Jindu and ors. Vs. State and ors.

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Court : Himachal Pradesh

Decided On : Mar-20-1957

Reported in : AIR1957HP61

Judge : Ramabhadran, J.C.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 9, 115 and 151 - Order 41, Rule 23 - Order 43, Rule 1(4); ;Himachal Pradesh (Courts) Order, 1948; ;Punjab Pre-emption Act, 1913 - Section 9

Appeal No. : Second Appeal Nos. 45 and 48 of 1951, 1 of 1954 and 23 of 1956

Appellant : Jindu and ors.

Respondent : State and ors.

Advocate for Def. : N.D. Gupta, Govt. Adv. for No. 1 and; M.L. Sud, Adv. on behalf of Vig., Adv. for No. 2 in S.A. No. 45

Advocate for Pet/Ap. : Party-in-person in S.A. No. 45 of '51,; H.C. Anand, Adv. in S.A. 48 of '51,;

Judgement :

Ramabhadran, J.C.

1. These four second appeals were heard during the present circuit to Bilaspur. The appeals involve some common points for determination, relating to the powers

of the erstwhile Raja of Bilaspur, prior to the accession of the Bilaspur State to the Union of India (which took place on 13-10-1948 A. D., corresponding to 28th Asoj 2005 B). After the accession of Bilaspur to the Indian Union, the territory was administered by the Central Government through a Chief Commissioner.

The personal rule of the, Raja, however, ended with accession. In the present appeals, as I shall show presently, we are! concerned with certain escheats of property in favour of the Raja of Bilaspur and their subsequent grant by the Raja to various persons. (In Regular Second Appeal No. 1 of 1954, the escheat of land took place before accession, but it was sold subsequent to ascession, by the Chief Commissioner of Bilaspur).

2. By means of two Robkars dated 1st. Sawan, 1982 and 1-8-1995 B., His Highness Raja Anand Chand of Bilaspur laid down the procedure to be followed in cases of escheat and the subsequent disposal of escheated properties. The purport of these Robkars was that if a person died, without leaving any heirs within five degrees, his properties were to escheat to the State. Such properties could be subsequently granted to the heirs of the deceased beyond the fifth degree on payment of certain Nazrana.

It was made clear that such grants or resettlements could not be pre-empted and Courts in Bilaspur were precluded from entertaining such suits. The question that crops up for determination is: Whether the procedure laid down in these two Robkars and the instructions contained therein, would amount to a legal enactment or were merely departmental instractions. In my opinion, there is no room for doubt that His Highness Raja Anand Chand in issuing these circulars, acted as the Ruler of the Bilaspur State.

From the very wording of these Robkars, it is clear that they were meant to be instructions for the guidance of the revenue officers, in the State, to enable them to submit correct reports regarding escheat cases and proposals for the disposal of properties so escheated. I am unable to accept the contention that these Robkars amounted to a statute, laying down a line of succession to the properties of those persons, who died without leaving any heirs within five degrees.

It has to be borne in mind that the Raja of Bilaspur exercised the full powers of a, sovereign within his State and discharged all his functions as such in matters judicial, executive and legislative. Only in matters relating to external affairs and relations with other States, he was controlled by the British Government. I may refer to the following authorities:--(a) in Gurdwara Sahib Siri Tej Bahadur Gaja v. Piyara Singh, AIR 1953 Pepsu 1, (FB) (A), a Full Bench of the former Pepsu High Court, in considering the powers of the former Maharaja of Patiala, observed as follows:

'The erstwhile Patiala State in the above sense was an independent and sovereign State, and its Ruler, so far as internal matters were concerned, exercised powers identical with that exercised by the Parliament in England. In short, though in matters relating to external affairs and relations with States, he was controlled by the British Government, and even in internal matters the paramount power had the right to interfere in certain contingencies, in internal matters, his words had the weight and authority of law, and he exercised all the powers of a sovereign and discharged all his functions as such in matters judicial, executive and administrative. In his sovereign capacity, he had the fullest control over his subjects and their property in his territories and could pass all kinds of orders.

Therefore, where, in his capacity as the Ruler of the Patiala State, the Maharaja passed an executive order depriving a subject of his property and conferred the same on a Gurdwara Committee:

Held, that the civil Courts had no jurisdiction to question the legality of that order.'

