(1980) 01 BOM CK 0030

Bombay High Court

Case No: First Appeal No''s. 715 to 717 of 1970

Attarsing and Others		APPELLANT
	Vs	
Nanded Sikh Gurudwara Sach Khand Shri Huzur Apachalnagar Saheb Board		RESPONDENT

Date of Decision: Jan. 14, 1980

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Constitution of India, 1950 - Article 226

Citation: AIR 1981 Bom 24 : (1981) MhLj 328

Hon'ble Judges: Rele, J; Masodkar, J

Bench: Division Bench

Advocate: M.K. Nasari and B.S. Deshmukh, for the Appellant; S.J. Deshpande, for the Respondent

Judgement

Masodkar, J.

All these three appeals can be disposed of by this common judgment, though they arise out of three special suits initially filed by the present appellants in the Court of the Civil Judge, Senior Division, Nanded, with regard to properties, being Survey No. 95 admeasuring 14 acres and 12 gunthas, Survey No. 94/A admeasuring 25 acres and 6 gunthas and Survey No. 96 admeasuring 22 acres and 22 gunthas. These properties were subjected to the process of orders made under the provisions of the Hyderabad Atiyat Enquiries Act, 1952 (hereinafter referred to as "the Act") and the Atiyat Courts, after inquiries, made orders directing delivery of possession against the present appellants. It is enough to observe, as it is not disputed, that under the Act, after the initial orders were made, the appellants took up appeals, as was provided under the Act, and having failed, eventually filed writ petitions, being Special Civil Applications Nos. 1938 of 1966, 1954 of 1966 and 1955 of 1966, in this Court, which were disposed of by the judgment of Sept. 30, 1969 in terms holding

that the Authorities under the Act were competent to pass the orders for possession in the inquiries held u/s 3-A of the Act and the orders were perfectly within their jurisdiction.

2. In the suits, after that adjudication, filed by these appellants-plaintiffs, the plaintiffs asserted that the orders made under the provisions of the Act were entirely without jurisdiction, that those orders did not operate as res judicata, that further the plaintiffs were the Shikmidars in possession of the properties as in an earlier inquiry by the Department of Subhedari, Aurangabad, it was found that these were Khalsa lands and that the finding recorded under the Act that these lands were service inam lands was entirely erroneous. The reliefs of declarations and consequent injunction were sought for. The defendant in each suit, being the Nanded Sikh Gurudwara Sach Khand Shri Huzur Apachalnagar Saheb Board, who moved the authorities under the provisions of the Act, resisted the claim in each suit on the basis of the earlier adjudication and particularly on the basis of the decision rendered by the High Court. The trial Court, after raising the necessary issues, by the impugned judgment came to the conclusion that in view of the earlier litigation and competent decisions, the suits were barred and the plaintiffs were not entitled to reagitate the same questions by filing the same. It also found that the Deputy Collector, who held the Atiyat inquiries, had all the jurisdiction.

3. Thus, in short, the plaintiffs in each suit have been non-suited by applying the principles of res judicata.

4. Faced with this obvious difficulty, Mr. Nasari submitted that Courts constituted and contemplated by the provisions of the Act were the Courts of limited jurisdiction and, therefore, the decisions rendered one way or the other on the question of jurisdiction by those Courts are not binding on a competent Civil Court. He contended that the bar of res judicata is not applicable to the question regarding the Jurisdiction of the Court. Without disputing the Jurisdiction of the High Court to render Judgment which was eventually rendered against the plaintiffs in the earlier petitions, the learned counsel submitted that on true interpretation of that judgment, what has been found is not the Jurisdiction of the Atiyat authorities, but a limited controversy is concluded with regard to the passing of the competent orders by the Atiyat authorities. The approach of the learned counsel is that if upon the true interpretation of the provisions of the Act it is seen that those authorities had no right or entitlement to render declaratory judgments and further make orders as to possession against the trespassers, assuming that there was trespass, then what the High Court decided was merely a limited question against the petitioners in the writ petitions and the suits based on initial title and claiming reliefs of injunction would not be barred. According to the learned counsel, the suits are based on an entirely different cause of action, being an assertion of a different title than the one which is subject to the provisions of the Act. He has contended that the nature and scope of the inquiry under the provisions of the Act does not admit inquiry into the

entire title of the persons like the plaintiffs and, therefore, merely because a judgment one way or the other is rendered by the Atiyat authorities and is affirmed by the High Court, that would not be enough to non-suit the present appellants-plaintiffs. Mr. Nasari also submitted that on true interpretation of Section 8-A of the Act, the orders directing possession and the eventual upholding thereof by the High Court are ultra vires the statute and as such would not operate as res judicata, nor the plaintiffs would be estopped by any principles under that doctrine. Reliance is placed on several decisions, being Burmah Shell and Storage and Distributing Co. of India Ltd., Madras Vs. The Labour Appellate Tribunal of India and Others, ; The State of Madras Vs. Balamanavala Reddiar and Another, ; Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, ; Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), ; Bhau Martand Shelar Vs. Hajabai Bala Nadaf and Another, and The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara, Some observations from the decision in Sikander Jehan Begum and Another Vs. Andhra Pradesh State Government, so as to re-emphasis the nature and scope of the inquiry under the provisions of the Act, are also pressed in service.

