
Nanak Chand and Others Vs UOI and Others

Writ Petition (C) 7057-75 of 2004

Court: Delhi High Court

Date of Decision: July 18, 2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 11, 144#Constitution of India, 1950 â€” Article 14, 141, 226, 311, 32

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Atul Nagrajan, Mr. Sushant Kumar Thakur, Mr. Surjeet Singh Malhotra and Mr. Ashwini Kumar, for the Appellant; Ruchir Mishra, Mukesh Kumar Tiwari, Advocates for R-1 to 3, Mr. Arun Birbal, Vineet Malhotra and Mr. D.K. Singh, Advocates for R-4/DDA, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.

Present writ petition has been filed under Article 226 of the Constitution of India seeking a direction to the respondents to

execute a sale deed/conveyance deed in favour of the petitioners in respect of Madangir flats in their possession/occupation. The prayer clause in

the present writ petition is reproduced hereinbelow:-

(i) Direct respondent no. 1, 2 & 3 to allot and execute the Sale Deed in favour of the petitioners for the flats in their occupation and possession;

(ii) Direct respondent no. 4 to forthwith execute Conveyance Deed in favour of the petitioners;

(iii) Direct respondent no. 4 to register the appellants as owners of Janta Type Flats at Madangir, New Delhi;

(iv) Direct respondent no. 1 & 2 to issue no-objection certificate to the effect that they are willing and forthcoming in transferring ownership, right

and title in the Janta Type Flats at Madangir, New Delhi in favour of the petitioners;

(v) Direct respondent no. 2 & 3 to restrain from making any further deductions from the salaries/pensions of the petitioners towards licence fee and

treat the same towards payment of instalment/cost of the each flat;

(vi) Direct respondent no. 1, 2 & 3 to correctly calculate/assess and return the excess amount collected from the petitioners towards hire-purchase

charges;

(vii) Pass any other or further orders which this Hon"ble Court may deem fit and proper.

At the outset, learned counsel for the respondents raises a preliminary objection to the maintainability of the present writ petition on the ground that

the present petition is barred by principles of constructive res judicata. Learned counsel for respondents point out that an earlier writ petition being

W.P. (C) 238/1996 filed by the present petitioners praying for identical relief was dismissed by a learned Single Judge of this Court on 28th

October, 2003 and even an appeal being W.A. 898/2003 was dismissed by the Division Bench of this Court. They state that even a SLP against

the Division Bench"s order was dismissed by the Supreme Court.

2. Mr. Arun Birbal, learned counsel for respondent-DDA states that petitioners have mischievously tried to create an impression in their List of

Dates that the Supreme Court had given them a liberty to file the present writ petition. Mr. Birbal submits that the averment in the List of Dates is

false as the Supreme Court had dismissed the petitioners SLP in limine without any leave or liberty to the petitioners to file a fresh writ petition.

3. However, Mr. Atul Nagrajan, learned counsel for petitioners submits that the issue decided in the first round of litigation is not being agitated in

the present writ petition. He submits that the plea of discrimination, as advanced in the present writ petition, was not even canvassed in W.P. (C)

238/1996. In support of his submission, learned counsel for petitioners refers to the judgment and order dated 28th October, 2003 passed by the

learned Single Judge wherein it has been observed as under:-

10) The case of the petitioners is solely based on the plea of promissory estoppel as it is submitted that these various representations amount to a

clear and unequivocal representation to the petitioners to transfer the flats in their names. It is submitted that reconsideration of the matter really

arose only subsequently in 1987 when a letter was addressed by the Vice-Chairman, DDA.

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15) In view of the narrow compass of the aforesaid controversy, the only question to be considered is whether there was any unequivocal and

clear representation to the petitioners that the flats would be transferred in their names and whether the petitioners have acted in pursuance to such

representations which would give rise to a position where the withdrawal from the said representations would result in injustice to the petitioners.

4. Mr. Atul Nagrajan, learned counsel for petitioners submits that constructive res judicata which is special and artificial form of res judicata

enacted by Section 11 of CPC does not apply to the writ petitions filed under Article 32 or Article 226 of the Constitution of India. He further

submits that no individual can waive his fundamental rights. In support of his submission, he refers to and relies upon the judgment in The

Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara, wherein it has been held as under:-

24. In the present appeals, the question which arises directly for our decision is: does the principle of constructive res judicata apply to petitions

under Art. 32 or Art. 226 where the dispute raised is in respect of a year different from the year involved in a prior dispute decided by this Court ?

We have already noticed the points actually decided by this Court against the appellants, on the earlier occasion (vide The Amalgamated

Coalfields Ltd. and Others Vs. The Janapada Sabha, Chhindwara, . One of the points sought to be raised was in regard to the validity of the

increase in the rate of tax from 3 pies to 9 pies per ton; and since this point had not been taken in the petition and relevant material was not

available on record, this Court refrained from expressing any opinion on it. The appellants contend that the order passed by this Court refusing

permission to the appellants to raise this point on the earlier occasion does not mean that this Court has decided the point on the merits against the

appellants; it may mean that the appellants were given liberty to raise this point later; but even otherwise, the point has not been considered and

should not be held to be barred by constructive res judicata. It is significant that the attack against the validity of the notices in the present

proceedings is based on grounds different and distinct from the grounds raised on the earlier occasion. It is not as if the same ground which was

urged on the earlier occasion is placed before the Court in another form. The grounds now urged are entirely distinct, and so, the decision of the

High Court can be upheld only if the principle of constructive res judicata can be said to apply to writ petitions filed under Art. 32 or Art. 226. In

our opinion, constructive res judicata which is a special and artificial form of res judicata enacted by section 11 of the CPC should not generally be

applied to writ petitions filed under Art. 32 or Art. 226. We would be reluctant to apply this principle to the present appeals all the more because

we are dealing with cases where the impugned tax liability is for different years. In dismissing the appellants' petitions on the ground of res judicata,

the High Court has no doubt referred to Art. 141 under which the law declared by this Court is binding on all Courts within the territory of India.

But when we are considering the question as to whether any law has been declared by this Court by implication, such implied declaration, though

binding must be held to be subject to revision by this Court on a proper occasion where the point in question is directly and expressly raised by

any party before this Court. Therefore, we are inclined to hold that the appellants cannot be precluded from raising the new contentions on which

their challenge against the validity of the notices is based.

5. On merits learned counsel for petitioners states that hundred flats at Madangir had been purchased by respondent nos. 1 and 2 from

respondent-DDA for use and occupation of its Class IV employees. He states that right at the outset, sixty out of hundred flats were given to

allottees on hire-purchase basis and consequently, they became owners of the said flats. He contends that though the remaining forty allottees also

sought allotment of flats on hire-purchase basis, yet they were arbitrarily denied ownership of the said flats. He submits that respondent nos. 1 and

2 should have treated the case of petitioners on similar/identical footing as the case of sixty employees of the respondent-hospital who had been

given the said Janta Flats at Madangir on hire-purchase basis.

6. In support of his plea of discrimination, learned counsel for petitioners relies upon the letter dated 23rd March, 1987 written by the Vice

Chairman, DDA to Additional Secretary, Ministry of Health and Family Welfare. The said letter reads as under:-

OM Kumar

Vice-Chairman

DELHI DEVELOPMENT AUTHORITY

VIKAS SADAN

IN A

D.O. NO. F(44)/86/HJG

March 22, 1987

Dear Shri Umashankar,

Please refer to your d.o. letter No. y. 16015/2/85-H dated the 26th February, 1987, regarding transfer of 40 Janta type flats at Madangir to the

staff of the Safdarjung Hospital.

2. We had earlier offered flats to the employees of Safdarjung Hospital and certain other Public Sector Undertakings. However, on re-

consideration, we feel that instead of offering flats to individual employees, it would be better to offer them as staff quarters of the Organisation.

This is so because in the former case only the individual employees will be benefited while in the latter requirements of many employees will be

catered to. Some of the organisations have appreciated this logic and are willing to accept allotment of flats for their staff quarters. I do hope that

you would also be willing to take flats from us for staff quarters of Safdarjung Hospital. We shall take further action in the matter on hearing from

you.

With regards,

Yours sincerely,

Sd/-

(OM KUMAR)

Shri P.K. Umashankar,

Addl. Secretary,

Govt. of India,

Ministry of Health and Family Welfare,

NEW DELHI.

7. Learned counsel for petitioners also refers to the letter dated 7th July, 1987 and office order dated 28th September, 1987 issued by the Office

of Labour Commissioner. The letter dated 7th July, 1987 and the Office Order dated 28th September, 1987 are reproduced hereinbelow:-

A) Letter dated 7th July, 1987:-

OFFICE OF THE LABOUR COMMISSIONER

(DELHI ADMINISTRATION)

15-RAJPUR ROAD: DELHI-110 054

No. F.14(1)/83/AHC/170

Dated the:-

To

Sh. Ramchander Tiwari,

General Secretary,

Jan Adhikar Kalyan Samiti,

I-346, Karampura,

New Delhi-110 015

Sir,

With reference to your letter No. 1407 dated 12.6.87 regarding, conferring of Hire-Purchase/Ownership rights to the unauthorised occupants of

Housing colonies at Karampura, Vishwakarma Nagar, Giri Nagar and Nehru Nagar etc. addressed to the Labour Commissioner, Delhi

Administration, Delhi, I am directed to inform you that in pursuance of the policy decision of the Executive Council meeting held at Raj Niwas on

16.4.86, necessary action is being taken in consultation with the Finance Department of Delhi Administration to give Hire-Purchase/Ownership

rights to the unauthorised occupants of the aforesaid colonies. During the course of discussions with your representatives on 3rd July, 1987, it was

pointed out to your Samiti that the matter is in its final stage and the terms and conditions on which Hire-Purchase/Ownership rights are to be

conferred will be intimated to you.

In the meantime, necessary directions are being issued to the Office of the Asstt. Housing Commissioner to complete the other formalities in the

matter.

Yours faithfully,

Sd/-7/7/87

(R.P. DATTA)

DY. LABOUR COMMISSIONER (H)

B) Office Order dated 28th September, 1987

DELHI ADMINISTRATION: DELHI

15-RAJPUR ROAD: DELHI

No. F.14(1)/83/AHC/P. II/

Dated: 28.9.87

OFFICE ORDER NO. 1/87

The Delhi Administration constructed 4844 quarters in various labour colonies from time to time under the Subsidised Industrial Housing Scheme.

Later on in 1979 policy decision was taken by Delhi Administration to give these houses to the allottees on Hire-purchase/Ownership basis.

2. From time to time, there have been representations from the sublettees of these quarters that as the original allottees of these quarters did not

require these quarters for their personal use, they had subletted these quarters to them at exorbitant rents. It was contended by them that they also

belong to economically weaker sections of the society and that the quarters which were in their possession should be given to them on Hire-

Purchase/Ownership basis.

3. The Delhi Administration has taken a policy decision on 16.4.86 to give these quarters to the aforesaid sublettees of these quarters at the price

at which Janata quarters are being sold by the D.D.A. to the public.

4. Labour Department had obtained eviction orders in about 59 cases but these orders could not be executed for one or the other reason and in

the meantime, the original allottees happened to occupy the same. It has been agreed that they should also be charged the same rate as mentioned

in para-3 above.

5. There are a few cases in which Labour Department had obtained eviction orders under the Public Premises Act and got the quarters evicted but

later on, the original allottees re-occupied these quarters. In these cases also they are to be charged at the rates mentioned in para-3 above.

6. In a few cases, wrong allotments had been made i.e. though the allottees were industrial workers but later on, it was found that they were not

the workers of registered factories and as such, they were not entitled for allotment under the Rules. In these cases also, they are to be charged at

the rates mentioned in para-3 above.

7. In some cases, there is double allotment i.e. before the marriage of the industrial workers they were allotted quarters individually but

subsequently they got married and thus came into possession of two quarters instead of one. In most of these quarters, the old parents of these

allottees are living. They are also to be charged at the rates mentioned in para-3 above.

In some cases, business activities are being conducted by the allottees either in the allotted portion of the quarter or in the unauthorised constructed

portion of the quarter. In these cases also they are to be given Hire-Purchase Rights as in the cases of eligible allottees.

Sd/-

(R.P. DATTA)

DY. LABOUR COMMISSIONER (H)

8. Mr. Arun Birbal, learned counsel for respondent no. 4-DDA states that flats at Madangir were constructed under a scheme namely Madangir

Residential Scheme floated in the early 1970s. He points out that the said Scheme was open to public at large. He, however, states that as there

was difficulty in selling the flats, they were also sold to public sector enterprises for use of their employees.

9. According to Mr. Birbal, out of the hundred flats in issue, sixty flats formed one category and were allotted to the individual registrants under

Madangir Residential Scheme, while remaining forty flats formed a distinct category as only forty flats were allotted to the respondent Hospital

through the Central Government for use of its employees.

10. Mr. Birbal states that the averments in the writ petition and the material annexed to the writ petition (Annexure P-1) clearly showed that the

sixty persons who had been allotted the flats were registrants under that Scheme with DDA in their individual capacity. He points out that it is not

the case of the petitioners that they got themselves registered with DDA for allotment of flats under that Scheme. According to him, even if for the

sake of argument, it is presumed that some or even all of those allottees were employees of the Hospital that was not the reason they got allotment

of flats in their name.

11. Mr. Birbal contends that the Central Government or the Hospital did not come into picture when the allotment was made to those sixty

persons by DDA as these allotments were made by DDA directly and the cost towards those sixty flats was also received by DDA from those

allottees.

12. Mr. Birbal states that forty flats were not allotted to individuals but to the respondent-Hospital through the Central Government for use of its

employees. Cost towards these forty flats was received by DDA from the Central Government. Thus, he submits that allotment of flats to sixty

persons on individual basis cannot be the reason for allotment of forty flats to the employee occupants. Mr. Birbal further states that after

retirement, the quarters were liable to be vacated by the employees and the same were then to be allotted to the employees next in line and those

in service of the respondent-hospital.

13. In rejoinder, learned counsel for petitioners submits that it is for the respondents to prove that the petitioners are not being discriminated

against. In support of his submission, he relies upon the judgment of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI),

wherein it has been held as under:-

16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle

on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality

before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by

both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality

in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot

is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality

enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on

which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine

was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of

succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational

principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have

been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the

objects sought to be achieved. This approach is noticed in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, when

at SCR p. 1034 (SCC p. 506), the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be

shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational,

unreasonable or discriminatory.

14. He also requests this Court to summon the original DDA file pertaining to Madangir Residential Scheme.

15. At this stage, learned counsel for Safdarjung Hospital states that he has brought the individual files of certain petitioners as directed by this

Court in other connected matters. However, these files offer no assistance to the petitioners.

16. Having heard learned counsel for parties, this Court finds that petitioners herein had earlier filed a civil writ petition bearing CWP No.

238/1996 before this Court seeking execution of Conveyance Deed of flats in their favour. The prayer clause in CWP No. 238/1996 is

reproduced hereinbelow:-

a) Issue an appropriate writ/direction and/or order in the nature of mandamus directing the respondent no. 1 to execute the necessary conveyance

deed and/or documents in favour of the petitioners in respect of the flat which are in their use and occupation ever since 1976 and which are more

specifically mentioned in ANNEXURE P-I.

b) Issue an appropriate writ/direction and/or order in the nature of prohibition, prohibiting the respondent no. 2 in any way interfering with the due

execution of the conveyance deed in favour of the petitioners.

c) Issue an appropriate writ/direction and/or order in the nature of prohibition, prohibiting the respondent no. 2 in making any deductions from the

salaries of the petitioners towards the hire purchase charges as the entire cost of the flat has been recovered.

d) to direct the respondent no. 2 by an appropriate writ/direction and/or order to treat the deductions made as licence fee towards the payment of

cost of the flats allotted to the petitioner.

e) to issue any other and/or further appropriate writ/direction and/or order, in the like nature as this Hon"ble Court may deem fit and proper in the

order to extend relief to the petitioners.

f) to refund the amount which has been recovered over and above the cost of the flats.

g) and to pass much other and/or further order/s as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case.

17. The said writ petition was dismissed by a learned Single Judge of this Court vide a detailed judgment and order dated 28th October, 2003.

The relevant portion of the said judgment is reproduced hereinbelow:-

16) It is not disputed that there was no allotment letter issued in favour of any of the petitioners staff or for that matter any of the employees. The

extracts of the minutes of the meeting dated 01.08.1973 show that the full payment was made by the Government of India and flats obtained from

DDA. However, the Union raised the issue of transfer of these flats on hire-purchase basis to the occupants and it was resolved that in case all the

40 allottees are prepared to go in for hire-purchase of these flats, the matter may be taken up with DDA Authorities. Thus, the matter was under

consideration.

17) The letter dated 24.10.1985 of the Employees Union itself makes it clear that even the stand of the Union was that the flats had been

purchased from DDA by the Hospital and that monthly deductions were being made towards rent from salary of the individuals. It may, however,

be noted that in the counter affidavit, it is stated that it is the licence fee which was being deducted. The Employees Union by the said letter, in fact,

proposed that the amount recovered from the salary bills of the individuals be adjusted against the cost of the flats allotted to them. Thus even in

1985, it was known that the flats had not been transferred to the occupants, but what was proposed was an adjustment of the licence fee/rent

deducted from the salaries of the employees to be adjusted against the cost of the flat. The various representations made in this behalf were

considered, but did not ultimately find favour. The letter dated 26.04.1989 of the Director General of the Health Services itself shows that there

should be a final rejection of the demand and the staff be informed accordingly. The writ petition has been filed in the year 1996, which is about 7

years after the final rejection.

18) The documents filed along with counter affidavit of the Hospital itself referred to the letter dated 22.03.1987 of the Vice-Chairman, DDA. The

same also shows that though undoubtedly at some stage of time the proposal was considered whether these flats could be transferred to the

employees, there was no final approval at any stage of time. In fact, the matter was resolved against the employees in this behalf.

19) In order to apply the principles of promissory estoppel in favour of the petitioners, the representation should be clear and unequivocal. In my

considered view, at no stage of time, has there been any representation or promise, much less unequivocally, which would go on to create any such

equitable rights in favour of the petitioners. The petitioners are fully aware that only a licence fee/rent was being charged from them. They were

requesting for transfer on ownership basis, but no decision was taken to approve the said request of the petitioners.

20. It is also to be appreciated that there is larger public issue involved inasmuch as these are flats of the Hospital, which are to be utilised by the

employees. Thus, whoever is working with the Organisation for the time being gets the benefit of occupation of these flats on deduction of a licence

fee charged. To transfer these flats to some of the allottees, who are the petitioners, would deprive the Organisation the benefit of making available

such accommodation to the current employees of the Hospital. In my considered view, there can be hardly any equities in favour of the petitioners,

which would attract the doctrine of promissory estoppel.

21. In view of the aforesaid, the petitioners have no right to seek transfer of the flats on ownership basis in the individual names, which flats vest

with the Hospital for the benefit of its employees.

22. I find no merit in the writ petition and the same is dismissed leaving the parties to bear their own costs.

18. The Division Bench of this Court in WA No. 898/2003 vide order dated 16th February, 2004 affirmed the decision of the learned Single

Judge. The order of the Division Bench is reproduced hereinbelow:-

This appeal is directed against the order of the learned Single Judge dated 28.10.2003. 40 Janta flats were purchased by Ministry of Health and

were given to Safdarjung Hospital for the use of its Class IV employees. These flats were allotted to the appellants herein on a monthly licence fee

of Rs. 37/- which they have been paying all through. In the counter affidavit placed before the learned Single Judge, it is mentioned by the

Safdarjung Hospital that these 40 Janta Type DDA flats were allotted to employees by Safdarjung Hospital and as and when any quarter fell

vacant, the same will be allotted to the next senior person in the waiting list. In the counter affidavit it is also mentioned that total number of

employees on the waiting list is more than 4,000 whereas accommodation available with them is less than 800. These flats meant for Class IV

employees were purchased by the respondent No. 2 and given to the Hospital to overcome the scarcity of the housing problem. The appellants are

entitled to reside in these flats as long as they are in service with Safdarjung Hospital till superannuation. These flats have to be returned to

Safdarjung Hospital to be allotted to other eligible employees according to the waiting list maintained by the Hospital. These flats cannot be sold to

the appellants on the ownership basis.

We find no merit in this appeal. The appeal being devoid of any merit is accordingly dismissed.

CM Nos. 2228/03, 2229/03 and 2230/03 also stand disposed of.

19. The SLP against the order of the Division Bench was dismissed in limine. The order of the Supreme Court dismissing the SLP is reproduced

hereinbelow:-

The SLP is dismissed.

20. The petitioners have tried to give an impression in their List of Dates as if the present writ petition had been filed in pursuance to the liberty

granted by the Supreme Court. Page F of the List of Dates of the writ petition reads as under:-

April 2004 The petitioners thereafter prefer a SLP before the Hon'ble Supreme Court. The petitioners place before the Supreme Court the fact

which Safdarjung Hospital and DDA concealed that is, sixty (60) other individuals who were similarly placed as the petitioners were given flats on

hire-purchase by the respondents but the same benefit has been denied to the petitioners. The Supreme Court verbally observes that this is a

new/additional ground which was never agitated before the learned Single Judge which gives rise to a fresh cause of action. However, the said

petition is dismissed.

21. From the Supreme Court's order referred to hereinabove it is apparent that petitioners' submission in the List of Dates is patently false.

22. Moreover, as the Supreme Court and the High Courts are Courts of record, the petitioners are precluded from relying on any alleged oral

observation contrary to the record.

23. In view of aforesaid, this Court is of the opinion that a false averment has been made by the petitioners. The Supreme Court in K.D. Sharma

Vs. Steel Authority of India Ltd. and Others, has held as under:-

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable

and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner

approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and

seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition

may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R.V. Kensington Income Tax Commrs. in the

following words: (KB p. 514)

.... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the

court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts--it says facts, not law. He must not

misstate the law if he can help it--the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully

and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated

to it, the court will set aside any action which it has taken on the faith of the imperfect statement.

(Emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of

the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the

court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, ""We will not listen to

your application because of what you have done."" The rule has been evolved in the larger public interest to deter unscrupulous litigants from

abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs. Viscount Reading, C.J. observed: (KB pp. 495-96)

... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit

in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true

facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the

merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has

been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the

applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true

facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything

further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of

this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open....

24. Consequently, as the petitioners have not approached this Court with clean hands, present writ petition is liable to be dismissed.

25. Also, upon a perusal of the prayer clause in CWP 238/1996 this Court is of the view that present writ petition is not maintainable on the

principle of constructive res judicata as the present petition amounts to re-litigation. Rule of constructive res judicata postulates that if a plea could

have been taken by the parties in an earlier proceeding between the same parties, the petitioner cannot be permitted to take that plea in a

subsequent proceeding based on the same cause of action. This rule is based on public policy and the principle of finality of judgment.

26. This Court is further of the opinion that the petitioners' submission that principle of constructive res judicata does not apply to writ petitions

filed under Article 32 or Article 226, is untenable in law. In *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam*

and Others, the Supreme Court has held as under:-

12. The result of the decision of this Court in the earlier appeal brought by the appellant before it is clear and unambiguous, and that is that the

appellant had failed to challenge the validity of the impugned order which had been passed by the Assistant Commissioner against him. In other

words, the effect of the earlier decision of this Court is that the appellant is liable to pay the tax and penalty imposed on him by the impugned

order. It would, we think, be unreasonable to suggest that after this judgment was pronounced by this Court, it should still be open to the appellant

to file a subsequent writ petition before the Madhya Pradesh High Court and urge that the said impugned order was invalid for some additional

grounds. In case the Madhya Pradesh High Court had upheld these contentions and had given effect to its decision, its order would have been

plainly inconsistent with the earlier decision of this Court, and that would be inconsistent with the finality which must attach to the decisions of this

Court as between the parties before it in respect of the subject-matter directly covered by the said decision. Considerations of public policy and

the principle of the finality of judgments are important constituents of the rule of law and they cannot be allowed to be violated just because a

citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity

by filing one writ petition after another.

27. It is pertinent to mention that in *Devilal Modi (supra)* the Constitution Bench of the Supreme Court explained its earlier decision in

Amalgamated Coalfields Ltd. (supra) and held as under:-

10. In regard to orders of assessment for different years, the position may be different. Even if the said orders are passed under the same

provisions of law, it may theoretically be open to the party to contend that the liability being recurring from year to year, the cause of action is not

the same; and so, even if a citizen's petition challenging the order of assessment passed against him for one year is rejected, it may be open to him

to challenge a similar assessment order passed for the next year. In that case, the court may ultimately adopt the same view which had been

adopted on the earlier occasion; but if a new ground is urged, the court may have to consider it on the merits, because, strictly, speaking the

principle of res judicata may not apply to such a case. That, in fact, is the effect of the decision of this Court in *The Amalgamated Coalfields Ltd.*

and *Anr. v. The Janapada Sabha, Chhindwara*. In that case, this Court had occasion to consider the question about the applicability of constructive

res judicata to proceedings taken by the appellant, the *Amalgamated Coalfields Ltd.*, challenging the tax levied against it for different periods. The

petition first filed by it for challenging the validity of the tax imposed against it for one year was dismissed by this Court in *The Amalgamated*

Coalfields Ltd. & Anr. v. The Janapada Sabha, Chhindwara. At the time when the appeal of the *Amalgamated Coalfields Ltd.* was argued before

this Court, some new points of law were sought to be raised, but this Court did not allow them to be raised on the ground that they should have

been raised at an earlier stage. When a similar order was passed against the said Company for a subsequent year, the said additional points were

raised by it in its petition before the High Court. The High Court held that it was not open to the Company to raise those points on the ground of

constructive res judicata; and that brought the Company to this Court in appeal by special leave. This Court held that the Court was in error in

holding that the principle of constructive res judicata precluded the Company from raising the said points. Accordingly, the merits of the said points

were considered and in fact, the said points were upheld. In dealing with the question of constructive res judicata, this Court observed that

constructive res judicata was an artificial form of res judicata enacted by Section 11 of the CPC and it should not be generally applied to writ

petitions filed under Art. 32 or Art. 226. It was in that connection that this Court also pointed out that the appeal before the Court was in relation

to an assessment levied for a different year, and that made the doctrine of res judicata itself inapplicable. Mr. Trivedi contends that in dealing with

writ petitions, no distinction should be made between cases where the impugned order of assessment is in respect of the same year or for different

years; and in support of this contention, he relied on the general observations made by this Court in *The Amalgamated Coalfields Ltd.* In our

opinion, the said general observations must be read in the light of the important fact that the order which was challenged in the second writ petition

was in relation to a different period and not for the same period as was covered by the earlier petition.

