
(1952) 04 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Application No. 13 of 1950

Ahmad-Un-Nissa Begum and another

APPELLANT

Vs

The State and others

RESPONDENT

Date of Decision : 10-04-1952

Acts Referred:

Constitution of India, 1950 — Article 133, 136, 154, 154(2)(a), 162
Government of India Act, 1935 — Section 40, 40(1)

Citation : AIR 1952 AP 39

Hon'ble Judges : Siadat Ali Khan, J; Mohd. Ahmed Ansari, J; Jaganmohan Reddy, J; Deshpande, J; A. Srinivasa Chari, J

Bench : Full Bench

Advocate : Bishweshwarnath and others, for the Appellant; Raja Ram Iyer, Advocate-General, Shanker Rao Bargaonkar, Counsel and others, for the Respondent

Judgement

Mohd. Ahmed Ansari, J.—The three questions referred to this larger Bench because of their constitutional importance are :

- (i) Is the Order of the Government of 3rd April 1950, administrative or quasi-judicial; and has this Court now jurisdiction under Constitution to quash it;
- (ii) Has H. E. H. the Nizam still the prerogative right of sanctioning recommendations by the Commissions which were hearing Jagir succession cases at the time the Jagir Abolition Regulation was passed; and
- (iii) If such right does not survive, has the executive of the Hyderabad State any power to confirm such successions for purposes of granting commutations to the persons entitled, and if so in what form must the Order be made?

2. The questions have arisen in an application to set aside the order confirming succession to the Jagir estate of one Nawab Kamal Yar Jung, who died on Isfandar 23, 1353 Fasli (26th January 1944). He belonged to a leading family of noblemen of the Hyderabad State, held a large jagir estate, and also owned

considerable non-jagir properties. The villages comprising his jagir estate numbered ninety-one. Soon after his death, H. E. H. the Nizam issued a Firman of Safar 22, 1363 Hijiri (18th February 1H4) appointing a Commission to enquire about his heirs, and to submit its recommendations to him through the Executive Committee. The personnel of the Commission had changed from time to time. At one time it consisted the then Deputy Prime Minister, an Hon"ble judge of this Court and a Member of the Revenue Board. These commissioners recommended that Riasat-un-nissa Begum, a wife of the deceased and opposite party NO. IS to this application, be put in possession of the jagir estate, but the report was not sanctioned when the Police Action took place.

After the Police Action, and on the recommendation of the Military Governor, another Firman of Moharrunt 20, 1368 Sijiri (22nd November 1948) was issued appointing four new Members of the Commission. They were Baja Dhonde Raj Bahadur, Manohar Pershad J., Suryanarayana Rao J. and Mir Amir Ali Khan. They did not record, any fresh evidence, though authorised to do so and after hearing the arguments of the several parties before them submitted a report dated Dai 11, 1359 Fasli (11th November 1949), in which the majority were of the opinion that Ahmed-un-nissa, Aziz-un-nissa and Riasat-un-nissa Begums were the three wives of the deceased and should together get two annas shares, Shrirri Buai and Pari Chehra were the "Muta" wives and their sons, Syed Mohd. Hussain, Syed Tahbur Hussain, and Syed Sadiq Hussain the deceased's legitimate sons, who should together get twelve annas shares. The majority also came to the conclusion that Khadija Begam was a legitimate daughter and entitled to two annas share. Some delay occurred before the recommendations of the majority were accepted by the Government by an Order of 3rd April 1950, which is as follows :

No. 1024 dated 3-4-50

To

The Nazim Atiyat, Hyderabad-Du.

Sir,

Enclosing herewith a copy of the Special Tribunal's decision in the Kamal Yar Jung's Succession ease along with note of dissent by Mir Amir Ali Khan, I am directed to inform you that Government have accepted the decision given by the majority of the Members constituting the Special Tribunal according to which the following have been declared the heirs of the late Nawab Kamal Yar Jang.

1. Tahawwar Hassaiii

Son

4 annas.

2. Mohd. Hussain Khan

... "

4 "

3. Sadiq Hussain Khan

....,

4 "

4. Khadeeja Begum

... Daughter

2 "

5. Biasatunnissa Begum

Azizannissa Begum

Wives

2 "

Lal Bee

Shreereen Bua, Parichehra Rua as the Namtua wives of late Nawab Kamal Yar Jung have been held entitled to "Guzara" only.

Necessary action may be taken.

Yours faithfully,

3. This Order is being challenged by Ahmed-un-nissa and Aziz-un-nissa Begums, through an application for the Writs of Certiorari, Prohibition and Mandamus against 25 persons. Of the persons impleaded as Opposite Parties, NO. 1 to 6 are the Government of Hyderabad and other Officers concerned in administering the estate. Nos. 21 and 32 are the remoter relations of the late Nawab and the rest are his wives, "Khawases" children and other relations. The following pedigree would more conveniently show the relationship of the parties with the deceased, and against each relation is given his position as a party to the application.

4. The main object of the application is to have the Order of the Hyderabad Government set aside. It further seeks to prevent the order from being given effect to and stop Opposite Parties NOS. 7 to 12 from drawing their shares as heirs of the late Nawab till judgments be given in the two suits instituted in the Civil Court. The application also prays for an order on the Government of Hyderabad to maintain the status-quo till then. The main ground for vacating the order is contained in prs. 7 (A), (B) and (c) of the application and can be summarised in its words as follows :

If it be held that H. E. H. the Nizam is still vested with the old prerogatives of sanctioning successions and conferring jagirs, the Order in question cannot be

effective until it has received the sanction of H. E. H. the Nizam; and

(ii) If it be held that the whole Royal prerogatives as a Sovereign Ruler have been taken away by the Constitution of India, there is no authority left behind to exercise that Sovereign power and the Order under protest could not be passed by the Chief Minister.

5. A brief summary of the different replies of the Opposite Parties may now be given. The nephews of the late Nawab, Opposite Parties NOS. 16 to 18 support the applicants. The Government and the different officers oppose the issuing of the writs on the grounds that the Order is an administrative one, is *intra vires*, and no application lies to quash it, They also assert that the decision of the Commissioners cannot be reversed on merits. The two alleged "Muta" wives and their respective children have filed two separate replies challenging the correctness of the grounds for quashing the order.

6. The Division Bench which originally heard the application was of the opinion that important Constitutional questions were involved and accordingly referred the case to a Full Bench of three Judges. In Para. 5 of the referring Order, five such questions are enumerated. When the case came for hearing before the Full Bench consisting of my learned brothers, Khaliluzzaman Siddiqui, Srinivasa Chari JJ. and myself, we thought it advisable to refer the three questions already mentioned to a larger Bench and accordingly they have come for the expression of opinion before this Bench.

7. Before dealing with them, it is necessary give a short account of the jagir tenures in this State, the legal basis of the powers of the Ruler with regard to such tenures before the Police Action, and the changes affecting them which took place after the Police Action till the inauguration of the Constitution. Some of their characteristics are given by the then Judicial Committee of this State in the case of *Laxminaryan v. Trimballi Lal*, 25 Deccan L. R. 1. It had been held there that the Ruler of the State was the absolute owner of all the lands, he granted usufructuary rights in them to others, which might be called tenures, two such tenure-holders were the Pattedars and the Jagirdars, the legal position of a Jagirdar differed from that of a Pattedar, in that the Jagirdar paid no revenue, his heirs did not automatically succeed to the estate, during the life-time of the holder alienation of the estate was forbidden, the grantor was not bound on the death of the grantee to confer the estate on his heirs and no suit relating to such tenures could be instituted in Civil Courts without prior permissions.

There were several Firmans to support the view. One was of Ramzan, 4, 1319 Hijiri (16th December 1901) which is referred to in the case and said that no Atiyat grant was heritable, so that the heirs of the deceased holder could insist on their rights to succeed. Again, in another Firman of Nabt-us-sani, 5, 1347 Hijiri (28th September 1928), it was laid down that the powers of the grantor could not be curtailed by the Rules framed for the guidance of the Atiyat Courts in succession matters and an absolute right vested in him to regrant the estate

or refrain from doing so; he could even confer the estate on a stranger. I shall cite only one other case of *Sultan-ul-Mulk v. Padshah Begum*, 85 Deccan L. R. 387, where the Judicial Committee again held that the jagir tenures were inalienable, non-heritable and reverted to the grantor on the death of each grantee and on being granted to the heirs, the order operated as a fresh grant.

The cumulative effect of the authorities referred to above is that the jagir tenures in this State consisted of usufructuary rights in lands which were terminable on the death of each grantee, were inalienable during his life, the heirs of the deceased holder got the estate as fresh grantees and the right to confer the estate was vested in the Ruler and exercisable in his absolute discretion. Nevertheless, the Jagirdars had during their lives valuable rights of managing their estates, enjoying the usufructs and other important privileges, which conferred considerable monetary benefits on them.

