

MANU/BH/0119/1995

Equivalent Citation: 1995(1)BLJR708, 1995(2)PLJR371

**IN THE HIGH COURT OF PATNA (RANCHI BENCH)
FULL BENCH**

Civil Writ Jurisdiction Case No. 3223 of 1994 (R)

Decided On: 15.05.1995

Appellants: **Union of India and Ors.**
Vs.

Respondent: **Ranchi Municipal Corporation and Ors.**

Hon'ble Judges/Coram:

B.L. Yadav , C.J., C.S.N. Mishra and P.K. Deb , JJ.

JUDGMENT

C.S.N. Mishra, J.

1. This writ application has been referred to a larger Bench by order, dated 8.2.1995 by a Division Bench presided over by the then Hon'ble the Chief Justice. The petitioner, Union of India through the General Manager, South Eastern Railway Calcutta, including the Senior Divisional Engineer (W), South Eastern Railway, Adra, has challenged 'he demand notice, dated 14.7.1994 issued under Section 203 of the Patna Municipal Corporation Act, 1951 (hereinafter to be referred to as 'the Act') and also the letter issued by the Administrator of the Ranchi Municipal Corporation, Respondent No. 3, directing the petitioners to pay the amount mentioned therein by way of service charges, failing which the distress warrant would be issued, It may be stated that the demand notice, as contained in Annexure-18 to this writ application, issued to the petitioners for realisation of a total sum of Rs. 1, 01, 39, 501/- includes the period from 1960 to March, 1995. At the outset, it may be stated here that through a writ application, namely, C.W.J.C. No. 2844 of 1992 (R), the petitioners had earlier challenged the same and similar demand notice, dated 30.7.1991 issued by the respondents for the period from 1960-61 to 1991-92 for a sum of Rs. 35, 07, 099.20 Ps. and a Division Bench of this Court, after hearing the parties, by its judgment, dated 16th April, 1993, negated the contentions of the petitioners and, accordingly, dismissed the siad writ application, The validity of the demand notice was questioned in the said writ application. Several questions were raised before the Division Bench and ultimately, the Bench, after hearing the parties, held that the petitioners were liable to pay the service charges to the Corporation in terms of Section 205 of the Act. This successive writ application has been filed by the petitioners for quashing of the same and similar demand notice, which includes some additional pleadings of the petitioners for the period quarter ending 31st March, 1995. From the demand notice, it appears that a sum of Rs, one crore and odds, which is mentioned above, includes the amount for the period from 1960-61 to 1991-92, which was the subject-matter of consideration in the aforesaid earlier writ application.

2. In this writ application, a counter-affidavit has been filed, wherein, a preliminary objection has been raised with regard to the maintainability of the second writ application. It is submitted that in the earlier writ application, a counter-affidavit on

behalf of the Corporation had been filed and after hearing the parties, a Division Bench of this Court, by a detailed judgment, dismissed the said writ application and held that the petitioners were liable to pay the services charges. Accordingly, it is submitted that the instant writ application is barred by the principle of res judicata. It is further stated that the same points, which had been raised in the earlier writ application, have been reiterated in the instant writ application with the only difference that some more amounts have been added in the demand notice for the period beyond 1991-92 till March, 1995. Having regard to the order that I propose to pass in this writ application, it is not necessary to refer to the various statements made in the respective pleadings of the parties. Suffice it to say that the similar demand notice issued by the Ranchi Municipal Corporation directing the petitioners to pay the service charges with respect to the buildings belonging to the South Eastern Railway was the subject-matter for consideration before the Division Bench of this Court in the earlier writ application wherein the prayer of the petitioners was negatived on the various grounds mentioned in the judgment. The learned Counsel for the respondents, in support of his preliminary objection regarding non-maintainability of the second writ application, has relied upon the following decisions--

(1) Srimati Raj Lakshmi Dasi and Ors. v. Banamali Sen and Ors. MANU/SC/0063/1952 : [1953]4SCR154)

(2) Daryao and Ors. v. State of U.P., and Ors. MANU/SC/0012/1961 : [1962]1SCR574)

(3) State of West Bengal v. Hemand Kumar Bhattacharjee and Ors. MANU/SC/0161/1962 : 1966CriLJ805), and

(4) The Direct Recruit Class-H Engineering Officers' Association and Ors. v. State of Maharashtra and Ors. MANU/SC/0291/1990 : [1990]2SCR900).

