Ishwar Dutt vs Land Acquisition Collector And Anr on 2 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3165, 2005 (7) SCC 190, 2005 AIR SCW 3578, 2005 (6) SCALE 11, 2005 (8) SRJ 107, (2005) 2 CLR 417 (SC), 2005 (5) SLT 632, (2005) 6 JT 540 (SC), (2005) 4 JCR 142 (SC), (2005) 33 ALLINDCAS 65 (SC), (2005) 6 SCJ 613, (2005) 5 SUPREME 701, (2005) 4 ICC 74, (2005) 6 SCALE 11, (2006) 101 CUT LT 29, (2005) 61 ALL LR 160, (2005) 4 ALL WC 3202

Bench: Ashok Bhan, S.B. Sinha

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           CASE NO.:
Appeal (civil)  443 of 2001

PETITIONER:
ISHWAR DUTT

RESPONDENT:
LAND ACQUISITION COLLECTOR and ANR.

DATE OF JUDGMENT: 02/08/2005

BENCH:
ASHOK BHAN & S.B. SINHA

JUDGMENT:
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JUDGMENT BHAN,ASHOK J.

Claimants/appellants aggrieved against the common/similar judgments and orders dated 20.12.1999 passed by the High Court of Himachal Pradesh dismissing their claim for interest @ 12% granted by an earlier order of the Division Bench of the same High Court in C.W.P. No. 510/85 dated 9.9.1985 on equitable consideration for depriving them of their lands without taking proceedings under the Land Acquisition Act and payment of compensation have come up in these batch of appeals.

Facts being common and similar it would be sufficient to refer to the facts of CA No. 443 of 2001 for the purposes of deciding the controversy involved in these appeals.

Some areas of Himachal Pradesh before re-organisation of the State of Punjab on 1.11.1966 formed part of the erstwhile State of Punjab. Public Works Department, Government of Punjab in the year 1966 took up the construction of Solan-Jawanji-Dharja Road. After the re-organisation of the States on 1.11.1966 the PWD Department of H.P. took over the construction. The road was finally

commissioned in the year 1968. Possession of the land owned by the appellants comprising of Khasra No. 102/1 situated in Village Bagur, Tehsil and District Solan, along with the lands of large number of villages that came under the said road construction plan was taken over in the year 1968. Though the possession of the land was taken over from the Land-owners in December, 1968 no steps were taken to formally acquire the land by issuing notification under Section 4 of the Land Acquisition Act, 1894 [hereinafter referred to as "the Act"].

Having failed to secure justice to get any compensation or even step being taken by the Government for acquiring the land of nearly 17 years, a public interest writ petition No. 510 of 1985 titled Chander Kant Sharma and Ors. v. State of Himachal Pradesh, was filed. The State of Himachal Pradesh failed to justify any valid reasons for not taking steps to get the land acquired and for not paying any compensation to the Land-owners. Finding grievance of the writ petitioners to be genuine the High Court vide its judgment and order dated 9.9.1985 directed the respondents to complete the acquisition proceedings within a time frame and further directed them to pay to the writ petitioners interest @ 12% per annum from the date of taking over of possession till the date of payment of interim compensation and of final compensation, if there is enhancement. It was observed that the aforesaid interest payable was in the nature of equitable compensation and such interest shall be in addition to the compensation, solatium and interest at the statutory rate which would be paid to the writ petitioners under the law whether awarded by the Collector or enhanced by the Court and such interest shall not be taken into consideration in any proceeding under the Act while awarding the statutory compensation (direction No. 3). The Division Bench gave the following directions for expeditious relief to the writ petitioners:

> "1. The acquisition proceedings in respect of villages Ser Chirag, Tawa Talara and Gatool shall be completed on or before January 31, 1986 and those in respect of land situate in village Deon Dhar shall be completed on or before June 30, 1986.
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> 2. The petitioners shall be paid as and by way of interim compensation, without prejudice to their rights and contentions to claim the compensation due to them in accordance with law in the course of the proceedings under the Act, a sum determined on the basis of the tentative market value set out in column No. 9 of the statements in a tabular form annexed to the affidavits of the Superintending Engineer and the Land Acquisition Officer. The interim compensation will be paid to the petitioners after explaining the aforesaid position to them against a receipt to be executed by them acknowledging the payment towards the ultimate compensation to which they become entitled in accordance with law. The payment will be made within a period of four weeks from today.
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> 3. On the amount of compensation payable to the petitioners, interest at the rate of 12 per cent per annum shall be paid from the date of the taking over of possession till the date of payment of interim compensation and of final compensation, if there is enhancement. The interest payable accordingly is in the nature of an equitable compensation and such interest will be in addition to the compensation, solatium and interest at the statutory rate which will be paid to the petitioners under the law,

whether awarded by the Collector of enhanced by the Court, and such interest will not be taken into consideration in any proceeding under the Act, while awarding the statutory compensation.