The powers enjoyed by the Raja of Bilaspur within his State were the same as those enjoyed by the Ruler of Patiala within his State.

(b) Ameer-un-Nissa Begum v. Mahboob Begum, AIR 1955 S. C. 352 (B). There, dealing with the powers of the Nizam of Hyderabad, prior to the integration of the Hyderabad State with the Indian Union, their Lordships of the Supreme Court pointed out that:

'Prior to the integration of Hyderabad State with the Indian Union and the coming into force of the Indian Constitution, the Nizam of Hyderabad enjoyed uncontrolled sovereign powers. He was the supreme legislature, the supreme judiciary and the supreme head of the executive, and there were no constitutional limitations upon his authority to act in any of these capacities.

The firmans were expressions of the sovereign will of the Nizam and they were binding in the same way as any other law; nay, they would override all other laws which were in conflict with them. So long as a particular firman held the field, that alone would govern or regulate the rights of the parties concerned though it could be annulled or modified by a later Firman, at any time, that the Nizam willed.'

On the same analogy, it can be said that an order passed, or a grant made, by the Ruler of Bilaspur, as such, before accession, expressed his sovereign will and were binding in tha same way as any other law. Therefore, by issuing the two Robkars of 1982 and 1995 B. the Raja of Bilaspur, in no way. curtailed his own powers. He was under no obligation to make a grant of any escheated property in favour of any person. He could have kept the escheated property under his personal management. No collateral of the deceased holder, beyond the fifth degree, could have claimed the property as of right, or instituted a suit against the Ruler, in respect of the same.

(c) Director of Endowments, Government of Hyderabad v. Akram Ali, (S) AIR 1956 S. C. 60 (C). There, too, their Lordships of the Supreme Court were considering the effect of a firman issued by the Nizam of Hyderabad, prior to the coming into force of the Constitution.

Their Lordships observed:

'The Nizam was an absolute sovereign regarding all domestic matters at the time when the Firman was issued and his word was law. The effect of this Firman was to deprive 'A' and all other claimants of all rights to possession.'

'It was conceded in this case that the Nizam had power to confiscate the property and to take it away from A in toto and it was conceded, that if he had done so, the

rights so destroyed would not have revived because the Constitution only guarantees to a citizen such rights as he had at the date it came into force; it does not alter them or add to them: all it guarantees is that he shall not be deprived of such rights as he has except in such ways as the Constitution allows. But if the Nizam could take away every vestige of right by a firman he could equally take away a part of them and at the date of the passing of the Constitution, 'A' would only have the balance of the rights left to him and not the whole, for what applies to the whole applies equally to the part:'

On the same analogy, it can be said here that once property had been escheated to the State, and the Raja of Bilaspur had granted the same in favour of any person, no other person could dispute the grant.

3. My attention was invited by the other side to Balak Ram v. Sita Ram, AIR 1954 Himachal-Pra. 6 (D), where my learned predecessor, in a case from Jubbal, held that:

'Where an act of the State is clearly referable to some municipal law, the sanction for the act is not that of sovereign power but that of the particular law, and consequently, immunity from having to justify such an act in a municipal Court cannot be claimed by the State.'

4. It would appear that in the former Jubbal State, there was a law, embodied in the State Wajibularz, regarding escheat and the grant of escheated land. In Bilaspur, as already shown, there was no such law. I have already given my reasons for holding that the two Robkars dated 1982 and 1995 B. cannot be treated as statutes. Consequently, the decision, reported in AIR 1954 Him-Pra. 6 (D), has no application to the facts of the present appeals.

5. My attention was also invited to Bhagtu v. Wazir Moti Ram, AIR 1951 J. and K. 14 (E). There, the facts were that, accepting 'the recommendations of, the revenue authorities the Ruler, acting as the highest revenue authority in the State, confirmed an order recording a person as malguzar. Under those circumstances, the Board of Judicial Advisers held that the order did not operate as a grant. I have already given my reasons for coming to the conclusions that the two Robkars

dated 1982 and 1995 B. were issued by Raja Anand Chand as Ruler of the State and not as the highest revenue Officer in the State. The above ruling has, therefore, no application here.

