ADMINSTRATIVE LAW PROJECT

RES JUDICTA AS A FORM OF JUDICIAL CONTROL OF ADMINSTRATIVE ACTION

SUBMITTED BY: VINAY SHEORAN

SUBMITTED TO: Ms.VENU PARNAMI

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Res judicata or ***res iudicata*** (RJ), also known as **claim preclusion**, is the Latin term for "a matter [already] judged", and may refer to two concepts: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal; and the legal doctrine meant to bar (or preclude) continued litigation of such cases between the sameparties, which is different between the two legal systems. In this latter usage, the term is synonymous with "preclusion".

In the case of *res judicata*, the matter cannot be raised again, either in the same court or in a different court. A court will use *res judicata* to deny reconsideration of a matter.

The legal concept of *res judicata* arose as a method of preventing injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. *Res judicata* does not merely prevent future judgments from contradicting earlier ones, but also prevents litigants from multiplying judgments, so a prevailing plaintiff could not recover damages from the defendant twice for the same injury.

Principle of Res Judicata

We have often seen lawyers arguing in courts that the suit is struck by the principle of 'res judicata'. If this plea is accepted by the Bench, in principle, the case in question is rejected right at the stage of admission itself.

According to the dictionary meaning, 'res judicata' means a case or suit involving a particular issue between two or more parties already decided by a court. Thereafter, if either of the parties approaches the same court for the adjudication of the same issue, the suit will be struck by the law of 'res judicata'. The rule of 'res judicata' is based on the conditions of public policy. It envisages that finality should attach to the binding decisions of the court so that the individuals should not be made to face the same litigation twice.

In cases involving income tax or sales tax, the general trend is not to apply the doctrine of 'res judicata'. As explained by the Supreme Court in Installment Supply (Pvt) Ltd, Vs Union of India (AIR 1976 SC 53), 'each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. However, it doesn't mean that tax authorities can reopen arbitrarily a question previously settled.

The principle of 'res judicata' has been held to apply to industrial adjudication when a matter in dispute in a subsequent case had earlier been directly and substantially in issue between the same parties and it had been heard and finally decided by the tribunal. The reason for this view is that multiplication of litigation, agitation and re-agitation of the same dispute between the same parties is not conducive to industrial pace. However, in applying this principle, extreme technical considerations, usually invoked in civil proceedings, may not be allowed to outweigh substantial justice to the parties in industrial adjudication (AIR 1974 SC 1132).

This rule of law has been made applicable even to writ proceedings as well. The position, therefore, is that when once a writ petition has been moved in a high court or Supreme Court (SC), and has been rejected there on merits, then a subsequent writ cannot be moved in the same court on the same cause of action (M S M Sharma Vs Sinha, AIR 1960 SC 1186).

If the petitioner seeks to urge some new grounds which he has failed to do before in the earlier petition, the matter cannot be agitated in a subsequent petition because of 'constructive res judicata'. In case, this rule is not applied to such proceedings, a party can go on filing one writ petition after another urging one or two new grounds each time, thus causing hardship to the opponent. What operates as 'res judicata' is the decision and not the reasons advanced by the court in support of its decision. (AIR 1968 SC 1370).

It, however, needs mention that 'constructive res judicata' applies to civil proceedings and not to habeas corpus petitions.

A subsequent petition under this writ jurisdiction can be filed on fresh grounds not pleaded earlier for the same relief (AIR 1982 S C 53). Even the Supreme Court can still entertain a petition under Article 32, whether or not new grounds are raised, in view of the importance of personal freedom. But, when a writ petition is withdrawn by the petitioner conceding the futility of the case as a ground for withdrawal and court allows it on the plea, a second petition will be barred by 'res judicata' (AIR 1975 Guj 183). A fresh petition is possible only if the court gives liberty for doing so.

There is some confusion on the point whether 'res judicata' applies when a writ petition is dismissed without the court making a speaking order. The apex court has held in a case that this doctrine should not operate in such a case. In Hoshnak Singh Vs India, the SC has ruled clearly that 'where a petition under Article 226 is dismissed in limine without a speaking order', such a dismissal would not constitute a bar to a subsequent petition. A high court can only review a decision where some mistake or error apparent on the face of the record is found. But, this power of review may not be exercised on the ground that the earlier decision was erroneous on merits.

If a person goes first to a high court under Article 226 and his petition is dismissed on merits, he cannot approach the SC under Article 32 because of 'res judicata'. He can reach the SC only by way of appeal. If, however, high court dismisses his or her writ petition not on merits, then 'res judicata' does not apply and petitioner can move the SC.