4. The tabular statement appended to the affidavits of the Superintending Engineer and the Land Acquisition Collector gives the requisite information relating to the land situate in other eleven villages which has been taken possession of for the purposes of the construction of the road in question. The land-owners, whose land in those villages has been taken possession of, will also be entitled to similar treatment. Under the circumstances, in order to ensure similar treatment being accorded to persons identically situate as the petitioners and in order to avoid proliferation of limitation, it appears to be just and proper to direct that the land- owners, whose land situate in those eleven villages has also been taken possession of for the purposes of the construction of the road in question, will also be entitled to the payment of interim compensation and equitable compensation on the same basis as the petitioners herein and that in those cases also, the acquisition proceedings shall be completed on or before January 31, 1986 and June 30, 1986, as the case may be, depending upon whether or not the acquisition proceedings have been initiated under Section 4 of the Act."

As the writ petition had been filed in public interest, in the direction No. 4 it was ordered by the Court that all the Land-owners whose land had been taken possession of in either of the awards would be entitled to the similar relief.

Some other petitioners filed CWP No. 125 of 1986 and CWP No. 147 of 1988 which were also disposed of with the similar directions.

As a result of the directions issued by the High Court in its order dated 9.9.1985 the respondents issued the notification under Section 4 of the Act for Village Bagure vide Notification No. Lok-Nirmn (Kha) - 7 (1)/62/88 dated 25.2.1989 published in the H.P. Gazette dated 15.4.1989. The Land Acquisition Collector completed the formalities of acquiring the land and ultimately by its award No. 27/1990 dated 31.1.1991 fixed the market value of the land at Rs. 9,727 per bigha. Apart from the statutory benefits of solatium etc. the land-owners were also awarded the interest @ 12% p.a. from the date of taking over of possession till the date of payment as directed by the Division Bench in its order dated 9.9.1985 on equitable grounds.

Being aggrieved against the market value fixed by the Land Acquisition Collector the appellants filed an application seeking reference under Section 18 of the Act to the District Judge. The District Judge, Solan vide its award dated 1.9.1992 enhanced the compensation to Rs. 45,000 per bigha. It was held that the land-owners were entitled to compensation at the rate of Rs. 45,000 per bigha and that they shall be further entitled to :

"(a) Compulsory acquisition charges at the rate of 30% on the market value assessed above;

(b) Additional compulsory acquisition charges at the rate of 12% per annum on the market value assessed above with effect from the date of notification under Section 4 of the Act of 1894, that is, 7.5.1989, till the date of the award, that is, 31.1.1991,.

(c) Interest at the rate of 12% per annum on the compensation assessed above with effect from 18.12.1968 till the date of payment of compensation in terms of the orders of the Hon'ble High Court in CWP No. 147/ 1988;

(d) Interest at the rate of 9% per annum on the enhanced compensation from the date of possession, that is, 18.12.68 till the date of expiry of one year thereafter, that is, 17.12.1969;

(e) Interest at the rate of 15% per annum of the enhanced amount with effect from 18.12.1969 till the date of payment of the amount in Court."

The Respondents being aggrieved by and dissatisfied with the said award preferred a First Appeal under Section 54 of the Act before the High Court which was marked as Regular First Appeal No. 104 of 1993. By reason of the impugned judgment, a Division Bench of the High Court while upholding the amount of compensation payable to the Appellant herein for acquisition of the land set aside that part of the award, purported to be relying on or on the basis of the decision of this Court in State of Himachal Pradesh and Ors v. Dharam Das, AIR (1996) SC 127, complying the payment of interest only with effect from 7.5.1989 or with effect from the date of publication of the notification under Section 4(1) of the Act and not from 18.12.1968.