8. In the period before the Police Action, the powers of the Ruler were often called his prerogatives and it was strenuously argued by the learned Advocate of the applicants that notions of English prerogative should not be imported when dealing with such powers. I do not agree with the contention. Terms of English Constitutional law were used to describe his position in the case of *Laxminarayan v. Trimbak Lal*, 25 Deccan L. R. 1, such as "absolute owner of all lands," "tenures" and "orders in Council." English Constitutional precedents were followed in this State in granting permission to sue the Government in Courts of law. Then the non-liability of the English Crown for the torts of its servant was noted upon in exonerating the Government from paying compensation for such acts. Indeed, the jagir tenures followed very closely the feudal systems of granting estates in land for services either past or future.

Therefore, I see no reason why the connotation of the word "prerogative" as used in English law should not be relied upon when dealing with such powers of the Ruler of this State before the Police Action. In *Anson's Law and Custom of the Constitution*, vol. II, part I, at page 18, the "prerogative" is said to consist of the residue of the executive powers which the Crown in the early stages of the country's history possessed in all the departments of the Government, or of the rights which originated from the Crown being the feudal Chief of the country, i.e., the ultimate land-owner of every man, or of the attributes with which legal theory invested the institution.

According to the above analysis, the prerogative of the Ruler of this State as regards the jagir tenures could only mean the rights he held as the ultimate owner of the jagir land. Consequently, after the death of each life-holder, the estate reverted to the grantor which was regranted to the person of his choice. This means that the power was not personal; but proprietary and capable of vesting in the juristic personality of his successor, as the ultimate owner of all land in the State. Now, I come to the legal changes made in the jagir tenures after the Police Action.

9. Soon after the Police Action, a Firman of 19-9-1948 was published in the Extra-ordinary Gazette of Aban 20, 1357 Fasli (20-9-1948) relating to the powers of Major General J. N. Chaudhury, the Military Governor, in the following words:

Whereas the General Officer Commanding in Chief Southern Army has appointed Major General J. N. Chaudhury, O. B. E., to be the Military Governor for the Hyderabad State and whereas all authority for the administration of the State now vests in him, I hereby enjoin all the subjects of the State to carry out such orders as he may deem fit to issue from time to time. I appeal to all officers of the State administration and subjects of the State to render faithful and unflinching obedience to the Military Governor and conduct themselves in a manner calculated to bring about the speedy restoration of law and order in the State.

10. Two things are clear from the document: One is that all the administrative powers of the Ruler were exercisable by the Military Governor and the other is that the new Chief was not vested with the ultimate ownership of land in the State. The non-vesting of the ownership explains the obtaining of the Firman for the appointment of the New Commissioners in the case and the vesting of the administrative, which is later clarified to include legislative powers validates the passing of the Jagir Abolition Regulation by the Military Governor. For it is an established principle of Constitutional law that duly constituted legislative authority can make laws affecting prerogative. I shall refer only to the case of AIR 1946 127 (Privy Council) in support of this view, where it has been held that the provincial legislature can pass an Act affecting Crown grants.

11. During this period, two important Regulations were passed. By the Regulation NO. XLI (4I) of 1358 Fasli, the estate of the Ruler known as "Sarf-e-Khas" was merged in the "Diwani" on 5-2-1949. Then by another Regulation NO. LXIX (69) of 1358 Fasli, which is called the Hyderabad (Abolition of Jagirs) Regulation and came into force from the date of its publication in the Jarida on Meher 15, 1358 Fasli (15-8-1949) all jagir tenures were incorporated into State lands. No person under 9. 4 of this Regulation could after its commencement be appointed or recognised as a Jagirdar whether in succession or otherwise. Section 5 directed a date to be notified for the transfer to the Government of the administration of the jagirs and on the date the jagirdars were to make over their managements to the Jagir Administrator. Such a date was notified.

Section 6 lays down that the jagirs shall be included in the "Diwani" and unless and until included in a district shall be administered by the Jagir Administrator and the powers, rights and liabilities in relation to such estates shall cease to be exercisable by the jagirdar and shall be exercisable by the Administrator. By sub-s. (7) of the Section, the share of a Jagirdar or Hissedat" in the net income of his jagir is inalienable save with the previous sanction of the Government and one half of such shares or allowances is liable to attachment in execution of decrees. Then sub-s. (8) makes the shares in the net income heritable according to the personal law of the persons entitled and according to sub-s. (9) in the absence of

any beir, they are to lapse to the Government in case of grants by the Ruler.

The Regulation after providing for the deduction of certain percentage of the gross revenue to the Government for the administration expenses allows in ss. 10 and 11 distribution of the balance among the persons entitled. By s. 14, such payments are called interim maintenance allowances which would be payable until the commutation for the jagirs is determined. Under sub-s. (2) of s. 21, all claims relating to a jagir or to any shares in the income notwithstanding any existing law are made justiciable by the Civil Court; but the proviso saves pending succession proceedings. As it is important, I shall quote it in extenso:

Provided that any proceeding pending at the commencement of this Regulation before an Atiyat Court or before ft Commission or any authority shall be completed in accordance with the existing law as if this Regulation had not been enacted.

12. The effects of these Regulations are that all existing Jagir tenures in the State were merged in the State lands and the State alone became the ultimate landlord, and the rights to receive allowances became statutory, heritable and justiciable. Had it not been for the proviso to sub-s. (2) of s. 21, it could have been argued with some justification that the rights to receive interim allowances and compensation required no special sanctions by acceptance of the recommendations of the tribunals in pending succession cases; for under sub-s, (3) of s. 9, the heirs of the deceased jagirdars are declared to be entitled to their shares in the income after the deduction of expenses.

The proviso, however, directs completion of such proceedings according to the existing law, which terra has been defined by clause (b) of s. 2 of Regulation NO. LXIX [69] of 1358 Fash to mean the law in force at the commencement of this Regulation including the Atiyat Law, customs or usage having the force of Jaw. Thus under the enactment still some sanction is necessary to complete the heirs' title to the income and compensation. I have said that the right of regranteeing jagir according to the Atiyat law was vested in the Ruler as his prerogative on the basis of his being the Seignior of the manor and could be exercised only by him even after the Police Action.

But after the passing of the Regulation and the vesting of the Seignior in the Government the power of regranteeing becomes statutory and capable of being exercised on behalf of the new owner, whoever it may be, by the person entrusted with the executive powers. It was argued that even before the Police Action estates of jagirdars escheated to the "Diwani" and never to the Ruler. I would not attach any importance to such precedents, for in Atiyat matters the Rulers of this State have not held themselves bound by precedents. The position becomes fundamentally different when there are specific statutory provisions and there are rules relating to such escheats in the Regulation. That was the legal position when Shri M. K. Vellodi was appointed as the Chief Minister.

13. At the time of his assuming the office, a Firman was issued investing him

with executive and legislative powers, which is dated 1.12-1949 and reads as follows;

Whereas the General Officer commanding in Chief Southern Army has as from the 1-12-1949 terminated the appointment of Major General J. N. Chaudhury, O. B. E. to be the Military Governor for the Hyderabad State;

And whereas it is necessary to make other arrangements for the administration of the State as from the said date;

Now, therefore, I hereby appoint as- from the said date Mr. M. K. Vellodi, C.I.E., I. C. S., to be my Chief Minister and.... I further direct that all the powers of administration including powers of legislation, vested in the Military Governor before the said date are exercisable by the Chief Minister.

14. It is incorrect to hold that the Military Governor, or the Chief Minister as his successor under the Proviso to s. 21 of the Regulation continued to regrant jagir tenures by virtue of the old prerogative power. Because of the above Regulation, the prerogative right has become subject to the Statute and was in abeyance; for where a statute empowers doing of a certain thing, which might before have been done by virtue of prerogative, the latter is abrogated so long as the statute is operative. I shall refer to the observation of Lord Atkinson, in the case of the Attorney-General v. Dekeyser's Royal Hotel, (1920) A. c. 508 on this point. He says at p. 539 :

... It was suggested that when ft statute is passed empowering the Grown to do a certain thing which it might theretofore have done by virtue of its prerogative, the prerogative is merged in the statute. I confess I do not think the word "merged" is happily chosen. I should prefer to say that when a. statute... is passed, it abridges the Royal prerogative while it is in force to this effect.: that the Crown can only do the particular thing under and in accordance with the statutory provisions, and that its prerogative power to do that thing is in abeyance....

15. Then having become statutory, it could be exercised subject to the provisions and for the purposes of the statute. For example, no grant could be made for life, and the grantee by virtue of the order got something which was both heritable and justiciable. On 25-1-1950, another Regulation called the Hyderabad Jagir Commutation Regulation was passed, whereby the method for the commutation and payment of the compensation to the jagirdars was fixed. These sums were also inalienable without the sanction of the Government which further establishes the ultimate ownership of the tenures being now vested in the State. But the power of sanctioning succession remained in the Ruler or the Chief Minister. This was the position when the Constitution of India was inaugurated, and it has to be determined what changes were brought about by such inauguration, which brings me to the questions NOS. a and 9 referred to this Bench.

16. The prerogative of absolute monarchy is so obviously inconsistent with a

republican Constitution where the supreme powers reside in the body of the people that it cannot exist under it. The executive powers of the Rajpramukhs under the Constitution, therefore, cannot be co-extensive with those of the former Rulers of part-B States. These powers are now circumscribed by and have to be gathered from the text of the Constitution. To this extent, there is a similarity between the Constitution of this Country and that of the United States. I am fortified in this view by the observations of his Lordship Saprú J. in the case of *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, . Accordingly all the prerogatives of the Ruler of this State lapsed On 26-1-1950.