In common law

The principle of *res judicata* may be used either by a judge or a defendant.

Once a final judgment has been handed down in a lawsuit, subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one will apply the *res judicata* doctrine to preserve the effect of the first judgment.

A defendant in a lawsuit may use *res judicata* as defense. The general rule is that a plaintiff who prosecuted an action against a defendant and obtained a valid final judgment is not able to initiate another action versus the same defendant where:

- the claim is based on the same transaction that was at issue in the first action;
- the plaintiff seeks a different remedy, or further remedy, than was obtained in the first action;
- the claim is of such nature as could have been joined in the first action.[1]

Once a bankruptcy plan is confirmed in court action, the plan is binding on all parties involved. Any question regarding the plan which could have been raised may be barred by *res judicata*.[2]

The Seventh Amendment to the United States Constitution provides that no fact having been tried by a jury shall be otherwise re-examinable in any court of the United States or of any state than according to the rules of law.

For *res judicata* to be binding, several factors must be met:

- identity in the thing at suit;
- identity of the cause at suit;
- identity of the parties to the action;
- identity in the designation of the parties involved;
- whether the judgment was final;
- whether the parties were given full and fair opportunity to be heard on the issue.

Regarding *designation of the parties involved*, a person may be involved in an action while filling a given office (e.g. as the agent of another), and may subsequently initiate the same action in a differing capacity (e.g. as his own agent). In that case *res judicata* would not be available as a defense unless the defendant could show that the differing designations were not legitimate and sufficient.

Scope

Res judicata includes two related concepts: claim preclusion and issue preclusion (also called collateral estoppel or issue estoppel), though sometimes *res judicata* is used more narrowly to mean only claim preclusion.

Claim preclusion bars a suit from being brought again on an event which was the subject of a previous legal cause of action that has already been finally decided between the parties or those inprivity with a party.

Issue preclusion bars the relitigation of issues of fact or law that have already been necessarily determined by a judge or jury as part of an earlier case.

It is often difficult to determine which, if either, of these concepts apply to later lawsuits that are seemingly related, because many causes of action can apply to the same factual situation and*vice versa*. The scope of an earlier judgment is probably the most difficult question that judges must resolve in applying *res judicata*. Sometimes merely part of the action will be affected. For example, a single claim may be struck from a complaint, or a single factual issue may be removed from reconsideration in the new trial.

Rationale

Res judicata is intended to strike a balance between competing interests. Its primary purpose is to assure an efficient judicial system. A related purpose is to create "repose" and finality.[3]

Justice Stewart explained the need for this legal precept as follows:

> Federal courts have traditionally adhered to the related doctrines of *res judicata* (claim preclusion) and *collateral estoppel* (issue preclusion). Under RJ, a final judgment on the merits of an action precludes the parties . . . from re-litigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first cause. As this court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on a judication.[4] REFER IN CASE OF **Gerard Chuchumba v Rector of Itaga Seminary- this case give essential elements for application of plea of res judicata**

Exceptions to application

Res judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as the suit travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which to challenge a judgment rather than trying to start a new trial. Once the appeals process is exhausted or waived, *res judicata* will apply even to a judgment that is contrary to law. In states that permit a judgment to be renewed, a lawsuit to renew the judgment would not be barred by *res judicata*, however in states that do not permit renewal by action (as opposed to renewal by scire facias or by motion), such an action would be rejected by the courts as vexatious.

There are limited exceptions to *res judicata* that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions—usually called collateral attacks—are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or on the competence of the earlier court to issue that decision. A collateral attack is more likely to be available (and to succeed) in

judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognize the judgment of a foreign court.

In addition, in matters involving due process, cases that appear to be *res judicata* may be re-litigated. An example would be the establishment of a right to counsel. People who have had liberty taken away (i.e., imprisoned) may be allowed to be re-tried with a counselor as a matter of fairness.

RJ may not apply in cases involving the *England reservation*. If a litigant files suit in federal court, and that court stays proceedings to allow a state court to consider the questions of state law, the litigant may inform the state court that he reserves any federal-law issues in the action for federal court. If he makes such a reservation, RJ would not bar him from returning the case to federal court at conclusion of action in state court

RJ may be avoided if claimant was not afforded a full and fair opportunity to litigate the issue decided by a state court. He could file suit in a federal court to challenge the adequacy of the state's procedures. In that case the federal suit would be against the state and not against the defendant in the first suit.

RJ may not apply if consent (or tacit agreement) is justification for splitting a claim. If plaintiff splits a claim in the course of a suit for special or justifiable reasons for doing so, a judgment in that action may not have the usual consequence of extinguishing the entire claim.

