filed by the petitioner on 17/3/2020. The cause of delay of more than two years in filing the present petition has not been explained by the petitioner and in paragraph 7 of the writ petition, it has conveniently been declared that there is no delay, as such, the present writ

petition is hit by the principle of *res judicata* and doctrine of delay and latches as well.

20. As a fallout and consequence of above-stated legal analysis, the present writ petition deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet