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Court : Rajasthan

Decided On : Feb-24-1969

Reported in : 1969WLN96

Judge : Kansingh, J.

Appeal No. : S.B. Cvil Writ No. 36 of 1969

Appellant : Shivram Singh

Respondent : The State of Rajasthan

Judgement :

Kansingh, J.

1. By this writ petition the petitioner who claims succession to a Jagir in the former Alwar State whose last holder expired in 1916, questions the validity of an order of the Raj Pramukh of the former United State of Matsya dated 25-4-1949, by which the Raj Pramukh ordered that the Jagir has escheated to the State. He further challanges the orders disposing of his representations. The petitioner has also prayed that a direction be issued to the State Government to recognise the petitioner as successor of the Jagir of Thikana Khora in accordance with Rule 14 of the Alwar State Jagir Rules and in consequence the State be commanded to restore the properties of the aforesaid jagir as also the income thereof to t he petitioner.

2. The order of the Raj Pramukh which is impugned has been quoted in para No. 8 of the writ-petition and it runs as follows:

His Highness the Raj Pramukh has been pleased to order that Khora Thikana (Alwar Unit) may escheated to Matsya, with immediate effect.

By Order of

His Highness the Raj Pramukh

Sd./- R.N. Saxena,

Secretary to Administrator

3. I have heard learned Counsel for the petitioner at sufficient length. He contends (hat this order of the Raj Pramukh of the former Matsya Union was bad, because according to Rule 29(d) of the Alwar State Jagir Rules, hereinafter to be referred as the 'Rules' the Government alone could have passed such an order. It is further contended that this order of the Raj Pramukh was also bad for the reason that according to Rule 29(d) the enquiry contemplated by the Hakim had not been completed and nor were the papers submitted to the Government. The learned Counsel maintain; that the Raj Pramukh could not have passed any orders without the conclusion of the enquiry, more so for the reason that the Maharaja of Alwar whose opinion was invited by the Raj Pramukh had opined that there was no justification for resuming the Jagir and that is why according to the minute recorded by the Maharaja of Alwar the mattsr remained pending for a long period. It was next urged by learned Counsel that the petitioner had made representations to the Raj Pramukh, but he did not know how they were disposed of. The petitioner submits that since, 1955 fresh representations had been submitted to the Government of Rajasthan and some letters were issued by the Government to the petitioner in that connection saying that the matter was receiving consideration, but that all proved to be of no help and consequently the petitioner has to file the present writ-petition.

4. At the very outset learned Counsel for the petitioner was asked to explain; (1) how an order of the Raipramukh of the erstwhile Matsya Union passed before the

coming into force of the Cononstitution or the intergration of the Matsya Union with the United State of Rajasthan could by challenged by the petitioner when that order was for escheating the Khora jagir, and (2) how the writ petition filed after a delay of almost 20 years since the order of the Rajpramukh was passed could be entertained

Reg., 1 : Learned Counsel submitted that the order having been passed by the Rajpramukh and not by the Government of the day could be questioned as the same was not in accordance with Rule 29 of the Rules. Learned Counsel placed reliance on Th. Bahadur Singh v. H.H. The Rajpramukh of Rajasthan ILR 7 Raj. 670 in support of his contention. We have carefully gene through this case. In that case one Thakur Sheodan Singh who was a Jagirdar of 6 annas share in the Jagir of Dhigwara was succeeded by his son Gopal Singh. Thakur Gopal singh having no male issue made an 'application to the Government of His Highness the Maharaja of Alwar on 24.2, 1955 for permission to adopt one Basant Singh according to Rule 9 of the Rules. The permission for such an adoption was given by the Executive Council of the Alwar State on 2.5.1946. In the meantime Gopal Singh expired on 7.7.1946. Basant singh who claimed to be the successor of Gopalsingh on the basis of adoption applied for recognition of his succession to Gopalsingh before the Hakim, (Jagir). Against this application Basantsingh he filed his objections and claimed that he was the nearest of kin and should be recognised as the successor of Thakur Gopalsigh. The Hakim, Jagir, gave the opinion that Basant Singh was entitled to succeed, but on an appeal the Home Minister remanded the case for further enquiry and report as to whether any adoption ceremony in respest of Basant singh had taken place. This report was submitted by the Hakim, Jagir on 13.9.1947 and it was to the effect that no ceremony of adoption had taken place beyond the sanction of the administration. The Judicial Secretary, who dealt with the matter, recorded his opinion to the effect that the mere sanction to adopt did not amount to an adoption without any ceremony of adoption. Accordingly, he recommended that succession be recognised in favour of the claimant other than Basant Singh who may be found to be entitled to succeed according to law. Basant Singh filed an appeal against this order of the Judicial Secretary and the Council of Ministers of Matsya Union, which had come into existence by that time, rejected the appeal. Basant Singh then filed

a review application which remained undecided till merger of the Matsya union into Rajasthan. This review petition was decided by the Rajpramukh of the United State of Rajasthan under Article 7 of the Covenant and on 16.9.1952.The Revenue Secretary conveyed the order of the Rajpramukh to the effect that succession in favour of Thakur Basant Singh be recognised in view of his adoption having been sanctioned by the administration. It was this order of the Rajpramukh passed on 16.9.1952 that came to be challenged in Th.Bahadur Singh's case ILR 7 Raj. 670. This case is, in my view, distingui shable from the present case. In the present case the impugned order was passed by the Rajpramukh of Matsya prior to the coming into force of the Constitution as well as the integration of the Matsya Union with the United State of Rajasthan.5 powers of the Raj Pramukh as they were prior to the coming into force of the Constitution arising from the covenant were not the same as the powers of the Rajpramukh flowing from the Constitution.

5. In Umraosingh v. Bhagwati Singh : AIR 1956 SC15 their Lordships of the Supreme Court had occasion to deal with the powers of the Raj Pramukh under the covenant before the coming into force of the Constitution. Their Lordships observed that powers of the Raj Pramukh in the matter of recognition of succession to Jagir arising from the covenant were in the nature of sovereign powers and were political in character being an incident of sovereignty and a matter that had to be exclusivaly settled in exercise of such a power cannot possibly be the subject of adjudication in a civil court. I am not unmindful of the fact that their Lordships were dealing with a civil suit and not a matter arising under Article 226 of the Constitution, but all the same if an order was passed by a competent authority namely, the Raj Pramukh and the order that was passed partook of the character of an act of a sovereign authority, then in respect of such an order the powers of this Court under Article 226 of the Constitution too cannot be invoked as the action of the Raj Pramukh was a completed act prior to the coming into force of the Constitution. Learned Counsel for the petitioner wants to argue that according to Rule 29(d) the matter could have been dealt with only by the Government as distinct from the Raj Pramukh. I may read the relevant sub-rule:

Rule 29(d) - After making necessary inquiries about the claims referred to in Clause (b) the Hakim Jagir shall as soon as possible subject for the orders of His Highness' Government his report and recommendations about succession.

In the period prior to the Constitution the term 'His Highness' 'Government' and the term 'Ruler' were almost synonymous. The Constitution of the erstwhile Indian State of Alwar was that the Ruler of Alwar was the repository of all legislative, judicial and executive powers. In other words, the Ruler of Alwar was the sovereign for the internal administration of the State. The distinction whatsoever, in my view, can be made between what is termed as 'His Highness' 'Government' and 'His Highness' or 'Ruler'. The position would change after the coming into force of the Constitution. Thereafter there will be no sovereign authority vesting in the Rajpramukh or the Governor and in that context the term 'His Highness' Government' will be deemed to be substituted by the Successor Government who will be entitled to exercise statutory powers apart from sovereign powers. This, however, cannot apply to the period preceding the Constitution as already observed. In these circumstances it is hardly of any consequence whether it was the Government of Matsya Union which passed the order or the Rajpramukh or the Union who passed the order. In either case the order will be in the name of the Rajpramukh duly authenticated by an officer empowered to authenticate such order. In these circumstances I do not find force in the contention sought to be raised by learned Counsel for the petitioner.

6. As regards the delay, learned Counsel for the petitioner submitted that the petitioner had been making representations to the State Government from time to time and the letters received from the State Government showed that the matter was under consideration of the Government. He has cited Firm Udairaj Bankatlal v. Commissioner, Civil Supplies (3) and Rao Manohar Singhji v. State of Rajasthan ILR 1 Raj. 888, I have gone through these cases as well. It is noteworthy that the delay in the present case is abnormal and even if the making of representations afforded any justification the petitioner has obviously waited for too long. Such a delay of almost two decades is not fit to be condoned. It is further noteworthy that these so-called representations were not under any provision of law.

7. In view of these considerations, therefore, 1 am not inclined to entertain the present writ petition which hereby reject in limine.

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