However, once a case has been appealed, finality of the appellate court's decision is vindicated in that proceeding by giving effect in later proceedings involving the same matter, whether in the appellate or lower courts. This is the law of the case doctrine.

Failure to apply

When a subsequent court fails to apply *res judicata* and renders a contradictory verdict on the same claim or issue, if a third court is faced with the same case, it will likely apply a "last in time" rule, giving effect only to the later judgment, even though the result came out differently the second time. This situation is not unheard of, as it is typically the responsibility of the parties to the suit to bring the earlier case to the judge's attention, and the judge must decide how broadly to apply it, or whether to recognize it in the first place. *See Americana Fabrics, Inc. v. L & L Textiles, Inc*., 754 F.2d 1524, 1529-30 (9th Cir. 1985).

In civil law

The doctrine of *res judicata* in nations that have a civil law legal system is much narrower in scope than in common law nations.

In order for a second suit to be dismissed on a motion of *res judicata* in a civilian jurisdiction, the trial must be identical to the first trial in the following manner: (1) identical parties, (2) identical theories of recovery, and (3) identical demands in both trials. In other words, the issue preclusion or collateral estoppel found in the common law doctrine of *res judicata* is not present in the civilian doctrine. In addition if all else is equal between the two cases, minus the relief sought, there will be no dismissal based on *res judicata* in a civil law jurisdiction.

While most civilian jurisdictions have slightly broadened the doctrine through multiple exceptions to these three requirements, there is no consensus on which exceptions ought to be allowed.

A very common use of the res judicata principle is to preclude plaintiffs after a class action suit has been settle even on plaintiffs who were not part of the original action because they could have joined that original action. [1]

Note: Louisiana (USA), a civil law jurisdiction, has in the last twenty years begun to follow the common law doctrine of *res judicata*.

In international law

Arguably, *res judicata* is a general principle of international law under Article 38 (1)(c) of the International Court of Justice Statute. "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: ... c. the general principles of law recognized by civilized nations".

Similar provisions are also found in the International Covenants on Civil and Political Rights, and Article 4 of Protocol 7 of the European Convention on Human Rights. However, in the two said conventions, the application of *res judicata* is restricted to criminal proceedings only. In the European Convention, reopening of a concluded criminal proceedings is possible if -

(a) it is in accordance with the law and penal procedure of the State concerned; (b) there is evidence of new or newly discovered facts, or (c) if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

CASE STUDY

The Province Of Bombay vs The Municipal Corporation Of ... on 7 January, 1953

It is obvious, therefore, that this **case** is no authority for the broad proposition that a finding of law would bar, by '**res judicata**' the agitation or the same issue of law in a different suit between the same parties. The **cases** to which it is necessary to refer hereafter are **cases** of -- 'Ahmed Bhauddin v. Babu', AIR 1930 Bom 135 (C); --'Keshav v. Gangadhar', AIR 1931 Bom 570 (D); -- 'Savitri v. Holebassappa', AIR 1932 Bom 257 (E) and -- ' Mahadevappa Somappa v. Dharmappa Sauna', AIR 1942 Bom 322 (P).

Holebasappa', (E) qualify the very broad proposition which was mentioned in --'Chamanlal v. Bapubhai', (A) by saying that the decision on an issue of law operates as '**res judicata**' if the cause of action in the subsequent suit is the same as in the previous suit, and that was also said in the**case** of -- ' Mahadevappa Somappa v. Dharmappa Sanna', (F). A **case** of their Lordships of the Privy Council, namely, -- ' Broken Hill Proprietary Co. v. Broken Hill Municipal Council', 1926 AC 94 (G), was followed in the last mentioned **case**; but it would be convenient to go to the consideration of that **case** later.

action, in which **case** the subsequent suit may not be barred under Order 2, Rule 2. Consequently, if the cause of action is the same, except in the **cases** last mentioned, either the suit will be the same and barred under Section 11, or the suit will be for a claim or a relief omitted, when it will be barred by Order 2, Rule 2, and the proposition laid down in -- 'Ahmed Bhauddin v. Babu', (C) and**cases** following it will be useful only in a limited number of **cases**.

In support of this **case** Halsbury refers to two **cases**: -- 'In re Graydon: Ex parte Official Receiver', (1896) 1 QB 417 (J) and -- 'Jones v. Lewis', (1919) 1 KB 323 (K). It must be mentioned at this stage that the actual point in the **case** of -- 'Jones v. Lewis (K)' was different. It states the principle of law in support of which it is quoted in Halsbury only incidentally as follows (p. 344):

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