It is true that Arts. 372 and 375 of the Constitution preserve earlier laws and functions of the former authorities. But they are also subject to the other provisions of the Constitution and cannot authorise continuance of the powers which are not conferred by the Constitution on the Governors of the States. Under Art. 154 of the Constitution, the executive powers of the States are vested in the Governors which they can exercise either directly or indirectly and Art. 162 extends them to all matters with respect to which the Legislatures of the States have powers to make laws. These according to cls. (2) and (3) of Art. 246 are those which are enumerated in Lists 2 and 3 of sch. 7 and Art. 23 says that wherever the word "Governor" occurs, the word "Rajpramukh" is to be substituted.

Thus the executive powers of the Rajpramukhs in part-B States, like those of the Governors of part-A States are to be exercised with the aid and on advice of a Council of Ministers with the Chief Minister as the head. In view of the above constitutional provisions, the statutory power of sanctioning successions to jagirs under the Proviso to sub-s. (a) of s. 21 of the Jagir Abolition Regulation can only be preserved if it can be held to be covered by any of the items mentioned in List a of sch. 7. The former prerogatives of exercising the residue of the executive power; or enjoying the attributes which legal theory invested the office of King in these circumstances cannot exist and have, therefore, lapsed. So also the rights enjoyed as the ultimate owner of all the lands as the ownership is no longer in him. Therefore, I am of opinion that no prerogative of the Ruler of this State survives after the coming into force of the Constitution of India; nor could it survive in any authority to whom it may have been delegated and that is my answer to Question No. 2.

17. Before dealing with the third question, it is better to emphasise that the Union Parliament or the State Legislatures have plenary powers as regards the Items mentioned in their respective lists in sch. 7. In *Bholaprasad v. Emperor*, AIR 1942 F. C. 17, it has been held that Legislatures in a federation have within their own spheres plenary powers of legislation as large and of the same nature as those of Parliament itself; and Parliament has always been regarded as sovereign legislating body. The executive of this State has also after the Constitution full powers with regard to Items mentioned in list 2 of sch. 7 and

such parts of the former law as relate to these matters are continued. Again, these items are not to be taken in a narrow or restricted sense, for in the *Logendra Nath Jha and Others Vs. Shri Polailal Biswas*, , his Lordship Fazl Ali J. at p. 322 observes:

Since the enactment of Government; of India Act, 1935, there have been several cases in- which the principles which govern the interpretation of the Legislative Lists have been laid down. One of these principles is that none of the items in each List is to be read in ft narrow or restricted sense....

In this connection, his Lordship has relied on the case of AIR 1941 16 (Federal Court) , where at p. 25, it is observed:

I think however that none of the items in the lists is to be read in a narrow and restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

Therefore, if the impugned order relates to a matter covered by any of the items of Lists in sch. 7 and has been made in exercise of the statutory powers, it would be valid even though it amounts to the exercise of the right of an ultimate owner.

18. So far as the proprietary rights are concerned, Part B States are part-successors of the former Indian States. Article 295 clearly divides such rights between the Union and Part B States. By cl. (i), sub-cl. (a), all properties and assets relating to any of the matters enumerated in the Union list are vested in the Union and by cl. (2) but subject to the aforesaid vesting, the Governments of Part B States are to be the successors of the Governments standing prior to the coming into force of the Constitution as regards properties and assets and all rights and liabilities arising out of a contract or otherwise. Therefore, the properties and liabilities of the former Hyderabad State before the inauguration of the Constitution have devolved in matters enumerated in Lists 2 and 3 in sch. 7 on the State of Hyderabad as a unit of the Indian. Federation. It has now to be ascertained by which items of the two Lists, the jagir tenure is covered. I think item 18 of list 2 is wide enough to cover it, which reads as follows:

Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

19. I have in the beginning of the judgment analysed the legal rights of the jagirdars as usufructuary life interest in land which were reduced under the two Regulations to interim allowances out of such lands and eventually to compensation. Therefore, this item 18 is clearly wide enough to cover these incidental matters which relate to tenures. These estates having been included in the State land, the Seigniorship became vested in the former Government, which has devolved under Art, 295 on the present executive of Hyderabad State. Although the abrogated prerogative has not survived, the Hyderabad State still

retains, in my opinion, the statutory powers of granting successions in pending proceedings as new Seignior of the estates for purposes of giving compensations to the heirs.

At this stage, I would mention that the proviso to s. 21 of the Regulation is not void, because it does not infringe the constitutional provisions contained in part in of the Constitution. Obviously, the only Article which could be invoked as being infringed is Fourteen, inasmuch as some of the pending proceedings are special commissions with no rights of appeals and civil proceedings to challenge the correctness of the recommendations. But the amendment introduced to Art. 31 of the Constitution saves certain legislations from the operation of part in and the Jagir Abolition Regulation is one of them. Therefore, I cannot hold the proviso to be void on this ground in view of the express provisions of Art. 31B of the Constitution.

20. The next part of the question is whether the power in the particular case has been exercised by proper authority and in a proper form. It was urged on behalf of the Government that under sub-cl. (a) of cl. (2) of Art. 154, the vesting of the executive power in the Rajpramukh should not be deemed to transfer to him any function which has been conferred by any existing law on any other authority and as the power of sanctioning regrants was enjoyed by the Military Governor and devolved on the Chief Minister the passing of the order by the Government is constitutionally proper. This provision like para, (a) of cl. (2) of Art. 53 preserves earlier subordination but not substitution. Were I to construe otherwise, the Chief Minister of this State would under the former Firmans be authorised to exercise powers relating to Items mentioned in List I of sch. 7. We could, for example, still appoint Judges of this High Court, though, under the Constitution the President alone can do so. Again, District Judges could be appointed by him though only the Rajpramukh can do so under Art. 133.

In my opinion, the powers of the Chief executive were recognised by the first Firman to have been conferred on the Military Governor and devolved under the second on the Chief Minister till 26th January 1950. After that date, the Chief executive of the State is the Rajpramukh, who should alone be substituted as the successor and must now exercise the power, with the aid and advice of a Council of Ministers with Chief Minister at its head. What the former chief executive of the State could do as regards matters covered by list 2, his successor the Rajpramukh must now perform. Therefore, the power of the Military Governor as the executive chief to sanction succession proceedings and after him of the Chief Minister devolved on their constitutional successor the Rajpramukh and he alone could have sanctioned the recommendations.

21. However, the Hyderabad Atiyat Enquiries Act, 1952 has recently been passed providing in sub-s. (2) of s. 13 that "the orders passed in cases relating to Atiyat grants including the Jagirs on or after 18th September 1948 and before the enactment of this Act by the Military Governor....the Chief Minister of Hyderabad.....shall be deemed to be the final orders validly passed by a

competent authority under the law in force at the time when the order was passed." It became operative from 1st April 1952 and the result of this enactment is that the particular order in question must be deemed to have been passed by the competent authority. It was urged before us that the enactment is contrary to Art. 385 of the Constitution, for it was passed after the Legislature of this State has been constituted and summoned. The argument is not correct: the Act received the sanction of the Rajpramukh on 8th March 1952 and the Legislature was summoned on the same date. Having regard to the date, the enactment is not subsequent to the Legislature being summoned and therefore is valid.

22. This provision would not save the particular power unless I hold Art. 166 of the Constitution to be directory. The Article says that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and further the orders and other instruments made and executed in the name of the Governor are to be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of the order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

It was because of these provisions that I referred the case to the larger Bench. In *J. K. Gas Plant Manufacturing Co. (Rampur) Ltd. v. Emperor*, A. I. R. 1947 F. C. 38, S. 40 (1) of Sch. 9 to the Government of India, Act, 1935, was considered to be directory. But that section was differently framed, for the provisions as to expression and signature were mentioned in it together, so that one relating to expression could not be held to be a separate mandatory provision. In these circumstances, the Federal Court observes:

They have to rely on the second and maintain that the provision as to the expression is completely separate and mandatory by itself.....we cannot read it, placed as it is in close juxtaposition with the provision as to signature -and its limited purpose, as a separate imperative provision....

23. Recently, the Supreme Court has in a case arising out of preventive detentions observed that the provisions of Art. 166 are directory and therefore whatever doubt may have existed about their being mandatory is removed and the question is settled. The particular impugned order is deemed to be of the competent authority and is not invalid on the ground that it does not comply with Art. 166 of the Constitution. My answer to Question NO. 2 is that the right to grant successions in pending proceedings being statutory still survives under the Constitution to the Executive of the Hyderabad State and the form in which the order has been made is not such as to render it invalid.

24. It was strenuously argued by Mr. Shanker Rao, the learned Counsel for Opposite Parties NOS. 7 to 12 that the Firman appointing the new Commissioners authorised the Commissioners to determine succession to the estate and, therefore, their recommendations became operative as judgment on

the date they were signed, and no further sanction was required to make them operative. At the time when the new Commissioners were appointed, the Jagir Abolition Regulation had not been passed, and the prerogative of regranting jagirs vested either in the Ruler or in the Military Governor, Express conferring of power on the Commissioners for regranting such jagirs on the heirs of the late Nawab was necessary. I would hesitate to draw such inferences from mere authorisation to determine the claims of the different persons and the Firman contains no such express power of regrants on the Commission. Moreover, the phraseology used by the Commissioners is not such as to justify their exercise of such a power. This argument therefore fails.