3. In opposition to the aforesaid argument, learned Counsel for the petitioners, has submitted firstly that the principle of res judicata is not application in the facts and circumstances of the case in as much as the demand notice, as contained in Annexure-18 includes some additional properties of the petitioners, which were not the subject-matter for consideration before this Court in the earlier writ application. It has been further submitted that the impugned demand notice also includes the amount of the subsequent period and, accordingly, the successive writ application cannot be said to be barred by the principle of res judicata. It was next contended that the earlier decision did not take into consideration the relevant provisions of the constitution as well as the Railways Act and, hence, this Court is not precluded from entertaining the subsequent writ application. The learned Counsel for the petitioners has also contended on the merit of the case and relied upon several decisions in support thereof, but in view of the order I propose to pass in this case, I do not think it necessary to go into this question and deal with the decisions cited by him. Besides in support of his contentions, regarding maintainability of this writ application, learned Counsel for the petitioners relied upon the ratio laid down in the case of Union of India v. The City Municipal Council, Bellary MANU/SC/0304/1978 : [1979]1SCR573 . Having regard to the rival contentions raised on behalf of the parties, let me consider the decisions relied upon by the counsel for the respondents in support of his preliminary objection first. In the case of Srimati Raj Lakshmi Dasi and Ors. (supra), it has been held that the test of res judicata is the identify of title in the two separate litigations and not the actual identity of the property involved in the

two cases. In this case, the dispute was without respect to 4 annas share in the property involved. The question of title with respect to 4 annas share was directly involved in the land acquisition proceeding, which had been finally decided by the competent court and the decision arrived at in the land acquisition proceeding was held to operate as *res judicata* and, accordingly, estopped the parties from re-agitating the matter in the subsequent suit. In the case of *Daryao and Ors.* (supra), a Constitution Bench of the Supreme Court, after taking into consideration the various decisions, on the question in hand, has held in Paragraph 9 as follows:--

9. But, is the rule of *res-judicata* merely a technical rule or is it based on high public on high public policy? If the rule of *res judicata* itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of *res judicata* as indicated in Section 11 of the Code of Civil Procedure has, no doubt, some technical aspects, for instance the rule, of constructive *res judicata* may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of *res judicata* they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

It was further held that the judgment pronounced by the competent courts is by itself an essential part of the rule of law, which is obviously is the basis of administration of justice upon which the constitution emphatically lays so much emphasis. In the case of *State of West Bengal* (supra), their Lordships of the apex Court has held that even a wrong decision of tie court of competent jurisdiction is as much binding between the parties litigating their respective claim as a right one and that can be annulled or rescinded only by filing an appeal before a court and/or tribunal and/or by filing the review application if the law so permits. In the case of the *Direct Recruit Class-IJ Engineering Officers" Association and Ors.* (supra), a Constitution Bench again, after taking into consideration the various decisions, on the issue in hand, has reiterated the view taken in the case of *Daryao and Ors.* (supra) in the following terms:

35** ** ** ** In similar situation a Constitution Bench of this Court in *Daryao v. State of U.P.* MANU/SC/0012/1961 : [1962]1SCR574 held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief 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 emphasises 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 Page 595 (of SCR): (at P, 1467 of A.I.R.) of the reported judgment, thus : ~

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

4. After having heard learned Counsel for the parties and having gone through the ratio of the decisions cited by the learned Counsel for the respondents in support of his preliminary objection I am of the definite view that this second writ application by the petitioners for the same and similar relief, which has been earlier decided by a Division Bench of this Court is not maintainable, firstly, on the ground of principle of res judicata and secondly, on the ground of propriety and procedure being followed in such matters. It is admitted position that the petitioners have challenged the same and identical demand notice issued by the respondents under Section 205 of the Act, which has been negated by a Division Bench of this Court by a reasoned judgment and, as such, the instant second writ application for the same and similar relief cannot be entertained. The two remedies were open to the petitioners viz. either to file a petition for review of the decision rendered by this Court or by way of appeal before the apex Court. It is submitted that the petitioners have already filed a review application against the judgment of this Court passed in C.W.J.C. No. 2844 of 1992 (R), which is still pending. I am not expressing any opinion on the merit of the said review application, which will be decided on its own. The decision, which has been relied upon by the learned Counsel for the petitioners, in my opinion, does not, in the facts and circumstances of this case, help the petitioners, in any way, so far the preliminary objection is concerned.

5. In the result, this successive writ application is dismissed. Consequently, the reference made by the Division Bench of this Court is held to be incompetent. No costs

B.L. Yadav, C.J.

6. I agree.

P.K. Deb, J.

7. I agree.

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