

Hukum Chand and ors. Vs. Delhi Development Authority and ors.

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Court : Delhi

Decided On : Jul-04-2008

Reported in : 152(2008)DLT565; 2008(105)DRJ271

Judge : T.S. Thakur and; Siddharth Mridul, JJ.

Acts : [Delhi Development Act, 1957](#) - Sections 21, 21(2), 31C, 31D, 31D(3), 31E and 53B; Delhi Development (Amendment) Act, 1984 - Sections 6; [Industrial Disputes Act, 1947](#); Madhya Pradesh Co-operative Societies Act; Code of Civil Procedure (CPC) - Sections 11

Appeal No. : Regular First Appeal Nos. 699-710/2006

Appellant : Hukum Chand and ors.

Respondent : Delhi Development Authority and ors.

Advocate for Def. : Gaurav Sarin, Adv.

Advocate for Pet/Ap. : M.S. Ganesh, Sr. Adv. and; Sushila Ram, Adv

Disposition : Appeal dismissed

Judgement :

Siddharth Mridul, J.

1. The present appeals have been preferred against the judgment and decree dated 6th July, 2006, whereby the Trial Court dismissed the suit filed by the plaintiffs, on the preliminary issue that the suit was barred by the principles of res judicata. The core question involved in the first appeals fall within a very narrow compass and may be framed thus: Whether a suit for declaration and consequential relief of injunction is barred on the principles of res judicata by an earlier decision of an appellate tribunal constituted under the [Delhi Development Act, 1957](#)(DD Act).

2. The factual matrix, crystallized into a chronology of dates and events relevant to determine the above question for the purpose of the present appeals, is as follows:

1. The suit land situated in Village Yusuf Sarai, New Delhi was purchased by registered sale deed by late Pandit Leela Ram, predecessor in interest of the appellants.

2. The suit land were acquired by an award No. 1259 on the 31st January, 1962, and immediately after its acquisition handed over to the Delhi Development Authority(DDA) for the planned development of Delhi.

3. In or around September 1990, the appellants came to know of the transfer of the suit land to the Indian Oil Corporation(IOC) by the DDA, without the latter having carried out any 'development' thereon, as specifically averred by the appellants.

4. The appellants filed Civil Writ Petition No. 3516 of 1990 in this Court arraying therein the Union of India, the DDA and the IOC as respondents. In the said writ petition the appellants sought the quashing of the transfer of suit land from DDA to the IOC, and a mandamus to enable the appellants to exercise the right of first purchase available to them in terms of the proviso to Sub-section (2) of Section 21 of the DD Act. A Division Bench of this Court rejected the said writ petition vide its order dated 16th November, 1990.

5. The appellants preferred SLP (Civil) No. 2643 of 1991 against the said decision dated 16th November, 1990 before the Supreme Court of India.

6. By its order dated 21st September, 1992, the Supreme Court disposed of the said SLP in the following terms:

It is disputed that by the notification dated May 24, 1961, it is not only the land of the petitioner but also other lands which were acquired. It is, however, contended on behalf of the petitioners that although it is so, the lands were not developed when they were sold to the Indian Oil Corporation in 1988. This is seriously disputed on behalf of the respondents. According to them the land was very much developed as they pointed out in paragraph 5 of their additional affidavit filed in this Court on 9.12.91. This is a matter which will require investigation into facts. Writ petition is not a proper remedy for the same. If the petitioner is so advised, he may agitate the question before a proper forum.

The petition stands disposed of.

7. The appellants thereafter preferred Appeal No. 420/ATMCD/92, under Section 31C of DD Act, against the decision of the DDA in transferring the suit land to IOC as aforesaid. By its order dated 25th January, 1993, the Appellate Tribunal held that the suit land allotted to IOC, was part of land developed by DDA in accordance with the Zonal Development Plan and had been disposed of by DDA after carrying out development in accordance with law. The appeal filed by the appellants was thus dismissed on merits with a categorical finding to the effect that appellants were not entitled to the benefit of proviso to Sub-section (2) of Section 21 of the DD Act.

8. The appellants filed Civil Writ Petition No. 2494 of 1993 before this Court seeking quashing of the said order dated 25th January, 1993. In the said Civil Writ Petition No. 2494 of 1993, the appellants also prayed for a mandamus to direct DDA to offer the suit land to appellants in accordance with the provision of Sub-section (2) of Section 21 of the DD Act.

9. A Division Bench of this Court dismissed the said Civil Writ Petition 2494 of 1993 vide its order dated 18th May, 1993 thus:

The finding of fact arrived at by the Appellate Tribunal in its well reasoned order dated 25th January, 1993 calls for no interference and we find ourselves in agreement with the conclusions arrived at that the development as envisaged by the Act did take place and that proviso to Sub-section (2) of Section 21 of the Delhi Development Act is not applicable in this case.

