

Koran Vs. Kamala Shetty

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Court : Kerala

Decided On : Mar-30-1977

Reported in : AIR1978Ker172

Judge : Gopalan Nambiyar, Ag. C.J.,; George Vadakkal and; Chandrasekhara Menon, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; Kerala Land Reforms Act, 1969 - Sections 80B

Appeal No. : C.R.P. 2806 of 1976-H

Appellant : Koran

Respondent : Kamala Shetty

Advocate for Def. : U.K. Kunikulaya, Adv.

Advocate for Pet/Ap. : T.P. Kelu Nambiyar and; P.G. Rajagopal, Adv.

Disposition : Petition dismissed

Judgement :

Gopalan Nambiyar, Ag. C.J.

1. This revision petition has come on before a Full Bench to consider two principal questions that appeared to arise for determination, viz. (1) the applicability of the

principle of res judicata, and in particular, the principle, of 'might and ought' embodied in Explanation IV to Section 11 of the C. P. C. to proceedings before the Land Tribunal under the Kerala Land Reforms Act; and (2) the question whether the status of a tenant who applies for purchase of kudikidappu has to be Judged with reference to the date of the commencement of Act 35 of 1969 i. e. 1-1-1970 or with respect to the date of making the application. The latter part of the first question does not actually arise on the facts; and the second question does not fall for consideration in view of our answer to the first part of the first question.

2. The revision is by the unsuccessful petitioner who applied for purchase of kudikidappu rights under Section 80-B of the Land Reforms Act. The application was allowed by the Land Tribunal, Kasaragod. An appeal from the order of the Tribunal was allowed by the Appellate Authority (Land Reforms), Kozhi-kode, and the application for purchase of kudikidappu was directed to be dismissed. The reason for the dismissal of the application ,was that two prior applications for purchase of the kudikidappu had been dismissed, O. A, No. 81 of 1970 which was dismissed on 15-11-1971, and O. A. 881 of 1971 dismissed on 11-11-1971. The latter application was dismissed on the ground that the applicant-petitioner had 3.66 acres of land on registry under the rules for assignment of Government lands for settlement of agricultural labourers which had been assigned in his favour in 1966, and therefore was disentitled under the Act to claim the status of a kudikidappukaran.

3. Counsel for the revision-petitioner contended that the assignment of Government lands to him had been cancelled on 11-8-1971 and this circumstance would make a difference which would enable him to maintain the present application and which would therefore enable him to steer clear of the bar of res judicata. He cited the decision of a learned Judge of this Court in Thomas v. Punnoose, (1973 Ker LT 1000) holding that neither the Land Reforms Act nor the Rules prohibited the filing of a second application and that the principles of res judicata embodied in Section 11 of the C. P. C. and other similar provisions do not apply to proceedings under the Act. An appeal was taken against the judgment of the learned Judge and a Division Bench, of which one of us (myself) was a member, sustained the judgment of the learned Judge on different grounds

altogether and held that no Question of res judicata would arise on the facts (vide the decision in *Thomas v. Punnoose*, 1975 Ker LT 406). The question of the applicability of the principle of res judicata should therefore be examined de hors the above decision.

4. In *Kelappan v. Anandan*, 1970 Ker LT 510 : (AIR 1971 Ker 11), a Division Bench of which I was a member, had surveyed somewhat exhaustively, the applicability of the principle of res judicata to suits. The principle laid down by us in the said decision was that where the question of res judicata arose for consideration in suits, in civil courts, the provisions of Section 11 of the C. P. C. were both exclusive and exhaustive, and no resort could be had to any general doctrine of res judicata outside what was embodied in the section. The decision again has no direct application to the question that falls for determination in this revision. In *Smt. Raj Lakshmi Dasi v. Banamali Sen* (AIR 1953 SC 33), the Supreme Court had occasion to consider how far the proceedings taken in a Land Acquisition Court, can be said to be conclusive or to constitute res judicata in respect of matters decided 'by it, when the same question came up for decision later, in other proceedings. It was ruled that the condition regarding the competency of the former court to try the subsequent suit is one of the limitations engrafted on the general rule of res judicata by Section 11 of the Civil P. C. and has application to suits alone; that when a plea of res judicata is founded on general principles of law, all that was necessary to establish was, that the court that heard and decided the former case, was a court of competent jurisdiction; and that beyond this, it was not necessary to further establish that it had jurisdiction to hear the latter suit; and that a plea of res judicata on general principles can successfully be taken in respect of judgments of courts of exclusive jurisdiction, like the revenue courts, land acquisition courts, administrative courts etc. In the course of its judgment, the Supreme Court referred to the classic observation of Sir Lawrence Jenkins who delivered the judgment of the Board in *Sheoparsan Singh v. Ramnandan*. 43 Ind App 91 (at p. 98) : (AIR 1916 PC 78) which reads as follows (at pp. 80-81 of AIR):

'In view of the arguments addressed to them, their Lordships desire to emphasize that the rule of res judicata, while founded on ancient precedent, is dictated by a

wisdom which is for all time. 'It has been well said declared Lord Coke, *interest reipublicae at sit finis litium*-- otherwise, great oppression might be done under colour and pretence of law'. Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijaneswara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for his purpose the text of Katyayana, who describes the plea thus: 'If a person, though defeated at law, sue again, he should be answered, 'you were defeated formerly".' This is called the plea of former judgment. And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law'.