25. Now, I come to the first question in the case as to whether the order can be quashed by writ of certiorari under Art. 226 of the Constitution. It is clear that if the order is purely administrative, no writ can be issued. But in order to ascertain whether it is an administrative or otherwise, I have to see what was the nature of the enquiry entrusted to the Commissioners, whose recommendation the particular order seeks to confirm. There was certainly a "lis" among the persons who appeared before the Commissioners as to whether Opposite Parties NOS. 7 to 10 were the legitimate children of the late Kamal Yar Jung. The determination of this "lis" affected the claims of those persons who were admitted heirs of the late Nawab.

The dispute involved ascertainment of the married, "muta" or concubine status of the ladies who are the mothers of certain claimants and this could only be reached on the evidence adduced by the parties to the disputes. The Commissioners have formed their conclusions after sifting of evidence like any other judicial body. Therefore, the conclusions of the Commissioners are quasi-judicial and so the order which makes them operative.

It has been held in the Province of Bombay Vs. Kusaldas S. Advani and Others, that when the law under which the authorities making a decision itself requires a judicial approach, decision will be quasi-judicial; prescribed forms of procedure are not necessary to make an enquiry judicial, provided in coming to the decision the well recognised principles of approach are required to be followed, and wherever any body of persons having a legal authority to determine questions affecting rights of subjects and having duties to act judicially, act in excess of their legal authority a writ of certiorari will lie. These conditions were required of the new commissioners and the order, as it purports to give effect to their recommendation, is also a quasi-judicial one. I may mention here that the old prerogative, as it has been made after the Constitution of India was inaugurated, is subject to the writ of certiorari of this Court. Therefore, my answer to Question NO. 1 is that the writ of certiorari does lie to enquire about the legal validity of the order.

26. A. Srinivasachari J.-These proceedings have arisen out of an application filed by twenty-five persons invoking the jurisdiction of the High Court under Art. 226 of the Constitution and praying that it be declared that the decision of the

Government to carry out the recommendations of the Commission constituted for the purpose of enquiring into the succession to the estate of the late Nawab Kamal Yar Jung is null and void and for further relief, ancillary to the above prayer. This application came on for hearing before a Division Bench of this Court and was admitted. Later the Bench was of opinion that having regard to the importance of the questions of law involved in this application, the case should be referred to a Full Bench and later certain questions of law arising in the case were referred by the Full Bench to a fuller Bench of five Judges. (His Lordship stated the facts and continued):

27-29. The petitioners have raised the objection that the Chief Minister was not competent to accord sanction to the recommendations of the Commission which was constituted by a Firman of H. E. H. the Nizam. Other questions also, such as whether the Order of the Chief Minister is in the nature of quasi-judicial order subject to the certiorari jurisdiction of the High Court, were raised.

30. At the outset the attention of the Full Bench was drawn by the learned counsel for the respondents to the fact that some of these parties had moved the Supreme Court of India at Delhi for special leave to appeal to the Supreme Court against the judgment of the Commission constituted to enquire into the succession of the estate of Nawab Kamal Yar Jung Bahadur. It was argued that this petition was incompetent in view of the matter being pending before the Supreme Court of India. This objection of the learned counsel cannot be regarded as an objection of a preliminary nature and, therefore, debar our hearing the arguments about the merits of the application for the issue of a writ. At best it could be said to be an objection which would warrant deferring of the issue of a writ (in the event of our holding that the issue of a writ is necessary) till the Supreme Court passes its order on the application for special leave to appeal.

Moreover, in the absence of an order of stay of proceedings by the Supreme Court, we were not inclined to wait till the result of the application for special leave was announced. The Full Bench, however, decided to pronounce its order on this application because the matter that was before the Supreme Court was an application for Special Leave to appeal under Art. 136 of the Constitution of India and if their Lordships of the Supreme Court granted leave to appeal, they would go into the merits of the decision of the Tribunal whereas the order of the Full Bench would be confined to judging whether the decision was in excess of jurisdiction justifying our interference in certiorari jurisdiction.

31. It has to be observed that the properties left by the late Nawab are Jagir lands and all matters relating to jagirs in the Hyderabad State are governed by a special Law known as "Atiyant Law" or the "law relating to Crown Grants". Under the "Atiyat" law whenever a jagirdar died his successors had to appear before the "Atiyat" Court which would enquire into the question of the succession to the estate of the Jagirdar and submit its recommendation to H. E. H. the Nizam. H. E. H. was the final authority to sanction or not to sanction the succession in

favour of a particular individual.

The procedure with regard to these matters has been specified in Regulation NO. XXXIV [34] of 1331 F., and Regulation NO. X [10] of 1338 F., which has the force of law, In this particular case H. E. H. chose to constitute a Special Commission instead of directing the case to be enquired into by the ordinarily constituted Court. This was in consonance with the practice in vogue here in regard to high noblemen styled as "Umarai Uzzam".

32. The power of H. E. H. the Nizam to. constitute Special Tribunals to enquire into the succession to the estate of Jagirdars or high noblemen has been recognised and there can be no dispute about it. The leading case of Pratap Gir v. State of Hyderabad, 35 Deccan L. R. 153, is in point. Once the right of H. E. H. the Nizam to constitute Special Tribunals is recognised then the next question that arises for consideration is as to whether the body so constituted would be regarded as a judicial body, whose order are subject to the certiorari jurisdiction of the High Court.

33. The Commission that was constituted was a judicial body, because it had the necessary ingredients which go to make it a judicial body. It was a body of persons having legal authority to determine questions affecting the right of subjects within the meaning of the dictum of Lord Atkinson in *Frome United Breweries Co. Ltd. v. Bath Country Borough Justices*, (1926) A. c. 586, and it had also the duty to act judicially and, therefore, according to the definition given by the Supreme Court in the famous case of *Province of Bombay Vs. Kusaldas S. Advani and Others*, , it was a judicial body and its decision a judicial decision. The tests laid down by Scott L. J. in *Cooper v. Wilson*, (1937 2 K. B. 309) in order to regard the proceedings of a body as a judicial one are satisfied in this case. They are:

- (a) There should be a dispute between two or more parties;
- (b) There must be the ascertainment of a fact by means of evidence of the parties with the assistance of arguments; and
- (c) A decision which disposes of the whole matter.

This, no doubt, was a body exercising judicial functions but its decisions were in the nature of recommendations subject to the formal approval of H. E. H. The question arises whether it ceased to be a judicial body and whether its decisions could not be regarded as judicial decisions simply because they became enforceable only after the sanction of H. E. H. was accorded to them. It is settled law that because a proceeding is subject to the confirmation and approval of another authority the proceeding does not cease to be a judicial proceeding. In *Bex v. Electricity Commissioners*, (1924) 1 K. B. 171 it was contended by the Attorney General that the Electricity Commissioners acted merely as advisers, they came to no decision at all. In dealing with this objection Lord Atkin L. J. observed:

In the provision that the final decision off the Commissioners is not to be operative until it has been approved lay the two Houses of Parliament, I find nothing inconsistent with the view that in arriving at that decision the commissioners themselves are to act judicially. It; Is to be noted that it is the order of the commissioners that eventually takes effect.

Mahajan J. observed in the case of *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi*, follows:

The fact that the Government has to make a declaration after the final decision of the Tribunal is not in any way inconsistent with the view that the tribunal nets judicially.

Likewise the decisions of Military Tribunals which are subject to the confirmation either by the Commander-in-Chief or other Military authorities are enforceable only after such confirmation. For that reason they do not; cease to be judgments of a quasi-judicial body. Therefore, the proceedings where the parties have had an opportunity to put forward their cases and after the parties have been heard the authority looked into the matter with a judicial approach, it is a judicial proceeding. If it is a judicial proceeding then it is certainly subject to the controlling authority of the High Court by means of a Writ of Certiorari. Thus the Commission constituted under the Firman of H. E. H. the Nizam is a judicial body and its proceedings are judicial.

If the proceedings of the Commission are regarded as judicial proceedings and its order a judicial order then in order to invoke our jurisdiction under Art. 226 of the Constitution of India unless the petitioners before us show that there has been a usurpation of jurisdiction or an excess of jurisdiction on the part of this Commission no rule for a writ of Certiorari would be issued under S. 226 of the Constitution of India. Excess of or want of jurisdiction would arise where the Commission had no authority to enter upon the enquiry. The exercise of the right to issue a writ is regulated and limited by fixed principles. The issue of a writ, as is generally understood, is not to reopen or vacate the judgment of an inferior tribunal as is done in the case of an appeal. The High Court would merely determine the validity or invalidity of the record of such inferior tribunal and affirm or reverse in whole or in part accordingly.