There is no merit in this writ petition. Dismissed.

10. The SLP (Civil) No. 17335 of 1993 against the said order dated 18th May, 1993 was rejected by the Supreme Court with the following order:

The SLP is dismissed.11. The appellants thereafter instituted the present Suit in this Court praying: (a) for a declaration that the transfer of suit land vide letter dated 17th December, 1989, was without 'development', and is consequently void; and the appellants are therefore entitled to right of first purchase of suit land under Sub-section (2) of Section 21 of the DD Act, (b) for a mandatory injunction directing the DDA to transfer the suit land to the appellants in accordance with the provisions of Sub-section (2) of Section 21 of the DD Act, and (c) for permanent injunction restraining the IOC from carrying out any further construction on the suit land.

12. This Court framed the following preliminary issues:

(a) Whether the suit is barred by principles of res judicata and limitation? (OPD)

(b) Whether the suit is bad for misjoinder of parties and whether defendant No. 2 is a necessary party to the suit? (OPD)

13. The Suit No. 1410 of 1994 stood transferred to the District Court on 23rd October, 2003 and was renumbered as Suit No. 409/06/94.

14. As aforesaid, by the impugned judgment and decree dated 6th July, 2006, on the above preliminary issues, the Trial Court held that the suit was not barred by limitation and was not bad for misjoinder of parties and that IOC was a necessary party to the suit. However, on preliminary issue No. 1, the trial Court held that the suit was barred by principles of res judicata.

3. Before examining the submission of counsel on the question raised before us, it is necessary to extract the relevant provisions of the CPC and DD Act. Section 11 of CPC reads as under:

11. Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation VIII- An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

Relevant provisions of the DD Act read as under:

21. Disposal of land by the Authority or the local authority concerned. - (1) Subject to any directions given by the Central Government under this Act, the Authority or, as the case may be, the local authority concerned may dispose of--

(a) any land acquired by the Central Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of Delhi according to plan.

(2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under Sub-section (1) shall be exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local

authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.31C. Appeals. (1) Any person aggrieved by any of the following orders made under this Act, may prefer an appeal to the Appellate Tribunal, namely:.

(b) an order of the Authority or the local authority disposing of any land under Section 21;.

31D. Appeals against orders of Appellate Tribunal.- (1) An appeal shall lie to the Lieutenant Governor of the National Capital Territory of Delhi against an order of the Appellate Tribunal, confirming, modifying or annulling an order of the Authority, officer of the Authority, local authority or competent authority, as the case may be, under this Act..

(3) An order of the Lieutenant Governor on an appeal under this section, and subject only to such order, an order of the Appellate Tribunal under Section 31C and subject to such orders of the Lieutenant Governor or an Appellate Tribunal, an order of the Authority, officer of the Authority, local authority or competent authority referred to in Sub-section (1) of that section shall be final.

31E. Bar of jurisdiction of courts.- (1)After the commencement of Section 6 of the Delhi Development (Amendment) Act,1984, no court shall entertain any suit, application or other proceedings in respect of any order appealable under Section 31C, and no such order shall be called in question otherwise than by preferring an appeal under that section.

(2) Notwithstanding anything contained in Sub-section (1), every suit, application or other proceeding pending in any court immediately before the commencement of Section 6 of the Delhi Development (Amendment) Act, 1984, in respect of any order, appealable under Section 31C shall continue to be dealt with and disposed of by that court as if the said section had not been brought into force.]

53B. Notice to be given of suits.- (1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made thereunder until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit such as is described in Sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing contained in Sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.]

4. Mr. M.S. Ganesh, Senior Advocate appearing on behalf of the appellants made the following submission:

(i) That under Section 53B of the DD Act read in conjunction the proviso to Sub-section (2) of Section 21 of the said Act, the question of title or recovery of the land could be determined only in a suit and as such was beyond the jurisdiction of the appellate tribunal. In other words, the appellate tribunal being a forum of limited jurisdiction, was incompetent to grant the relief of declaration of title and recovery of land and as such its adjudication in respect of the suit land would not operate as

res judicata in the subsequent suit on account of the adjudication being null and void as a determination by a tribunal not competent to decide the issue, and

(ii) that exclusion of jurisdiction of civil courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied.

5. Learned Counsel for the appellants inter alia relied on the following decisions in support of his contentions:

1. Mathura Prasad Bajoo Jaiswal v. Dossibai N. Jeejeebhoy : [1970]3SCR830 A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law. A question of jurisdiction of the Court or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. Further, if by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same parties, whether the cause of action in the subsequent litigation is the same or otherwise.

2. Isabella Johnson v. M A Susai : AIR 1991 SC993 A court which has no jurisdiction in law cannot be conferred with the jurisdiction by applying principles of res judicata. It is well settled that there can be no estoppel on a pure question of law and in this case the question of jurisdiction is a pure question of law.