The Supreme Court decision was concerned with the question of the applicability of the general principle of *res judicata* to courts and not to Tribunals. The applicability of the principle of *res judicata* to Tribunals fell to 'be considered by the Supreme Court in *Burn and Co. v. Their Employees* (AIR 1957 SC 38). - The question arose whether an award given by an Industrial Tribunal on a matter in controversy between the parties after hearing, was to have no force if repudiated by either of them, and the matter comes up for consideration again before that Tribunal. Venkata-rama Ayyar J. who spoke for the Court observed thus (at p. 43):--

'What then is the position Are we to hold that an award given on a matter in controversy between the parties after full hearing ceases to have any force if either of them repudiates it under Section 19(6), and that the Tribunal has no option when the matter is again referred to it for adjudication, but to proceed to try it *de novo*, traverse the entire ground once again, and come to a fresh decision. That would be contrary to the well-recognised principle that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be re-asserted. It is on this principle that the rule of *res judicata* enacted in Section 11. Civil P. C. is based. That section is no doubt, in terms inapplicable to the present matter, but the principle underlying it expressed in the maxim '*interest reipublicae at sit finis litium*', is founded on sound public policy and is universal application, (vide Broom's Legal Maxims, Tenth

Edition, page 218). 'The rule of res judicata is dictated' observed Sir Lawrence Jenkins C. J. in *SheoparsanSingh v. Ramnandan Prasad Narayan Singh*, 43 Ind App 91 : ILR 43 Cal 694 (AIR 1916 PC 78), 'by a wisdom which is for all time'.

And there are good reasons why this principle should be applicable to decisions of Industrial Tribunals also. Legislation regulating the relation between Capital and Labour has two objects in view. It seeks to ensure to the workmen who have not the capacity to treat with capital on equal terms, fair returns for their labour. It also seeks to prevent disputes between employer and employees, so that production might not be adversely affected and the larger interests of the society might not suffer. Now, if we are to hold that an adjudication loses its force when it is repudiated under Section 19 (6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work it either party will treat it as a mere stage in the prosecution of a prolonged struggle, and far from bringing industrial peace the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigour.'

Here, then, is a direct pronouncement by the Supreme Court that the general principle of res judicata or collusiveness of a prior decision is founded on sound public policy and is of universal application and in particular is applicable to adjudication by tribunals also. The general principle laid down above was not in any way detracted from in the decision in *Workmen of Balmer Lawrie and Co. v. Balmer Lawrie and Co.* (AIR 1964 SC 728 : (1964) 5 SCR 344). There it was observed (at p. 731 of AIR):

'While dealing with the question about the revision of wage scales, it is necessary to remember that the technical considerations of res judicata should not be allowed to hamper the discretion of industrial adjudication. It is undoubtedly true that wage scales are devised and wage structures constructed as matters of long-term policy, and so, industrial adjudication would naturally be reluctant to interfere with the wage structures without justification or in a light-hearted manner. When a wage structure is framed, all relevant factors are taken into account and normally, it should remain in operation for a fairly long period) but it would be unreasonable

to introduce considerations of res Judicata as such, because for various reasons which constitute the special characteristics of industrial adjudication the said technical considerations would be inadmissible. As the Labour Appellate Tribunal itself has observed, the principle of gradual advance towards the living wage which industrial adjudication can never ignore, itself constitutes such a special feature of industrial adjudication that it renders the application of the technical rule of res judicata singularly inappropriate. If the paying capacity of the employer increases or the cost of living shows an upward trend or there are other anomalies, mistakes, or errors in the award fixing wage structure, or there has been a rise in the wage structure in comparable industries in the region, industrial employees would be justified in making a claim for the re-examination of the wage structure and if such a claim is referred for industrial adjudication, the Adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the making of the award or that material change in relevant circumstances had not been proved. It is, of course, not possible to lay down any hard and fast rule in the matter. The question as to revision must be examined on the merits in each individual case, that is brought before an adjudicator for his adjudication'.