28. In *State of U.P. Vs. Nawab Hussain*, the Supreme Court after considering both *Amalgamated Coalfields Ltd.* (supra) and *Devilal Modi*

(supra) observed as under:-

8. It is not in controversy before us that the respondent did not raise the plea, in the writ petition which had been filed in the High Court, that by

virtue of clause (1) of Article 311 of the Constitution he could not be dismissed by the Deputy Inspector-General of Police as he had been

appointed by the Inspector-General of Police. It is also not in controversy that that was an important plea which was within the knowledge of the

respondent and could well have been taken in the writ petition, but he contended himself by raising the other pleas that he was not afforded a

reasonable opportunity to meet the case against him in the departmental inquiry and that the action taken against him was mala fide. It was

therefore not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority

subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata, and the High Court erred in

taking a contrary view.

29. Not too far back, the Supreme Court in *M. Nagabhushana Vs. State of Karnataka and Others*, emphatically re-emphasised that the principle

of constructive res judicata is applicable to writ proceedings. The relevant portion of the Supreme Court's judgment in *M. Nagabhushana* (supra)

is reproduced hereinbelow:-

12. The principles of Res Judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis

lithium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si

constat curiae quod sit pro una et eadem cause meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it

is for one and the same cause. This doctrine of res judicata is common to all civilized system of jurisprudence to the extent that a judgment after a

proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for

ever set the controversy at rest.

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22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive

res judicata, as explained in Explanation IV to Section 11 of the CPC, are also applicable to writ petitions.

23. Thus, the attempt to re-argue the case which has been finally decided by the Court of last resort is a clear abuse of process of the court,

regardless of the principles of res judicata, as has been held by this Court in *K.K. Modi Vs. K.N. Modi and Others*, . In SCC para 44 of the

Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p. 592)

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to

justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The re-agitation may

or may not be barred as res judicata

24. In coming to the aforementioned finding, this Court relied on The Supreme Court Practice 1995 published by Sweet & Maxwell (p. 344). The

relevant principles laid down in the aforesaid practice and which have been accepted by this Court are as follows: (K.K. Modi case, SCC p. 592,

para 43)

43....This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent

improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in

the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all

the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.

25. On the premises aforesaid, it is clear that the attempt by the appellant to re-agitate the same issues which were considered by this Court and

were rejected expressly in the previous judgment in AIMO case, is a clear instance of an abuse of process of this Court apart from the fact that

such issues are barred by principles of res judicata or constructive res judicata and principles analogous thereto.

30. In N.D. Qureshi Vs. Union of India (UOI) and Another, , a Division Bench of this Court of which the present Bench was a party observed as

under:-

12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In

our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon"ble

Supreme Court in K.K. Modi Vs. K.N. Modi and Others, has held that it is an abuse of the process of the court and contrary to justice and public

policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be

barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon"ble

Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view,

frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like

in the present case.

31. Consequently, in the opinion of this Court as on the same cause of action, an alleged new argument is being sought to be advanced, it is barred

by principle of constructive res judicata and amounts to re-litigation which is impermissible in law.

32. As far as plea of discrimination is concerned, this Court finds that even in the counter-affidavit filed by DDA in the earlier CWP 238/1996 it

had been made clear that there are two ways of allotment of flats. First is that if an individual gets himself registered by making an application under

a scheme framed by DDA wherein flats are allotted by DDA to individuals from time to time and the second is, after approval from the

Government of India, DDA makes an allotment in favour of government organisations/institutions for their staff quarters. It was repeatedly

emphasised in the said counter-affidavit that only forty flats involved in the present proceedings were allotted to Safdurjung Hospital for their staff

quarters in consultation with the Government of India and not for individual ownership.

33. This Court also finds that the letter dated 22nd March, 1987 relied upon by learned counsel for petitioners in the present petition had been

considered by learned Single Judge while dismissing the writ petition being CWP 238/1996.