3. Kiran Singh v. Chaman Paswan : [1955]1SCR117 - It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set whenever and wherever it is sought to be

enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties.

4. Balai Chandra Hazra v. Shewdhari Jadav : [1978]3SCR147 When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him.

5. Sushil Kumar Mehta v. Gobind Ram Bohra : (1990)1SCC193 it is settled law that normally a decree passed by a Court of competent jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a Court without jurisdiction over the subject matter or other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non iudice. A decree passed by such a Court is a nullity and is nonest. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the Court to pass a decree which cannot be cured by consent or waiver of the party. If the Court has jurisdiction but there is defect in its exercise which does not go to the root of its authority, such a defect like pecuniary or territorial could be waived by the party.

6. On behalf of the DDA, Mr. Gaurav Sarin, Advocate invited our attention to the order passed by the Appellate Tribunal and to the order passed by this Court in CWP No. 2494/1993, to contend that the determination made thereunder would operate as res judicata in terms of Section 11 of the CPC and consequently the subsequent suit on matter directly and substantially in issue in the earlier

proceeding could not be entertained or tried.

7. In order to determine the question posed hereinabove, a brief exposition of the doctrine of res judicata is essential. The doctrine of res judicata literally means matter in which judgment has been pronounced. The test of res judicata, inter alia, is whether both the proceedings have been filed based on the same cause of action. The doctrine of res judicata is based on the maxim 'Interest reipublicae ut sit finis litium' or in other words 'it concerns the state that there be an end to law suits' and partly on the maxim 'Nemo debet bis vexari pro una at eadam causa' or in other words 'no man should be vexed twice over for the same cause'.

8. The rule of res judicata contains the principle of conclusiveness of the judgment and is an inhibition against the Court from trying the subsequent proceeding. The principle ousts the jurisdiction of the Court from deciding a 'lis' which has been disposed of on merits by a speaking order. In *Daryao v. State of Uttar Pradesh* reported as : [1962]1SCR574 , the Supreme Court observed that the principle underlying Section 11 are that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter and that these principles are applicable even when the case does not fall within the strict terms of Section 11.

9. In *B. Dass v. State of Punjab* , the Punjab High Court held that in view of *Daryao v. State of Uttar Pradesh* (Supra), the general principle of res judicata would be attracted where a decision in a writ petition is pleaded as a bar against a subsequent suit if the other conditions are satisfied. In *R.C. Tiwari v. M.P. State Co-operative Marketing Federation Ltd.*, : (1997)1ILLJ236SC , the question before the Supreme Court was whether the dispute relating to dismissal of an employee decided by the Deputy Registrar of Madhya Pradesh, Co-operative Societies could be re-agitated before a labour court under the [Industrial Disputes Act, 1947](#). It was held, that no doubt Section 11 CPC does not in terms apply to Deputy Registrar of Madhya Pradesh, Co-operative Societies Act because it is not a court, but a tribunal constituted under the Societies Act is given special jurisdiction. So the principles laid down therein mutatis mutandis squarely apply to the procedure provided under the Act, and operate as res judicata.

10. In *Gulab Chand v. State of Gujrat* reported as : [1965]2SCR547 , the Supreme Court observed that there was no 'good reason to preclude such decision on matters of controversy in writ proceedings under Articles 226 or 32 of Constitution from operating as *res judicata* in subsequent regular suits on the same matters in controversy between the same parties'.

11. In *Hope Plantation Ltd. v. Taluk Land Board, Peermade* 1999 5 SCC, the Supreme Court held the plea of *res judicata*, though technical, is based on public policy in order to put an end to litigation. After the insertion of Explanation VIII, which contains a non-obstante clause, the legal position with regard to the adjudication by courts of limited jurisdiction operating as *res judicata* in subsequent suits has been conclusively established.

12. A plain reading of Explanation VIII clearly indicates that, the application of Section 11 of the CPC extends to a decision of a court of limited jurisdiction, inasmuch as, an issue heard and finally decided within the competence of such court, will operate as *res judicata* in a subsequent suit. The only condition in order to attract Explanation VIII is that the decision in a former proceeding must be final and not subject to the concurrent jurisdiction of a civil court. It is thus unquestionable that a matter directly and substantially in issue in a former proceeding, adjudicated upon by a court of exclusive jurisdiction, will bar the trial of the same issue in a subsequent suit. It is equally settled that tribunals invested with a special jurisdiction are courts of exclusive jurisdiction in respect of the specific matters that they are competent to adjudicate. A decision in a previous proceeding tried by a tribunal will be *res judicata* if the proceeding falls within the class to which the Act constituting the tribunal applies. Therefore, it is observed that in order that a decision in a former proceeding operates as *res judicata*, the requirement of Section 11 CPC is that the tribunal which decided the former proceeding must either be a court of exclusive jurisdiction or a court of limited jurisdiction competent to try the issue raised in the subsequent suit.