6. As already stated, the Ruler of Bilaspur acceded to the Indian Union on 13-10-1943 A. D. From that date, the territory of the Bilaspur State became art integral part of the Indian Union. The Raja surrendered all his ruling powers. The administration was taken over by the Central Government, which operated through a Chief Commissioner. The point for determination is whether the Chief Commissioner exercised the same powers as the Ruler. The answer, obviously, must be in the negative. With the accession of the State to the Union of India, the sovereign powers of the Ruler came to an end.

Such powers as the Chief Commissioner exercised in Bilaspur were those which were conferred upon him by the Central Government and these, obviously, could not compare with the power enjoyed by the Ruler prior to accession. It, therefore, follows that it was not open to the Chief Commissioner, in the absence of legislative enactment, to cancel or modify, any grant made by the Ruler in his sovereign capacity.

In Mast Ram v. State of Himachal Pradesh, AIR 1954 Him. Pra. 84 (F), the facts were that on 25-3-1948 the Rana of Jubbal State granted certain lands to one Mast Ram. On 30-8-1950, the Chief Commissioner of Himachal Pradesh (Jubbal State having acceded to the Union of India by that time and become a part of Himachal Pradesh) set aside the grant made by the Rana Sahib on 25-3-1948. Mast Ram filed a writ petition to this Court. In granting that petition, I had observed that:

'It is not disputed that the grants in favour of the petitioner were made by the Ruler of Jubbal prior to the merger of the State into Himachal Pradesh, i. e. at a time when the ruler was fully autonomous and sovereign, except in matters relating to defence, external affairs and communications, which had been transferred to the Dominion of India, soon after the passing of the Indian Independence Act, 1947.'

'It seems to me that whatever be the rights that passed to the petitioner by reason of the grants made to him by the Ruler of Jubbal, he could not be deprived of them, by orders of the nature passed by Mr. Moon, on 30-8-1950. Articles 19(f) and 31(1) of the Constitution come into play.'

On the same analogy, it can be said here that the grants made by the Raja of Bilaspur, prior to the accession, could not be reviewed or cancelled by the Chief Commissioner subsequent to the accession.

7. To sum up, therefore, the findings of this Court are as follows:- (i) Prior to accestion, the Raja, of Bilaspur enjoyed full sovereign powers with the State. His will was law and there were no restrictions on his powers.

(ii)The Robkars issued by the Raja in 1932 and 1995 B. wore departmental instructions and did not have the force of law. (iii) After accession, the Chief Commissioner did not enjoy the same powers as the Ruler prior to accession. Consequently, he could not modify or cancel grants made by the Ruler as sovereign.

8. Having come to these conclusions, I shall apply them to these four appeals. I shall state the facts giving rise to each appeal, briefly.

Regular Second Appeal' No. 45 of 1951.

9. One Mt. Jiwani died, without leaving any heirs within five degrees. Consequently, her lands were escheated to the State. The Ruler granted these lands, in the first instance, to one Mansha Ram. Thereupon, one Jindu Chamar filed a review petition, which was allowed by the Ruler. The grant in favour of Mansha Ram was cancelled and the land was allotted to Jindu. Thereupon, Mansha Ram, filed a suit in the Court of the Subordinate Judge, Bilaspur, praying that the grant in favour of Jindu be set aside and he (Mansha Rom) be put in possession of the land. The Subordinate Judge (Mr. G.R. Prashar) dismissed the suit holding that the grant in favour of Jindu was an act of the sovereign and could not, therefore, be agitated in a civil Court.

Mansha Ram then went up in appeal. The learned District Judge (Mr. J. P. Thakore) came to the conclusion that the jurisdiction of the 'civil Court was not barred, since, in his opinion, the grant was made by the Ruler, not as n sovereign, but as Financial Commissioner. Having come so far, the District Judge passed an order, purporting to remand the suit under Order 41, Rule 23, Civil P. C., on the score that no evidence had been recorded by the trial Court on one issue. It is obvious that Order 41, Rule 23, Civil P. C. had no application in the present case. The suit had been decided by the Subordinate Judge (Mr. Prashar), not upon a preliminary point, but after giving his findings, on all issuers. Therefore, there was no question of remand under Order 41, Rule 23.

If at all, a remand had to be made--which, to my mind, was unnecessary--it would have been made only under Section 151, Civil P. C. No appeal lies from an order remanding a case under Section 151, Civil P. C. At the request of the appellant, I decided to treat the second appeal as a revision petition.

10. I have already given my reasons for holding that the Robkars of 1982 and 1995 B. did not have the force of law and they were merely departmental instructions. Therefore, the act of the Ruler in allowing the review petition and granting the suit properties in favour of Jindu could not be questioned in a civil Court. The view of the learned District Judge to the contrary was erroneous. 'Under paragraph 35, Himachal Pradesh (Courts) Order, it is open to this Court, in exercise of its revisional powers, to set aside the order of remand and to restore the decision of the Subordinate Judge, whereby the suit was dismissed. In my opinion, an order in such terms should be passed.

Regular Second Appeal No. 48 of 1951.

11. This second appeal arises out of a suit filed by Tota and others against Jagat Ram and the Bilaspur State, seeking a declaration that the grant of 27 bighas of land in favour of Jagat Ram made by His Highness the Raja Sahib of Bilaspur on 10-8-2004 B. was null and void and a decree for possession of the same. The land formerly belonged to one Mt. Ganeshu, who died without leaving any heirs within five degrees. After her death, the lands escheated to the State. His Highness granted the lands to Jagat Ram in recognition of his meritorious service in World

War No. II (where he was awarded a Military Cross by the British Government). The plaintiffs' case was that the grant was opposed to the rules contained in the Robkars of 1982 and 1995 B. The trial Court (Subordinate Judge of Bilaspur) dismissed the suit holding that the grant had . been made by His Highness in his sovereign capacity and was, therefore, beyond the jurisdiction of the civil Court.

On appeal being taken to him, the learned District Judge, held that the Robkars had been issued by His Highness, in his capacity as a sovereign, but the grant was made by him as the State Government. I have had considerable difficulty in understanding the finding of the District Judge. The District Judge felt that the grant in favour of Jagat Ram was against the rules contained in the Robkars of 1982 and 1995 B. In his opinion, therefore it was open to the Civil Court to go into the matter. Accordingly, he granted declaration in favour of the plaintiffs to the effect that they were entitled to the grant of the land in suit. The grant made in favour of Jagat Ram was set aside.

At the same time, the District Judge felt that no decree for possession could be passed in favour of the plaintiffs in view of the provisions of Section 9 of the Punjab Pre-emption Act. A bare decree for declaration was, accordingly, granted by the District Judge. Jagat Ram has come up in second appeal. The learned Government Advocate for the State has supported the appellant.

12. I have already given my reasons for holding that the Robkars of 1982 and 1995 B. do not amount to a legal enactment. They are only departmental instructions. It was open to the Ruler as sovereign to grant the escheated property to anybody he liked. His act could not be questioned in a civil Court. Mr. Anand pointed out that the Chief Commissioner, to whom an application was made by the plaintiffs, felt himself incompetent to cancel or modify the orders of the Ruler, passed as the sovereign, vide Ex. P. 4. Jagat Ram won the Military Cross for gallantry during World War No. II. I fail to see how the grant, made by a sovereign, of property that had escheated to the State, could be questioned in a civil Court. I am, therefore, of the opinion that this second appeal must be allowed and the plaintiffs should be non-suited.

Regular Second Appeal No. 23 of 1956.

13. By an order dated 28th Baisakh, 2004, Bk. His Highness the Raja of Bilaspur granted the suit lands to Badri, plaintiff, on payment of Nazrana amounting to Rs. 354/8/-. Sita Ram and other defendants filed a review petition before the Ruler. Before the review petition could be disposed of, Bilaspur State acceded to the Union of India. The Chief Commissioner, who had taken charge of the administration, on behalf of the Central Government cancelled the grant made by His Highness, dispossessed Badri and handed over the lands to the defendants.