34. Further, letter dated 7th July, 1987 and Office Order dated 28th September, 1987 issued by the Deputy Labour Commissioner do not pertain

to the flats at Madangir. In fact, the Office Order dated 28th September, 1987 is confined to 4844 quarters under the Subsidised Industrial

Housing Scheme. In the opinion of this Court, correspondence and office orders issued by the Labour Commissioners are irrelevant and cannot be

used to bind down the Central Government or the respondent-Hospital or DDA.

35. The submission of learned counsel for petitioners that it is for the respondents to prove that petitioners are not being discriminated against, is

untenable in law. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , it was reiterated that where a party seeks to

impeach the validity of a rule made by a competent authority on the ground that the rule offends Article 14, the burden is on him to plead and

prove the infirmity. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to

show that there has been a clear transgression of the constitutional principles. A rule cannot be struck down as discriminatory on any a priori

reasoning.

36. The judgment of *D.S. Nakara and Others* (supra) referred to by learned counsel for petitioners only states that when prima facie, a plea of

discrimination is made out, the burden of proof shifts on the state to show that it is not so.

37. Consequently, as the petitioners have not been able to make out a prima facie case of discrimination, the judgment of *D.S. Nakara and Others*

(supra) is clearly inapplicable to the present case.

38. This Court is further of the view that the present petition is barred by delay and laches. Even in the earlier writ petition being CWP 238/1996,

the learned Single Judge had pointed out that the said writ petition had been filed seven years after the final rejection.

39. Undoubtedly, the provisions of Limitation Act, 1963 do not apply to the proceedings under Article 226 of the Constitution, but in a catena of

cases it has been held that if a writ petition is filed beyond the period of limitation prescribed for filing a civil suit for a similar cause, the High Court

would be well entitled not to entertain the petition on the ground of delay and laches. In fact, the Supreme Court in State of Madhya Pradesh Vs.

Bhailal Bhai and Others, , has held as under:-

21..... Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art.

226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be

brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may

consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is

more than this period, it will almost always be proper for the Court to hold that it is unreasonable....

40. Further, the Supreme Court in Banda Development Authority, Banda Vs. Moti Lal Agarwal and Others, has held as under:-

17. It is true that no limitation has been prescribed for filing a petition under Article 226 of the Constitution but one of the several rules of self-

imposed restraint evolved by the superior courts is that the High Court will not entertain petitions filed after long lapse of time because that may

adversely affect the settled/crystallised rights of the parties. If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit

for similar cause, the High Court will treat the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

41. Principle of delay and laches is not an abstract proposition of law but based on the ground level reality including the fact that parties are not

supposed to maintain records or papers beyond a certain time. To ask DDA now to produce documents pertaining to a Scheme which is thirty to

forty years old would be both unfair and an impossible act.

42. As this Court has reached the conclusion that the present petition amounts to re-litigation, the respondents needs to be restituted inasmuch as

by virtue of the interim order passed by this Court, they have not been able to evict the petitioners for nearly nine years. The Supreme Court in

Mrs. Kavita Trehan and another Vs. Balsara Hygiene Products Ltd., , has held as under:-

22. The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be

exercised under inherent powers where the case did not strictly fall within the ambit of Section 144. Section 144 opens with the words: ""Where

and insofar as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted

for the purpose,.... "" The instant case may not strictly fall within the terms of Section 144; but the aggrieved party in such a case can appeal to the

larger and general powers of restitution inherent in every court.

43. Consequently, exercising the inherent power of restitution, this Court directs the petitioners to hand over vacant physical possession of the flats

in question to respondents within a period of four weeks. In the event the physical vacant possession is not handed over within the stipulated

period, respondents shall be entitled to take forcible possession of the same. The local police is directed to render all assistance to the respondents

in evicting the petitioners. Respondents are also granted liberty to file appropriate proceedings to seek recovery of mesne profits for use and

occupation of their flats from the date of dismissal of Special Leave Petition, i.e., 16th April, 2004. The direction to evict and to use police force

has been passed in the present case as these flats were to be utilised by the employees of the respondent-Hospital and not by family members of

retired employees. In fact, flats had been purchased by the respondent-Hospital with intent to serve its patients efficiently by offering good

reasonable residential accommodation to its employees. This Court is of view that due to pendency of the present proceedings and grant of interim

order, a larger public purpose has been defeated. Further, the petitioners who have scant regard to the finality of a judgment need to know that in

courts there may be delay but once the wheel of justice moves, complete justice is done. With the aforesaid observations, present writ petition is

dismissed. Interim order dated 5th July, 2004 stands vacated.