In the *Associated Cement Staff Union v. Associated Cement Co. Ltd. Bombay* (AIR 1964 SC 914 : (1964) 1 SCWR 265), this principle was again re-affirmed as follows (at p. 917 of AIR):

'It is true that too frequent alterations of conditions of service by industrial adjudication have been generally deprecated by this Court for the reason that it is likely to disturb industrial peace and equilibrium. At the same time the Court has more than once pointed out the importance of remembering the dynamic nature of industrial relations. That is why the Court has specially in the more recent decisions refused to apply to industrial adjudications principles of res judicata that are meant and suited for ordinary civil litigations. Even where conditions of service have been changed only a few years before, industrial adjudication has allowed fresh changes if convinced of the necessity and justification of these by the existing conditions and circumstances. Where, as in the present case, in a previous Reference the Tribunal had refused the demand for change, there is even less reason for saying that that refusal should have any such binding effect',

5. Consistent with the principle of the above decisions and in no way at variance with them, it was observed by the Supreme Court in *Workmen of the Straw Board v. Straw Board* . (AIR 1974 SC 1132 at p. 1140) as follows:

'25. It is now well established that although the entire Civil P. C. is not applicable to industrial adjudication, the principles of res judicata laid down under Section 11 of the Civil P. C., however, are applicable, wherever possible, for very good reasons. This is so since multiplicity of litigation and agitation and reagitation of the same dispute at issue between the same employer and his employees will not be conducive to industrial peace which is the principal object of all labour legislation bearing on industrial adjudication. But whether a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and the same had 'been heard and finally decided by the Tribunal will be of pertinent consideration and will have to be determined before holding in a particular case that the principles of res judi-cata are attracted'.

The principle was repeated again in *Punjab Co-operative Bank Ltd. v. R.S. Bhatia* (AIR 1975 SC 1898) where it was stated (at p. 1899):

'5. The first point urged on behalf of the appellant is that the respondent was not a workman within the meaning of the Act and that the Labour Court committed an error in saying that there was no evidence led on this issue and resting its judgment on the principles of res judicata on the basis of the decision of Shri Kaul in I. D. No. 66/1962. In our opinion the Labour Court rightly applied the principles of res judicata to the issue whether the respondent was a workman or not within the meaning of the Act. The same parties in I. D. No. 66/1962 joined issue on the aforesaid question. A decision given by the competent Labour Court in that regard has rightly been held as a bar on the principles of res judicata in the trial of the same issue in the present proceeding.'

There is thus sufficient authority to hold that the principle of finality or conclusiveness of a prior decision or the gene-ral principle of res judicata is applicable even to quasi-judicial bodies like the Land Tribunals functioning under the Kerala Land Reforms Act. On principle it appears to us that this should be so, as these Tribunals are invested with the task of deciding important rights and have

to do so on principles of natural justice and fair play. In these circumstances, the rules of *res judicata* are applicable to them. We are, for the present content to understand the decision of a Division Bench of this Court in *Workmen of the Cochin Lighterage Corporation v. Paul Abrao* (1974 Ker LT 61), as a concession to the wide powers and the special nature of the jurisdiction of the Industrial Tribunal, rather than as ruling out altogether the applicability of the principle of *res judicata* to them. As that question is not directly before us, we need not express our final opinion.

6. The question whether the rule of 'might and ought' embodied in Explanation IV to Section 11 of the C. P. C. can be regarded as part of general rule of *res judicata* and whether it can have application to proceedings before these Tribunals does not directly arise for consideration on the facts of the present revision petition. Counsel for the revision petitioner fairly conceded before us that the facts and circumstances which were present at the time of the filing of the prior application, O. A. 881 of 1971, were precisely the same as those at the time of filing the application which has given rise to the present revision petition. That 'being so, there is no need to investigate or to pronounce on the question as to whether the failure to put forward any circumstance or contention in the prior application would debar the petitioner from urging the same in the present application on the principle of 'might and ought' embodied in Explanation IV to Section 11 of the Civil P. C.

7. As the matter was, to some extent argued before us, we may merely notice that after some vacillation of judicial opinion, the Supreme Court in *Devilal Modi v. Sales Tax Officer, Ratlam* (AIR 1965 SC 1150) and *Gulabchand Chhota-lal Parikh v. State of Gujarat* (AIR 1965 SC 1153), has accepted the position that the principle of 'might and ought' would have application in writ proceedings. (See the discussion in Seervai's Constitutional Law of India, Second Edition, Vol. II, p. 828). We need not for the purpose of this case examine the same.

8. In view of our conclusion that the present application under Section 80-B is barred by *res Judicata* by reason of the prior order in O. A. 881 of 1971, there is no need to consider the second question set out in the opening paragraph of this

judgment. We express no opinion on it.

We dismiss this revision petition with costs.

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