In Dharam Das, (supra) the State of Himachal Pradesh had filed an appeal against the judgment rendered in C.W.P. No.125 of 1986, [State of Himachal Pradesh and Ors. v. Dharam Das], in which a direction similar to the one which had been given by the High Court in C.W.P. No.510 of 1985, [Chander Kant Sharma and Ors. v. The State of Himachal Pradesh through the Secretary and Anr.] was given. This Court did not approve of the view taken by the High Court and a contra view was taken by holding that the amount other than the one envisaged either under Section 23 (1-A) of the Act or under any of the provisions of the Act could not be granted on equitable grounds.

SUBMISSIONS :

The learned counsel appearing on behalf of the Appellant submitted that having regard to the fact that the appeal preferred by the Respondents herein was confined to the quantum of compensation and as they did not question the order of the High Court dated 9.9.1985 passed in C.W.P. 510 of 1985, the impugned judgment cannot be sustained.

The learned counsel would contend that in any view of the matter the decision of this Court in Dharam Das, (supra) could not have been relied upon as the principles of res judicata would be attracted to the fact of the present case and furthermore in view of the fact that the said order has been acted upon.

The learned counsel appearing on behalf of the Respondent, however, supported the judgment and submitted that no interest can be granted on the date of possession. Reliance in this behalf has been placed on R.L. Jain (D) By LRs. v. DDA and Ors., [2004] 4 SCC 79.

FINDINGS :

It is not in dispute that the High Court issued a writ of mandamus. It is also not in dispute that the direction of the High Court was acted upon. The principle of res judicata, as is well-known, would apply in different proceedings arising out of the same course of action but would also apply in different stages of the same proceedings. As the judgment and order passed in C.W.P. No. 510 of 1985 attained finality, we are of the opinion that the Respondents herein could not have raised any contention contrary thereto or inconsistent therewith in any subsequent proceedings. In fact the Land Acquisition Officer while passing the award on 31.1.1991 took into consideration the said direction and awarded 12% additional compensation at the market value. The said order of the Land Acquisition Officer never came to be questioned and, thus, attained finality.

Section 18 of the Act provides that any person who has not accepted the award may file an application for referring the dispute for determination of the court inter alia as regard the amount of compensation.

The State could have filed such an application under Section 18. It did not choose to do so. Only the Appellant herein took recourse to the said provision culminating in passing of the impugned judgment of the High Court.

Thus, the award of the Land Acquisition Officer directing payment of additional interest has also attained finality.

In the Reference Court or for that matter the High Court exercising its appellate jurisdiction under Section 54 of the Act could not have dealt with the said question. The principle of res judicata is species of the principle of estoppel. When a proceeding based on a particular cause of action has attained finality, the principle of res judicata shall fully apply.

Reference in this regard may be made to Wade and Forsyth on Administrative Law, 9th Ed., pg. 243, wherein it is stated:

"One special variety of estoppel is res judicata. This results from the rule which prevents the parties to a judicial determination from litigating the same question over again even though the determination is demonstrably wrong. Except in proceedings by way of appeal, the parties bound by the judgment are estopped from questioning it. As between one another they may neither pursue the same cause of action again,

> nor may they again litigate any issue which was an essential element in the decision. These two aspects are sometimes distinguished as `cause of action estoppel' and `issue estoppel.' In Hope Plantations Ltd. v. Taluk Land Board, Peermade and Anr., [1999] 5 SCC 590, this Court observed :
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> "Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum..."

In `The Doctrine of Res Judicata' 2nd Edition by George Spencer Bower and Turner, it is stated :

> "A judicial decision is deemed final, when it leaves nothing to be judicially determined or ascertained thereafter, in order to render it effective and capable of execution, and is absolute, complete, and certain, and when it is not lawfully subject to subsequent rescission, review, or modification by the tribunal which pronounced it...."

Reference, in this connection, may also be made to Ram Chandra Singh v. Savitri Devi and Ors., JT (2005) 11 SC 439.

Yet recently in Swamy Atmananda and Ors. v. Sri Ramakrishna Tapovanam and Ors., JT (2005) 4 SC 472 in which one of us was a party, this Court observed:

> "The object and purport of principle of res judicata as contained in Section 11 of the Code of Civil Procedure is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment.
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> The principle of res judicata envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment."

It was further noticed:

> "In Ishwardas v. the State of Madhya Pradesh and Ors., AIR (1979) SC 551, this Court held:
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> "...In order to sustain the plea of res judicata it is not necessary that all the parties to the two litigations must be common. All that is necessary is that the issue should be between the same parties or between parties under whom they or any of them claim..."