13. Having carefully examined the relevant provisions, perused the record and heard counsel, we observe that in the present appeals, the cause of action, namely the transfer of suit land to IOC by the DDA without carrying out any

'development' thereon, is the same cause of action based on which the appellants preferred the earlier two rounds of proceedings including the appeal before the Appellate Tribunal challenging the order of the DDA in so transferring the suit land. It is also seen that essentially the relief claimed by the appellants in all the three rounds of litigation was the enforcement of their right of first purchase of the suit land in terms of the proviso to Sub-section (2) of Section 21 of the DD Act. It is not disputed that the Appellate Tribunal heard and finally decided the question of 'development' of the suit land against the appellants in the appeal under the provision of Section 31C of the DD Act. Further the finding of the Appellate Tribunal became final and binding on the appellants, who chose not to prefer an appeal against it under the provision of Section 31D of the DD Act. It is this order and decision of the Appellate Authority, which the Trial Court determined as operating as res judicata and consequently as a bar to the present suit for declaration and permanent injunction filed by the appellants. The appellants contend that the determination of the Trial Court is erroneous since it failed to appreciate that the order of the Appellate Tribunal was a nullity and could not operate as res judicata since the adjudication by the Tribunal was without jurisdiction. According to the appellants a question of title or recovery could be determined only in a suit envisaged under Section 53B of the DD Act.

14. In the present case, from a plain reading of the provision of Sub-section (1)(b) of Section 31C, it is apparent that the Appellate Tribunal was competent to adjudicate the appeal against the order of the DDA disposing of the suit land under the provision of Section 21 of the DD Act. It is also equally clear from a plain reading of Sub-section (3) of Section 31D that, the order of the Appellate Tribunal under Section 31C subject only to such orders that the Lieutenant Governor may have rendered in the appeal which the appellants chose not to prefer under the said Section, resultantly became final. In any event the Writ Petition that was preferred by the appellants against the said order of Appellate Tribunal was also dismissed by this Court vide its order dated 18th May, 1993, affirming therein the reasons as well as conclusions arrived at by the Appellate Tribunal in this regard. Further, as is seen the provision of Section 31E unequivocally bar the jurisdiction of civil courts by expressly providing that, after the commencement of Section 6 of DD Act (w.e.f. 24.2.1986), no court shall entertain any suit in respect of the said

order transferring land appealable under Section 31C, and that no such order could be called into question otherwise than by preferring an appeal under that Section. Therefore, we are of the opinion, that the Appellate Tribunal as a court of exclusive jurisdiction was alone competent to hear, adjudicate and determine the appeal against the said order of the DDA disposing of the suit land under Section 21. The said order dated 25th January, 1993 passed by the Appellate Tribunal, having been rendered by a court of competent jurisdiction on the same issue between the very same parties finally indisputably operates as *res judicata* to bar the present suit filed by the appellants.

15. The provision of Section 53B relied upon heavily by the appellants was inserted w.e.f. 30.12.1963 i.e. prior to the insertion of Section 31C, 31D and 31E and only provides that a suit of recovery of immoveable property or for a declaration of title thereto, could have been instituted and prosecuted without the statutory notice required in terms of Sub-section (1) of Section 53B. However, the said provision cannot be looked at in isolation. It has to be read in harmony alongwith the mandate of Sections 31C, 31D and 31E which were inserted by way of amendment of the DD Act and came into force w.e.f. 24.2.1986 as aforesaid. In other words although the provision of Section 53B provided for the requirement of statutory notice only before the institution of proceedings against DDA or its officers etc. acting in accordance with DD Act, whilst expressly excluding from its rigour a suit for recovery or declaration of title, but the conjoint reading of the said provisions clearly leads to the conclusion that only a suit for title or recovery pending prior to insertion of Sections 31C to 31E on 24.2.1986 would continue to be dealt with and disposed of by the civil court on the legal fiction as if Section 31C had not been brought into force. The said provision of Section 53B cannot and does not in any manner limit or curtail the exclusive jurisdiction of the Appellate Tribunal to adjudicate and determine the appeal filed in the year 1992 in relation to the said order of DDA disposing of suit land under the provisions of Section 21 of the DD Act. No other point was raised by counsel for the parties.

16. In this view of the matter we find no merit in the submission made on behalf of the appellants. The core question framed hereinabove is answered in the affirmative. The adjudication by the Appellate Tribunal of the issue of

'development' of suit land with the specific finding therein that the appellants were not entitled to the benefit of the right to first purchase, as opined by us hereinabove, clearly operates as res judicata qua the present suit. This being the position, as a corollary to our discussion and observations aforestated, we affirm the judgment and decree passed by the Trial Court and dismiss the present appeals accordingly. The parties to bear their respective costs.

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