Badri then filed a suit in the Court of the Subordinate Judge, Bilaspur, claiming that the grant in his favour made by the Ruler could not be cancelled by the Chief Commissioner. He, therefore, sought a declaration that the order of the Chief Commissioner purporting to cancel the grant, was void and ineffective and he be put in possession of the suit lands. The Subordinate Judge granted the plaintiff a decree as prayed for. There was an appeal by the defendants to the learned District Judge, who, however, concurred with the view of the trial Court and dismissed the appeal. The defendants have come up in second appeal.

14. I have already given my reasons for holding that a grant made by the Raja, as sovereign, could not be cancelled or modified by the Chief Commissioner.

I notice that the Chief Commissioner hasbased his order on his notion that the grant in favour of Sita Ram and others would be forthe 'greatest good of the greatest number.''The Chief Commissioner has not cared to consider whether, under the guise of doing the'greatest good to the greatest number,' he wascompetent to cancel the grant made by a sovereign ruler. This order is dated 1-12-1949. Itis noteworthy that in another case, referred toin Regular Second Appeal No. 48 of 1951, thesame Chief Commissioner had felt on 22-4-1949that he was not competent to cancel a grantmade by the Ruler.

15. I am satisfied that the decisions of the Courts below are correct and the suit was rightly decreed. This second appeal must, therefore, fail.

Regular Second Appeal No. 1 of 1954.

16. The facts giving rise to this second appeal, are slightly different from those of the other three appeals, already considered. Two females, Mt. Malaru and Mt. Gyanu died before the accession of the Bilaspur State to the Union of India. They left no heirs within five degrees. Consequently, their lands were escheated to the State. On 6-4-1949 A. D. i. e. after the accession of Bilaspur State to the Union of India, the Chief Commissioner sold these lands to defendants 2 to 7.

Indar Singh filed a suit in the Court of the Subordinate Judge, Bilaspur, claiming, firstly, that there could have been no escheat in favour of the State in his (plaintiff's) presence; secondly, that even in the event of escheat, he (the plaintiff), as a collateral, had a preferential right to purchase the land. The Subordinate Judge came to the conclusion that the plaintiff was entitled to the land in suit in preference to the defendants. Consequently, he granted the plaintiff a decree for possession, subject to the payment of a sum of Rs. 1,909/- to the defendants. The defendants then went up in appeal to the District Judge, but were unsuccessful there. Hence, this second appeal.

17. Two points arise for determination in this appeal, (a) Whether the escheat in favour of the State was lawful and (b) Whether the sale in favour of the defendants was bad?.

18. As far as (a) is concerned, the record shows that both Mts. Malaru and Gyanu had died before 13-10-1948, when the State of Bilaspur merged to the Union of India, vide ,Ex. P. 4 and paragraph 1 of the plaint. Therefore, the escheat in favour of the State took place before the Ruler parted with his sovereign powers. For reasons already stated at the beginning pf this judgment, the acts of the sovereign in this respect could not be challenged in a civil Court. Therefore, it comes to this that the properties, in question, did escheat in favour of the State after the death of Mt. Gyanu and they vested in the State.

19. Coming to (b), it is true that, by thetime the properties were sold to the defendants,Bilaspur State had acceded to the Union ofIndia and the sale was effected by the ChiefCommissioner. This does not, however, affectthe transaction and for two reasons, (i) Theproperty having vested in the Government lawfully, they were at liberty to dispose of it inany manner they choose. In Commissioner

forLocal Government Lands and Settlement v.Abdulhusein Kaderbhai, AIR 1931 P. C. 132, (G),their Lordships of the Privy Council werepleased to point out that:

'Prima facie, the Crown and the servants of the Crown exercising the right of disposing of Crown property, have at least the rights of private owners of making the disposition in any way that appears to them to be best in the interests of the Crown.'

On the same analogy, the Chief Commissioner, as the agent of the Central Government could dispose of these lands as he deemed proper in the interest of the Government.

(ii) The sale of the suit lands to the defendants could not confer upon the plaintiffs aright of pre-emption, vide Section 9 of the PunjabPre-emption Act, whose provisions were inforce in Bilaspur as long ago as in 2000 B. Inmy view, therefore, the suit was misconceivedand the Courts below erred in granting a decree. Accordingly, this second appeal must beallowed.

(The rest of the judgment is not necessaryfor purposes of the report.)