The petitioners seek to impeach the order of the Chief Minister on the ground that he was not competent to sanction the recommendation of the Tribunal because the sanction to the recommendation of a Commission constituted by H. K. H. the Nizam could not be given by the Chief Minister. The question, therefore, arises as to whether the Chief Minister was competent to give the sanction and whether he could exercise the powers that H. E. H. the Nizam could have exercised for these purposes. In order to determine this we will have to find out the nature of the power exercised by H. E. H. the Nizam in according sanction to the recommendation of the Commissions that he usually constituted for

enquiring into the succession relating to jagirs. The Nizam combined in himself all the three functions viz., legislative, executive and judicial in this State.

34. The granting of the jagir to a person finally rested with the Nizam. He did so after a formal enquiry into the succession. If the granting or resuming of the jagir rested finally with the Nizam does it necessarily follow that the sanction that he accorded to the recommendations of a judicial body which he constituted for enquiring into the succession of jagirdars was only by virtue of his being the Sovereign? If it is not in the exercise of his Royal prerogative that the sanction is accorded then it can only be regarded as an order in the exercise of his statutory duty sanctioning the succession and directing the implementation of the recommendations of a Tribunal constituted by him and which he has empowered to enquire into the succession to the estate of a jagirdar. These would be discussed in the succeeding paragraphs.

35. At this stage it would be desirable to trace the course of events that took place after the commission was constituted.

36. On 18-9-1948 the Police Action terminated and the Military Governor was put in charge of the Administration.

37. After the Police Action H. E. H. the Nizam invested the Military Governor, Major General J. N. Chaudhury, with all the powers that the (the Nizam) exercised as Ruler of the State. The Firman by virtue of which the Military Governor was invested with such powers reads as follows:

Whereas the General Officer Commanding in Chief Southern Army has appointed Major General J. N. Chaudhury, O. B. E., to be the Military Governor for the Hyderabad State and whereas all authority for the administration of the State now vests in him; I hereby enjoin all the subjects of the State to carry out such orders as he may deem fit to issue from time to time. I appeal to all officers of the State administration and subjects of the State to render faithful and unflinching obedience to the Military Governor and conduct themselves in a manner calculated to bring about the speedy restoration of law and order in the State.

A reading of the Firman would show that H. E. H. the Nizam purported to invest the Military Governor with all the administrative and legislative powers for the administration of the State. The Military Governor continued to exercise these powers during the tenure of his office till 1-9-1949 when Shri M. K. Vellodi was appointed the Chief Minister for the Hyderabad State.

38. After the assumption of office by Major General Chaudhury as the Military Governor of Hyderabad, and the delegation of all powers to him by the Nizam, the next event of importance which requires mention in connection with this case, is the passing of the Hyderabad (Abolition of Jagirs) Regulation NO. LXIX [69] of 1358 F. This law came into force on 15-8-1949. This Regulation was passed with a view to abolish all jagirs and to pay commutation to all the existing

jagirdars. Under this Regulation a saving was provided by which all proceedings pending at the commencement of this Regulation before an Atiyat Court or before a Commission or any other authority were to be completed in accordance with the existing law, as if this Regulation had not been enacted, vide proviso to s. 21 of the Hyderabad (Abolition of Jagirs) Regulation NO. LXIX [69] of 1358 F. The words "existing law" contained in the above proviso have been defined in s. 2 (b) of the Regulation as meaning "the law in force at the commencement of this Regulation including Atiyat law."

39. The existence of these Sections in the new enactment would imply that all pending proceedings would be governed by the law that was extant prior to the coming into force of this Regulation. As observed above this case would be governed by the Atiyat law as embodied in Regulation NO. xxxiv [34] of 1331 F. and Regulation NO. X [10] of 1338 p. which having been passed by Firman of H. E. H. the Nizam, have the force of law.

40. When the state of affairs was such, the learned Members of the Commission passed their final decision, in the form of a recommendation determining the rights of the parties who appeared before them. This decision was passed on 9-11-1949, and required confirmation by the competent authority.

41. The Military Governor left and in his place Shri M. K. Vellodi was appointed Chief Minister of the Hyderabad State on 1-12-1949 and put in charge of the administration.

42. The Nizam by a Firman dated 1-12-1949 invested the Chief Minister with the same powers that were held by his predecessor in office namely the Military Governor. The second Firman reads as follows:

Whereas the General Officer Commanding in Chief Southern Army has as from 1-12-1949 terminated the appointment of Major General J. N. Chaudhury, O. B. E., to be the Military Governor for the Hyderabad State; And whereas it is necessary to make other arrangements for the administration of the State as from the said date; Now, therefore? I hereby appoint as from the said date Mr. M. K. Vellodi, C. I. E., I. C. S., to be my Chief Minister and.....I further direct that all the powers of administration, including powers of legislation vested in the Military Governor before the said date shall as from the said date be exercisable by the Chief Minister.

43. It was very strongly argued by Raja Bahadur Bisheshwarnath, advocate for the petitioners that the sanction that the Nizam used to grant to the recommendations of a Commission or the Atiyat Court was by virtue of his prerogative right as the Sovereign and since H. E. H. the Nizam ceased to have his prerogative right after the Constitution there was no authority to exercise that power and that power could never be exercised by the Chief Minister.

44. This argument has now ceased to have any importance as will be shown by me in the succeeding para.

45. We have to examine as to whether it was in virtue of his right as sovereign and his prerogative right that the Nizam accorded sanction to the recommendations of any Special Commission constituted by him or the recommendations of the Atiyat Court. The history of the Atiyat law supports the view that the Nizam was exercising the power as the Head of the State. In this connection it might be noted that generally jagirs used to be granted in the name of the individual whom the Nizam chose on the recommendation of the Special Court constituted to enquire into the succession of a deceased jagirdar and the other heirs were held entitled to share in the income of the jagir according to their shares under the personal law.

The underlying principle of granting the jagir in the name of one individual and allowing the others to share the income was merely to prevent fragmentation of holdings which was one of the basic principles of Atiyat law. No doubt in theory a jagirdar could not claim the jagir as a matter of right and it was left to the Sovereign to grant it; still in practice invariably a jagir used to be granted to the person entitled to succeed to the estate of the deceased jagirdar under the personal law to which he was subject. That even under the Atiyat Law jagir used to be granted to that person who was entitled to the property under the personal law is very well borne out by the judgment of the Atiyat Committee in the case of Gesudaraz Khan which received the sanction of the Nizam by his Firman.

This judgment very well illustrates the position that it was only personal law that was being administered. I might herein just refer to the portion of the judgment wherein it is stated :

In all matters of inheritance among Mohommedans whether of Matrukas or Atiyats the rights of the parties are primarily governed by Mohammedan Law.

If any deviation was made from the personal law, it was only done in order to give effect to the policy of the Atiyat Law which aims at (1) non-fragmentation and (2) that all the members of the family should be benefited by the grant without any preference or exclusion. The position was that the Nizam constituted a Court to report after enquiry as to who was entitled to succeed to the estate of the deceased jagirdar and he granted the jagir to that person who was declared to be entitled by such Court.

No doubt in some cases the Nizam preferred to give possession of the jagir to a person other than the eldest person to whom generally possession used to be given. This preference used to be made having regard to the personal qualifications and suitability of the person. The fact that in certain cases he preferred to give possession of the jagir to a person other than the one whom the Atiyat Court recommended would not, in my opinion, make any difference so far as this principle was concerned that the Nizam granted the jagir to the person who was recommended as being entitled to the jagir by an enquiring committee. Further the fact that invariably the person who would be entitled under the personal law was granted the jagir also goes to show that the Nizam was

following an established procedure and that he did not set at naught the existing law. Being the head of the State the sanction used to be accorded by him.

46. In 1329F. "Babe-Hukumath" was formed and in 1331F., Regulations by means of Firmans were passed laying down the procedure that had to be followed with regard to the determination of the heir of deceased jagirdar. Whenever complicated questions of law arose in such succession proceedings the parties were directed to go to a civil Court. A regular procedure was established and the Court or the Special Commission as the case may be was expected to follow the established procedure in enquiring into the succession of a deceased jagirdar and submit its report. The Nizam approved of the recommendation. Therefore, there was statute law appertaining to the grant of jagirdrs.

The existence of a law and procedure governing the enquiry into the succession of a deceased jagirdar and the Nizam's granting the jagir to a person who was found to be entitled after enquiry, after the established procedure was gone through clearly show that the Nizam was exercising his power under the Statute law of the land and not in exercise of any prerogative right. As was observed by Lord Dunedin in the case of Attorney General v. D. E. Keyser's Royal Hotel, 1920 A. c. 508 :

It is equally certain that if the whole ground of something which could be done by the prerogative is covered by the Statute it is the Statute that rules.

To put it in another way, prerogative is only the ultimate resource of the Executive and when there exists a statutory provision covering precisely the same ground there is no longer room for the exercise of the Royal Prerogative.

47. This right ceased to have any importance after the Hyderabad (Abolition of Jagirs) Regulation (NO. 69 (LXIX) of 1358F.) which came into force on 15-8-1949. With the advent of this Regulation, the question of determining as to whom the jagir should be granted ceased to have any importance because as the preamble would show this enactment was made with a view to abolish all jagirs and 9. 4 of the above Regulation also says that after the commencement of this Regulation no person would be appointed or be recognised as a jagirdar, whether in succession to a deceased jagirdar or otherwise. Therefore, if it be assumed for the sake of argument that the Nizam while recognising a particular person as a jagirdar was doing so by virtue of his prerogative right the occasion for the exercise of such a right had ceased with the coming into force of the Jagir Regulation. Now what was left to be done was to sanction the payment of compensation to the person who had been declared to be entitled to succeed to the deceased jagirdar and this act of sanctioning is not done by the head of the State by virtue of any prerogative right.