5. In order to consider the above submissions, it is enough to observe that this is an ingenious method to get over the competent judgment rendered by this Court in writ petitions. As far as the challenge in the writ petitions is concerned, it is not in dispute that these very plaintiffs had invoked the jurisdiction of this Court in its admitted jurisdiction under the Constitution and questioned the order made by the Deputy Collector Atiyat and Inam Abolition, District Nanded, which was confirmed by the Collector by his order dated Aug. 25, 1966 against each of the petitioners in those petitions (the plaintiffs herein). That order of the High Court is exhibited in all those suits and, as stated above, is not in dispute. A reference to that order shows that all what is being said now with regard to the merits of those orders was also re-asserted and made foundation by the petitioners, the present plaintiffs, before the High Court. What was contended before the High Court is summarised in the judgment of the High Court in the following words:--

"……it was contended that the authorities under the Hyderabad Atiyat Inquiries Act, 1952 acted without jurisdiction in entertaining the three applications filed by the Gurudwara Board for possession of the aforesaid lands. The finding of the two authorities that the lands were granted as inams to the Gurudwara temple for the maintenance of the temple services and the further finding that in view of the exemption of these inams from the provisions of the Hyderabad Abolition of Inams and Cash Grants Act, 1954, these petitioners have no right whatsoever to continue in possession of the said lands and are liable to be evicted, are not seriously challenged before us.

The only argument made in support of the contention that the authorities under the Hyderabad Atiyat Inquiries Act, 1952 had no jurisdiction to order possession is that

there is no provision in that Act specifically empowering the authorities to order possession of the land."

It is not disputed for the purpose of the present appeals that as far as the petitions were concerned, they did contain the assertions of title in favour of the petitioners on the basis that the lands were not inam lands but khalsa lands, which is also the basis of the title alleged and asserted by the present suits. It is not further in dispute that the summary of the submissions so extracted above was on the basis of the submissions made in support of the petitions. From this and particularly from the express statement of summary quoted above, it is obvious that as far as the character of the property was concerned, though the petitions raised disputes, the same were not pressed and the submissions were eventually restricted with regard to the powers of the authorities to make an order for delivery of possession. After taking into account the provisions of the Act, the judgment of this Court held that the orders were perfectly within jurisdiction and that the Atiyat authorities were competent to make orders for possession in the inquiries held under the provisions of Section 3-A of the Act.

6. If, therefore, this is the decision by a competent Court, that is, the High Court, whose power was invoked by each of the plaintiffs, we fail to see how on the basis of any of the authorities, on which Mr. Nesari is relying, he is entitled to reagitate the same questions which were, in fact and without dispute, brought before the High Court in the writ petitions, by now filing suits. It is well settled that judgments rendered by competent Courts like the High Court in writ petitions are binding on the parties and operate as res judicata so that the same questions cannot be the subject of any other action like the suit. (See Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), , State of Punjab Vs. Bua Das Kaushal, , and Union of India (UOI) Vs. Nanak Singh, In our view, it would be most improper, in exercising our civil jurisdiction, to permit inquiries into the questions gone into by this Court while exercising its admittedly competent writ jurisdiction. As we have stated above, except making a general submission that under the Constitution the High Court exercises a supervisory jurisdiction, there is no challenge to the admitted jurisdiction of the High Court and we do not see how the plaintiffs can be relieved from the bar of res judicata or even the principles on which such bar operates, when there is a competent adjudication by the High Court in a competent proceeding at the instance of the present appellants of the question of the jurisdiction of the Atiyat Courts as well as their power to make orders as to the eviction of the present plaintiffs. Surely, the doctrine of res judicata is the doctrine of repose and is to be applied for achieving finality. It imminently subserves the public policy meant to protect the litigant from double vexation. As far as the present controversy is concerned, the facts do not admit any doubt that before the High Court not only there was identity of title and cause, which is again the foundation of the present actions, but also there is identity of the parties. Inter partes, therefore, the judgment of the High Court in writ petitions does operate as res judicata and the

plaintiffs in each suit would not be entitled to reagitate the same questions by filing suits of the present kind.

7. In this view, we find no merit in any of the appeals. The appeals to stand dismissed with costs.

8. Mr. Deshmukh at the close of the judgment prayed for three months'' time for delivery of possession. We do not see any reason to give such time. That prayer, therefore, stands rejected.

9. Appeals dismissed.