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learned counsel found it difficult to develop the argument and to show how an order of termination of services could be said to be outside the scope of section 41 of the Punjab Municipal Act.

For the reasons given above this petition fails and is hereby dismissed. In the circumstances of the case, however, I should not like to burden the petitioner with costs of these proceedings.

Bishan Narain, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS.

Before D. K. Mahajan, J.

DR. MOOL RAJ,—*Petitioner.*

versus

ANJUMAN IMDAD BHAMI BAFJNDGAN AND ANOTHER,—*Respondents.*

Civil Writ No. 590 of 1960

1960

May 24th

Constitution of India—Article 226—Petition for grant of writ dismissed in limine—*Second petition on the same facts —Whether competent—Rules of* res judicata—*Whether applicable—Successive writs of* habeas corpus—Whether *competent.*

Held, that it is now beyond question that the rule of *res judicata* is not confined to section II of the Code of Civil Procedure. It is a rule of general application and is based on a sound principle. On the same facts no person can be twice harassed. So far as successive petitions under Article 226 of the Constitution on the same fact and the same cause of action are concerned, the rule of *res judicata* is applicable. These writs of *habeas corpus,* however, stand on a different footing and successive writs of *habeas corpus* are competent. The rule is rather strict in the case of writs of mandamus. Where a first application for mandmus is refused on the ground of want of demand and refusal of justice, a second application after demand and refusal is incompetent.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari mandamus for any other appropriate writ order or direction be issued restraining the respondents from taking and continuing the proceedinggs which they are taking for the recovery of the amount as arrears of the Land Revenue and further praying that the confirmation of the sale be stayed.

SHAMAIR CHAND & P. C. JAIN, Advocate for the Petitioner.

J. N. TALWAR, Advocate for the Respondents.

ORDER.

MAHAJAN, J.—The present petition under Article 226 of the Constitution is directed against the recovery proceedings initiated by the Anjuman Imdad Bahmi Bafindgan, Kapurthala, hereinafter called the Society, against the petitioner Dr. Moolraj, under the Patiala Recovery of State Dues Act (No. IV of 2 002 Bk.)—hereinafter called the Act. Mahajan, J.

The facts disclose how sometimes the process of Court can be abused to its utmost limit. In the year 1946, the petitioner raised a loan from the Society in the sum of Rs. 5,000. Thereafter he applied to the Society that he wanted to leave for another province and his house be sold and the debt due from him be recovered from the sale proceeds of the house. On the 23rd of September, 1946, the Society gave an award under the Co-operative Societies, Act, 1912. The execution was levied in a civil Court on the basis of this award. This led to a suit by the petitioner for permanent injunction that the award be not executed. The suit was decreed *ex parte* and that decision has become final as no appeal against it was preferred.

In the year 1951, the Registrar, Co-operative Societies, issued a certificate under the Act, for

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recovery of Rs. 7,384, principal and interest. In pursuance of this certificate, the property of the debtor was put to auction. This led to the second suit by the petitioner-debtor in the Court of Sub-Judge 1st Class, Kapurthala, challenging the order of the Registrar, Co-operative Societies, and his jurisdiction to proceed under the Act. This suit failed, and an appeal and a second appeal against that decision also failed. Thereafter, the petitioner raised objection before the Collector that the amount could not be recovered as State dues. The objection was dismissed by the Collector. An appeal to the Commissioner and a revision to the Additional Financial Commissioner also failed. Having failed in the civil Courts and before the revenue authorities, the petitioner approached this Court under Article 226 of the Constitution, in C.W. No. 90 of 1958, which was dismissed *in limine* by this Court. Thereafter he moved the Supreme Court under Article 32 of the Constitution. The facts on which this petition was grounded are identical with the petition, which failed in this Court. An *interim* stay was granted by the Supreme Court, but later on when the petition was opposed by the opposite party, the stay was refused and the proceedings under the Act were allowed to go on. It is not known what fate the petition in the Supreme Court has met. The petition in the Supreme Court is C.W. No. 40 of 1958. The present petition was filed on the 28th of April, 1960, on identical grounds and identical facts. It may be stated that no new fact has come into existence after the date of the dismissal of the petition *in limine* by this Court or after the date of the petition filed under Article 32 of the Constitution in the Supreme Court.

To the present petition, the respondents have raised a preliminary objection and that is, that it

is not competent, in view of the dismissal of an identical petition on the same facts. The contention is that to the proceedings under Article 226 of the Constitution, the principles of *res judicata* apply.

After hearing the learned counsel for the parties, I am of the view that the preliminary objection must prevail. It is now beyond question that the rule of *res judicata* is not confined to section 11 of the Code of Civil Procedure. It is a rule of general application and is based on a sound principle. On the same facts no person can be twice harassed. So far as successive proceedings under Article 226 of the Constitution on the same facts and the same cause of action are concerned, the rule of *res judicata*, has been applied in *Radhashyam* v. *Patna Municipality* (1). Also see in this connection, the decision of the Supreme Court in *Mrs. Godavari parulekar* v. *parulekar* (2).

So far the English Courts are concerned, the decision in *R. V. Bodmin Corporation* (3), is in point, wherein it was observed as under :

> "Such a writ is an extraordinary remedy, and persons seeking it may very reasonably be required not to apply for it unless they have sufficient cause for doing so. They must come prepared with full and sufficient material to support their application, and if those materials are incomplete, I think it is quite right that they should not be allowed to come again".

In the present case, on the identical facts the writ was dismissed and I do not conceive, how a

(1) A. I. R. 1956 Pat. 182.
(2) A. I. R. 1953 S. C. 52.
(3) 1892 Q. B. 21.

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second petition on the same facts is competent. Really this will be an abuse of the process of the Court. It is well known that powers under Article 226 of the Constitution are discretionary and will only be exercised in cases of grave injustice and not to defeat and delay justice.

Mr. Shamair Chand relies on a Full Bench decision of this Court in *Ramji Lal* v. *The Crown* (1). That decision relates to writs of *habeas corpus*. It was held, therein, that successive writs of *habeas corpus* are competent. That decision has no analogy or application to successive writs like the writs of *certiorari*, *mandamus* or the like. Rules as to writs of *habeas corpus* stand on totally different footing.

It may be pointed out that in the case of a writ of *mandamus*, the rule is rather strict. Where a first application for *mandamus* is refused on the ground of want of demand and refusal of justice, a fresh application after demand and refusal is incompetent. See in this connection, Halsbury's Laws England, Hailsham Edition, Vol. 9, page 786, where the following observations occur:—

> "When an application for a prerogative writ has been made, argued, and refused on the ground of defects in the case as disclosed in the affidavits supporting the motion, it is not competent for the applicant to make a second application for the same writ on amended affidavits containing fresh materials".

For the reasons given above, this petition fails and is dismissed with costs.

R.S.

(1) 1948 P. L. R. 225.