48. After the coming into force of the Constitution the Nizam became a Rajpramukh and the executive power of the State was vested in him under the provisions of Art. 154 of the Constitution. If it is conceded that the sanction to the payment of compensation to the heirs of a deceased jagirdar is accorded by

the head of the State then the Rajpramukh in whom is vested the executive power could accord the sanction.

49. It was argued at the bar that even if it be regarded that the sanction of the Rajpramukh was enough to give effect to the recommendations of the Commission then under the provisions of Art. 166 of the Constitution this being an executive act of the Government it ought to be expressed to be taken in the name of the Rajpramukh and the order now impugned does not appear to have been expressly taken in the name of the Rajpramukh. So far as this argument is concerned even at the stage when arguments were addressed before us I was of the opinion that this provision in Art. 166 was only directory and not mandatory having regard to the decision of the Federal Court in *K. Gas Plant Manufacturing Co. v. Emperor*, AIR 1947 P. c. 38, wherein their Lordships, while discussing a similar provision in the Government of India Act, held that that provision was only directory. And the fact that the order was not expressed to be made in the name of the Rajpramukh would not vitiate the order.

Since the hearing of these applications the matter has now been set at rest by the decision of the Supreme Court on 27-3-1952 in the Habeas Corpus petitions which went up from the Punjab wherein while dealing with s. 11, Preventive Detention Act, their Lordships held that the provision relating to the issuing of the order by the Executive after the report was received from the Advisory Board to be expressed to be made in the name of the Governor was only directory and that it would not be rendered void if it was not expressed to be made in the name of the Governor under Art. 166 (1) of the Constitution. So this contention can have no force.

50. I find that the delay in the hearing of the case has worked to the disadvantage of the petitioners further in this that on 8-3-1952 an Act received the assent of the Rajpramukh called the Hyderabad Atiyat Enquiries Act x [10] of 1952. By virtue of s. 13 of the aforesaid Act finality was given to the decision of the Atiyat Court and other decisions by Military Governor, the Chief Minister or the Chief Civil Administrator of Hyderabad or the Revenue Minister by virtue of powers given to him by the Chief Minister. Such of those orders that were passed in cases relating to Atiyat grants including jagirs on or after 18-9-1948 up to the date of the coming into force of the Act in question were validated and held to be orders passed by a competent authority under the law in force.

This is a curative and validating legislation validating the acts and decisions of all authorities in regard to jagir matters. The effect of this legislation is that even if under an enactment the sanction of the Nizam was necessary the Nizam purported to validate orders not passed by him but by persons to whom the powers had been delegated and, therefore, by force of this legislation all the orders passed subsequent to 18-9-1948, right up to the coming into force of the Act would be declared proper and held to be valid. The order that is now impugned is an order which comes within the period mentioned in s. 13 of the Act and, therefore, if there was any flaw with regard to the competence of the

sanctioning authority it has been now cured and validated by this enactment. Therefore, no question of the order being incompetent or being bad for want of authority can arise.

51. An argument was advanced at the bar on behalf of one of the interveners, whom we permitted to argue (for the reason that the question in his case also involved the same point) that the Rajpramukh could not pass the law as the State Legislative Assembly had been summoned already and the moment the State Assembly is summoned the Rajpramukh ceases to have any legislative power. This argument had to be thrown out immediately as it was brought to our notice that the Rajpramukh summoned the Assembly on 8-4-1952 and this law was assented to by him on the 8th. The principle of law is that there is always a presumption of the constitutionality of a law and the onus is upon the person who attacks the validity of the law being unconstitutional to show that it is unconstitutional. The advocate appearing for the interveners was not able to satisfy us that the summoning of the Assembly was prior to the giving of the assent to this Act.

52. I would, therefore, answer the questions that have been referred to the Fuller Bench as follows :

(1) The order of the Government according sanction to the recommendations of a specially constituted Commission is a quasi-judicial order, and, therefore, this Court is competent to quash it under Art. 226 of the Constitution in a proper case.

(2) Question NO. 2 as to whether the Nizam was exercising his prerogative right in sanctioning the recommendation of the Commission, requires no answer for the reason that I hold that even before the Jagir Abolition Regulation the Nizam was only exercising his right as the head of the State and even if it be assumed that he had any prerogative right there was no question of the exercise of such prerogative right when after the Jagir Abolition Regulation the question of the grant of a jagir to a jagirdar did not arise.

(2b) The Rajpramukh, as Head of the Executive, has power to confirm successions for the purpose of granting commutations etc.

(3) The contention that the order confirming such succession should be expressed to be taken (made?) in the name of the Rajpramukh is no longer important in view of the decision of the Supreme Court and the fact that it is not expressly made in the name of the Rajpramukh would not invalidate an order.

53. Deshpande, J.-I have read the judgment prepared by my learned brother A. Srinivasa Chari J. I agree and have nothing to add.

54. Siadat Ali Khan, J.-This is Kamal Yar Jung's Virasat case. He was a big jagirdar and nobleman of Hyderabad. He died on 26th January 1944 A. D. leaving behind the following alleged heirs, 3 sons, one daughter, three wives and two concubines. The legitimacy of the issues and the marriage of the ladies is

questioned. H. E. H. the Nizam appointed a Commission on 18th February 1944 to inquire into his succession and report. After the Police Action another Commission was appointed by a Firman dated 22nd November 1948. It reported on 9th November 1949. On 3rd May 1950 the Chief Minister accepted the opinion of the majority recognizing the persons recommended by it as heirs and the quantum of their shares also. It is this order sanctioning the succession which has been challenged by applications for the writs of certiorari, prohibition and mandamus. The case was originally heard by a Division Bench, then by a Full Bench and later on by this Bench to which the following three questions have been referred :

1. Is the order of the Government of 3rd April administrative or quasi-judicial and has this Court jurisdiction under the Constitution of India to quash it ?
2. Has H. E. H. the Nizam the prerogative to sanction the recommendations of the Commissions which were hearing Jagir succession cases at the time the Jagirs Abolition Regulation was passed ?
3. If such prerogative does not survive, has the executive of the Hyderabad State the powers under the Constitution to confirm such successions for purposes of granting commutations and if so in what form must the order be made ?

The case was ably argued. I record my opinion below.

55. In my opinion, as it is the order of the Chief Minister which is impugned, it is important to bear it in mind. As already stated, this is what the Chief Minister has done. He has, (a) accepted the finding of the majority of the Commission, and in so accepting it, he has (b) sanctioned the succession to the deceased Nawab, that is, he has recognized the persons recommended by the Commission as his heirs; and (c) he also sanctioned the quantum of their shares.

The effect of his order in the present set-up will be that the commutation fixed for the big jagir of the deceased Nawab will be paid to the heirs so recognized, to the exclusion and prejudice of the other claimants. It is really these questions which we have to consider under the various laws in force now and, I beg indulgence to state that, I am not sure, whether these issues have not been clouded by the questions framed. However this may be, I will have to give an opinion on these questions, which professedly relate to the impugned order and are an index to the prevailing circumstances in which this order was passed. I will begin with the consideration of the second question.

56. The second question is :

Has H. E. H. the Nizam the prerogative to sanction the recommendations of the Commissions which were hearing Jagir succession cases at the time when the Jagirs Abolition Regulation was passed ?

It should be noted that as the recommendations of the Kamal Yar Jung's Commission were not sanctioned by H. E. H. the Nizam, the question, strictly

speaking, does not arise. It is framed, however, as it was Contended by the learned advocate, Raja Bahadur Bisheshwarnath, that H. E. H. the Nizam alone had the prerogative to sanction the recommendations and no one else could sanction it; or alternatively, if having regard to the provisions of the Constitution of India (hereinafter referred to as the Constitution Act) it is held that H. E. H. had not the prerogative, then as there are no provisions either in the Constitution Act or elsewhere, there is no authority to sanction them and there is a vacuum and the Courts cannot fill it; that taking the law as it stands, there is no authority to sanction the succession under consideration and this Court should so declare it. In my opinion, though owing to total abolition of the Jagirs and the coming into force of the Constitution Act, these contentions are not germane to the question under consideration, still they must be briefly examined as they have been so strenuously advanced.

57. Before the Police Action, H. E. H. the Nizam had full powers to appoint the Commissions to inquire into and report on the succession of big jagirdars. It was the usual practice here. The status in those days of a Commission of this kind was also not in doubt. It was a quasi-judicial body as its approach to the succession cases was judicial except that it did not decide the succession, but only reported its opinion on it to H.E.H. the Nizam, who had full powers either to accept or reject it, but who in practice usually adopted it with or without modification. After the Police Action H. E. H. was pleased to vest all powers of administration and legislation in the Military Governor by two Firmans (dated 19-8-48 and 1-12-1949 A.D.). The Military Governor abolished the jagirs and pending commutation provided for interim allowances in Meher 1358F. (corresponding to August 1949 A.D.).