Yet again in Arnold v. National Westminster Bank Plc., [1991] 3 ALL ER 41, the House of Lords noticed the distinction between cause of action estoppel and issue estoppel. Cause of action estoppel arises where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject-matter. In such a case, the bar is absolute in relation to all points decided unless fraud or collusion is alleged, such as to justify setting aside the earlier judgment. The discovery of new factual matter which could not have been found out by reasonable diligence for use in the earlier proceedings does not, according to the law of England, permit the latter to be reopened. Issue estoppel may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. Here also bar is complete to relitigation but its operation can be thwarted under certain circumstances. The House then finally observed: but there is room for the view that the underlying principles upon which estoppel is based, public policy and justice have greater force in cause of action estoppel, the subject-matter of the two proceedings being identical, than they do in issue estoppel, where the subject-matter is different. Once it is accepted that different considerations apply to issue estoppel, it is hard to perceive any logical distinction between a point which was previously raised and decided and one which might have been but was not. Given that the further material which would have put an entirely different complexion on the point was at the earlier stage unknown to the party and could not by reasonable diligence have been discovered by him, it is hard to see why there should be a different result according to whether he decided not to take the point, thinking it hopeless, or argue it faintly without any real hope of success.

In Gulabchand Chhotalal Parikh v. State of Gujarat, AIR (1965) SC 1153 the Constitution Bench held that the principle of res judicata is also applicable to subsequent suits where the same issues between the same parties had been decided in an earlier proceeding under Article 226 of the Constitution.

It is trite that the principle of res judicata is also applicable to the writ proceedings. [See Himachal Pradesh Road Transport Corporation v. Balwant Singh, [1993] Supp 1 SCC 552].

In Bhanu Kumar Jain v. Archana Kumar and Anr., [2005] 1 SCC 787, it was held:

> "It is now well-settled that principles of res judicata applies in different stages of the same proceedings. [See Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr., AIR (1960) SC 941 and Prahlad Singh v. Col. Sukhdev Singh, [1987] 1 SCC 727].

In Y.B. Patil (supra) it was held:

> "4... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent state of that proceeding..."

It was further observed:

> "In a case of this nature, however, the doctrine of `issue estoppel' as also `cause of action estoppel' may arise. In Thoday (supra) Lord Diplock held :
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> "...cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment....If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam."

The said dicta was followed in Barber v. Staffordshire Country Council, [1996] 2 All ER 748. A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See C. (a minor) v. Hackney London Borough Council, [1996] 1 All ER 973].

[See `The Doctrine of Res judicata', 2nd Edn. by Spencer Bower and Turner p. 149] In this view of the matter, the High Court, in our opinion, had no jurisdiction to go into the aforementioned question.

Furthermore, a writ of mandamus is required to be obeyed unless a judgment is overruled or a legislation by way of validating statute is brought into force.

In Madan Mohan Pathak and Anr v. Union of India and Ors., [1978] 2 SCC 50 :

> AIR (1978) SC 803], the Constitution Bench observed:
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> "Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation

> to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees."

In any event, the directions issued by the court stood complied with. Having regard to Section 18 of the Act or otherwise the wheel cannot be turned back.

We must also note that the question raised by the learned Judges of the High Court was not raised by the Respondents although having regard to the decision of this Court in Dharam Das (supra) it was available.

The High Court, in our opinion, although has a wide power in terms of Section 107 of the Code of Civil Procedure but it could not have gone outside the pleadings and make out a new case.

In Siddu Venkappa Devadiga v. Smt. Rangu S. Devadiga and Ors., [1977] 3 SCC 532, it was held:

> "8...As has been stated, the defendant traversed that claim in his written statement and pleaded that the business always belonged to him as owner. There was thus no plea that the business was "benami" for Shivanna. We also find that the parties did not join issue on the question that the business was "benami". On the other hand, the point at issue was whether Shivanna was the owner of the business and the tenancy rights of the premises where it was being carried on. It is well-settled, having been laid down by this Court in Trojan and Co. Ltd. v. RM. N.N. Nagappa Chettiar and Raruha Singh v. Achal Singh that the decision of a case cannot be based on grounds outside the plea of the parties, and that it is the case pleaded which has to be found. The High Court therefore went wrong in ignoring this basic principle of law, and in making out an entirely new case which was not pleaded and was not the subject-matter of the trial."

For the reasons stated above, the appeals are accepted, the impugned judgments under appeals are set aside and that of the Reference Court are affirmed. No costs.