Later on, (in January 1950), the Jagir Commutation Regulation was passed and commutations for all jagirs were fixed. In the result, the jagirs became a thing of the past, they ceased to exist, were completely effaced from the topography of this State and were merged in the Taluks and the Districts of the State as new entities. It is thus important, in my view of the case, to bear in mind that the reality of the situation shows that we are here faced not with the jagir lands but with their commutations in cash. It is in this context that I will have to examine the argument from the prerogatives of H. E. H. the Nizam. The nature of the prerogatives of H.E.H. the Nizam in the matter of grant of jagir lands has been the subject of many judicial and other authoritative pronouncements: but it has received rather elaborate exposition in the cases of *Laxminarain v. Trimbaklal*, 25 Deccan L. R. 1 and *Sultan-ul-Mulk v. Princess Jehandarunnissa Begum*, 35 Deccan L. R. 887.

There the prerogatives of H. E. H. the Nizam in respect of jagirs have been stated to be that He is the overlord of all the jagir lands as he is the absolute owner of all the other lands of the---

State; that the grant of the jagir lands is at His will, and is for the life-time of the grantee; that at the death of the grantee the grant reverts to the grantor and he

may re-grant it to the heirs of the deceased jagirdar or to anybody else at his pleasure; that as every grant is a fresh grant, the jagir tenures were non-hereditary and inalienable, whether by way of sale, gift, mortgage or otherwise. The grants were not subject to the ordinary jurisdiction of the civil Courts or to the rules framed for the guidance of the Atiyat Courts.

Thus the essence of the jagir tenure consisted in remission of revenue which inured to the benefit of the jagirdar and the essence of the prerogatives was the absolute dominion over the jagir land and the power to grant or resume it at each succession. Thus long before the Constitution Act the prerogatives under consideration were deemed to relate to land. There have been several definitions of the prerogatives, for example, the one in Anson's Law and Custom of the Constitution, vol. II, part 1, p. 18 where it is said to consist of the residue of the executive powers over every Department of the Government and also of rights as the over-lord of feudal lands. Again in Chalmers and Wood Phillips, Edn. 5, p. 100, prerogatives are divided into two kinds; personal or political. Political prerogatives are sub-divided into domestic and foreign; domestic prerogatives are further sub-divided into executive or administrative.

As prerogatives extended to all the Departments of the Government, they are also classified as NO. 2 Judicial, NO. 3 Legislative, NO. 4 Revenue and NO. 5 Ecclesiastical. It is clear that we are here concerned with that aspect of prerogatives which relates to grant of lands, and, therefore, clearly we are concerned only with political, executive or administrative prerogatives. In the personal prerogative such rights of King are enumerated as the King never dies, the King can do no wrong, the King is never a minor, the King is not bound by limitation and so forth. These classifications also show that the prerogatives regarding grants have relation to land. It is evident from the Constitutional History of modern countries, especially of England that the prerogatives of King, especially in the domain of politics, have always been curtailed by legislative enactments.

Thus it is to be noted that in India there have been several cases in which the Legislature of a State has been held by their Lordships of the Privy Council and the Federal Court to be fully competent to legislate even in derogation of a grant. Item 18 of List 2 of sch. 7, Constitution Act clearly makes land a subject which is within the competence of State Legislature and in the cases referred to above their Lordships of the Privy Council and the Federal Court have held very clearly under a similar provision in the Government of India Act of 1935 that land includes jagir lands, that is, lands which have been the subject at the Crown Grant.- vide AIR 1946 127 (Privy Council) and Meghraj v. Allah Rakhia, A. I. R. 1947 p. c. 72. In the last-mentioned case it was observed that

the key to item 21, List II, Sch. VII, (Government of India Act 1935, which corresponds to item 18 of List 2 of Sch. VII, Constitution Act) is to be found in the opening word "land". That word is sufficient in itself to include every form of land whether agricultural or not. Land indeed is primarily a matter of provincial

concern. The land in each province may have its special characteristics in view of which it is necessary to legislate and there are local customs and traditions in regard to land-holding and particular problems of provincial or local concern which require provincial consideration.

And in the last-mentioned case their Lordships of the Privy Council observed that:

They completely agree in the opinion of the Federal Court that if once it is found that the subject-matter of a Crown Grant is within the competence of a provincial legislature nothing can prevent that legislature from legislating about it unless the Constitution Act itself expressly prohibits legislation on the subject either "absolutely or conditionally.

In the face of the above provision in the Constitution Act and the above pronouncements it is impossible not to take the view that jagir lands of this State are subject to the legislative competence and to the executive orders of the executive of this State. Article 295 makes the Government of a State fully competent to pass orders regarding the land which has been property of the State before the enforcement of the Constitution of India and which has now become its property. Thus I am afraid I cannot agree with the argument from indefinable and inalienable prerogatives of H. E. H. the Nizam.

The learned advocate explained further that he was not arguing that these prerogatives still continue, but that his argument was that there has been no provision to take away these prerogatives. In my opinion, Art. 295 and Art. 246 (2) under which item 18 of List II is embodied in the Constitution Act are the provisions by which the prerogative should be deemed to have been taken away as they do not, I am afraid, find any place under the Republican Constitution of India.

58. Thus whether having regard to the law obtaining before the Police Action or to the theoretical examination of the subject, the prerogatives of H. E. H. the Nizam in respect of the grant of jagirs related to land. It has always been accepted in constitutional law that royal prerogatives are amenable to curtailment by Statute Law. As a matter of fact they were here not only curtailed but practically abolished by the two Jagir Regulations and the provisions of the Constitution Act referred to above. I said practically abolished, because, the Jagirs Abolition Regulation abolished the jagirs and thus removed the subject to which the prerogatives related.

Similarly, the Constitution Act brought land within the legislative competence of the State Legislature (Art. 246 (2) and sch. VII, item 18) and also made the State Government the owner of the State lands (Art. 295). Hence the argument from prerogative cannot be accepted and the answer to question 2 above, can only be that H. E. H. the Nizam as King could not have accepted the recommendations of the Commission at the time of the Jagirs Abolition Regulation or thereafter. It is contended, however, that having regard to proviso to s. 21 (2), Jagirs Abolition Regulation, H. E. H. the Nizam has still the

prerogative under consideration. The sub-s. (2) and proviso to it are as follows :

All claims relating to a jagir or to any share in the income thereof, whether arising under this Regulation or otherwise, shall, subject to this Regulation but notwithstanding any existing law, be filed in, and decided by, the appropriate civil Court :

Provided that any proceeding pending at the commencement of this Regulation before an Atiyat Court or before a Commission or any other authority shall be completed in accordance with the existing law as if this Regulation had not been enacted.

It is to be noted however that the Constitution Act came into force after the Jagirs Abolition Regulation and it has owing to the provisions referred to above (i. e. Arts. 295 and 246 (2)) taken away the prerogatives and, therefore, this contention also fails. I will advert to this proviso more fully later on. My answer to the second question is therefore in the negative.

59. I come now to the third question which is as follows:

"If such prerogative does not survive, has the executive of the Hyderabad State the powers under the Constitution to confirm such successions for purposes of granting commutations and if so, in what form must the order be made ?

It was contended at the Bar that even though executive power of the State now vests in the Rajpramukh under Art. 166, still this article should be read subject to Art. 154 (2) (a) and that as the Chief Minister was empowered by Fynnans with the power of administration, that power is saved by Art. 154 (2) (a) and his sanction alone is sufficient. In my opinion, it would have been so, if the conferring of administrative powers on the Chief Minister by H. E. H. the Nizam had not been affected by the provisions of the Constitution of India. Article 372 is the article which for the time being gives validity and continued force to the existing law. But this is subject to the other provisions of the Constitution.

Hence, the Firmans by which H. E. H. the Nizam conferred administrative power first on the Military Governor, Major General Choudhari, and, after him on the Chief Minister are also subject to the provisions of the Constitution of India. It is evident that any power conferred before the Constitution of India cannot remain unaffected by the provisions of the Constitution if it is not in consonance with its provisions. It should be noted that it was also argued emphatically that "the grant of a jagir being an administrative matter, the Chief Minister was fully competent to sanction it inasmuch as executive and administrative powers have been delegated to the Chief Minister and Art. 154 (2) (a) pre serves this delegation."

But it is evident that the granting of a jagir with all its feudal notions and tenures based on the conception of absolute monarchy according to which the sovereign is the owner of all lands and of all public powers finds no place under the provisions of the Republican Constitution of India wherein the sovereign is the

public. It is thus difficult to agree with the contention that the administrative powers conferred by H. E. H. the Nizam continued undiminished even after the promulgation of the Constitution of India. Hence, in my opinion, these powers did not continue after, the introduction of the Constitution Act and sanction by the Chief Minister cannot be deemed to be saved by Art. 154 (2) (a).

60. Thus, though very clearly the sanction by the Chief Minister cannot be deemed to be valid under Art. 154 (2) (a), the fact remains that by Art. 295, the Government has become the owner of the lands of the State and has succeeded to all the rights and obligations of the former Government. And even though the Jagir lands as such do not exist now and have been transferred into State lands, yet it is clear that the Government ownership of State land extends and covers "all ancillary or subsidiary matters which can reasonably and fairly be said to be comprehended in it." AIR 1941 16 (Federal Court) . This means that the Government ownership extends to the commutation of jagir lands, and they have powers to grant it.

It is from this point of view that it was argued further that as the jagirs have been abolished and amalgamated with the State lands and as the jagirdars have only a right to compensation and as under the old law what pertained to H. E. H. the Nizam was the grant of a jagir, H: E. H. the Nizam's sanction required under the old law for granting of a jagir is not necessary for the grant of a compensation for the jagir. It was emphasized that as under s. 4, Jagirs Abolition Regulation no jagirdar can be appointed, the question becomes of pure compensation and compensation can be granted by the Chief Minister without reference to H. E. H. the Nizam which was necessary for grant of a jagir only.

I have stated just now that commutation for jagir lands being a matter ancillary and incidental to jagir lands, the Government of Hyderabad has power to sanction it under the Constitution Act. But it seems to me that an important distinction has to be taken here, namely, that even though Government had power to sanction commutation, but has the Chief Minister only sanctioned the commutation or has he done something more ? I have already stated in the beginning of para. 2 of this judgment what he has done. He has, as already stated, not only sanctioned the quantum of shares in which the commutation amount will be paid, but has also sanctioned the succession to the deceased nobleman. The question is : Can he do that and was the granting of succession within his powers ?

I am inclined strongly to answer this question in the affirmative for the reason that the question of succession was decided by a body which included two Judges of this Court, after taking evidence in the presence of the advocates of all the parties and hearing their argument. In all conscience this should be enough. But on consideration I found it difficult to act in accordance with my strong inclination. For, according sanction to the report of the Commission on the question of succession was under the prerogative of the Sovereign, which does not exist now. Question of succession pertains to civil Court with rights of more

than one appeal. There is no warrant under the law of the land including the Constitution Act to deprive the parties of these rights.

Section 21 (2) of the Jagirs Abolition Regulation already quoted above has made all claims to any share in the jagir income, a matter which pertains to the civil Courts. After the promulgation of the Jagir Commutation Regulation a share in the jagir income can only mean a share in the commuted amount, and any claim thereto becomes a matter justiciable in the ordinary civil Courts. No doubt, the succession case under consideration was a pending case and, therefore, it falls under the proviso to this section. But the question is: Can the proviso be deemed to go unscathed after the promulgation of the Constitution Act and be deemed to be good law in spite of the Constitution Act? I do not think so; for, it offends the law of the land including the Constitution Act in so many ways.

It makes disputes about succession justiciable by a Tribunal, whereas the law of the land makes it justiciable by ordinary Civil Courts. It gives no right of appeal, whereas the law of the land gives at least the right of two appeals, one to this Court and the other to the Supreme Court. It saves prerogative whether as attributes of the King or as attributes of the executive power, whereas the law of the land now in force has sounded the death-knell of all divine attributes of the King. Of these three reasons it may be said about the first two that as held in the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, that as

Many different classifications of persons have been upheld as constitutional; and a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it

there is in the existing law sufficient basis or reason for appointing Special Tribunals in the case of succession of big noblemen. In my opinion, it must not, however, be forgotten that the reason or basis that had validity in the heyday of big noblemen of the feudal hierarchy and during the existence of jagirs, cannot be deemed to have continued validity or justification after the abolition of jagirs and the payment of commutation amounts. Hence, I do not think decisions by Tribunal with the deprivation of right of appeal can be justified or upheld. However this may be, as to the first two reasons, the proviso under consideration is without any doubt bad on account of the third, namely, its saving of the Royal prerogative. After the advent of the Republican Constitution of India, no royal prerogatives are saved; and hence as the proviso saves H. E. H. the Nizam's prerogative of according sanction to succession inquiries on the report of a Commission or Tribunal, it is obviously and clearly ultra vires the Constitution Act and is, therefore, void.

It may be contended that the royal prerogative has been made statutory by the enactment of the two Jagir Abolition Regulations. My answer will be that here there is a confusion: for, the said Regulations far from saving the royal prerogative have made succession justiciable by ordinary Courts of law. I read the wording of item 18, list 2, sch. VII. In my opinion, it does not confer any

power to sanction succession; nor does the wording of Art. 162, Constitution Act help; for though it has made executive and administrative powers in general and, therefore, over land co-extensive with legislative powers, yet it has not invested the executive with judicial powers. Administrative law is a fact, and is a stout fact at that, with exuberant and robust growth, but in the matter of grants and re-grants it has not, as far as I know, any growth and, therefore, the executive cannot be deemed to be invested with judicial powers in the matter of succession to lands or to the sums commuted for them.

I have held above that commutation for jagir lands being an ancillary and incidental matter to jagir lands is within the province of the Government, and the Government has power to sanction it. The above review will show that even so, the sanction should be in accordance with law, that is, it should only be after the succession is determined in accordance with the law of the land, including the rights of appeal. I must emphasize that no authority is needed for the proposition that right of appeal is a statutory right and nobody can easily be held to be deprived of it. The proviso to s. 21 (2), therefore offends this statutory right and is bad on that ground. Moreover, as already stated, it saves existing law, which includes prerogatives of the King and that is repugnant to the Constitution Act and, therefore, void.

61. The question, however, arises whether the above view is correct in view of Art. 31 (b), Constitution Act. I have given careful consideration to this question and I am of opinion that it is. For what this article provides is that:

... No law providing for the acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such right shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provisions of this Part.

A perusal of this provision will show that what is saved is the law providing for "the acquisition of any estate or any rights therein or the extinguishment or modification of any such rights". The impugned proviso to s. 21 (2), Jagirs Abolition Regulation 1358F. does not provide for the acquisition of any estate or any right therein or the extinguishment or modification of acquisition of any estate or right therein. The proviso safeguards only a procedure; that procedure of sanctioning succession, in my opinion, violates the Constitution Act by saving the royal prerogative of sanctioning succession and also the statutory right of appeal and is, therefore, void. It is not saved, in my opinion, by the inclusion of the Jagirs Abolition Regulation in sch. IX to the amendment to Art. 31. For, we will have to apply the doctrine of severability, and the proviso being repugnant to the Republican Constitution of India, will have to be held void. The proviso is thus not saved by Art. 31 (b).

62. Lest it may be deemed that I have not paid attention to the argument advanced by the Bar I must note here that the learned Advocate-General referred to s. 13 (2), Hyderabad Atiyat Enquiries Act of 1952. This section

validates the orders passed by the executive officers by declaring that they should be deemed to have been validly passed by a competent authority. In my opinion, this provision cures the defect as to form in the order of the Chief Minister under consideration; but it cannot be deemed to cure the defect as to content. I have examined its content and have held that as it also sanctions succession, it is ultra vires the powers of executive. Hence, I cannot accept the argument of the learned Advocate General from this Act. Next the learned advocate, Mr. Shankar Rao Borgaonkar, argued that the decision of the Commission was final. He pointed out that of the two Firmans of appointing the Commission, the second Firman did not contain the words that "the Commission should submit a report" and that this shows that H. E. H. the Nizam himself considered that the finding of the Commission would be final. I do not agree.

For, if I look to the existing law, the Commission has no power of deciding finally between the parties under it and if I look to the provisions of the Constitution Act and to those of the Jagirs Abolition Regulation the rights of succession have to be decided, as already stated, by a Court of law and not by a Commission. The Jagirs Abolition Regulation itself makes this provision about adjudication by the civil Courts in a. 21 and if its proviso exempts pending proceedings it means, inter alia, that they will have to be decided in accordance with the existing Atiyat Law and the existing Atiyat Law required H. E. H. the Nizam's sanction. I have shown above that after the Constitution Act, H. E. H. the Nizam cannot sanction succession. For these reasons I do not agree with, the contentions of both the learned advocates.

63. As the order of the Chief Minister under consideration is not a purely administrative one, but is a quasi Judicial one inasmuch as it was based on the report of the. Commission, the modus operandi of which prescribed a judicial approach, it is amenable in my opinion to the Certiorari jurisdiction of this Court. Thus, clearly a writ of certiorari lies and this Court has jurisdiction to go into its validity.

64. In the above context my answer to the first question is that the order of the Chief Minister dated 3-5-1950 was of a quasi-judicial nature and this Court has jurisdiction to consider its validity. My answer to the second question is that H. E. H. the Nizam has now no power as a Sovereign to pass orders on the recommendations of the Commission as his sovereign powers have been determined by the coming into force of the Constitution Act; and my answer to the third question is that the executive of the Hyderabad State has no power under the Constitution Act to confirm succession proceedings though it has power to sanction commutation after succession is settled by the law Courts. With these answers the file may be sent back.

65. Jaganmohan Reddy, J. This reference has been made by the Pull Bench as involving difficult constitutional questions upon which this High Court has not hitherto pronounced its opinion. I have had the advantage of reading and studying the opinions of my learned brothers Mohd. Ahmed Ansari and Mir Siadat

Ali Khan which they have now pronounced. My own reflections have led me to the majority view expressed by my learned brothers Mohd. Ahmed Ansari, Srinivasachari and Vithal Rao. The facts of the case have been fully stated in the judgments of my learned brothers and as such I omit any detailed account of them. Without seeking to unnecessarily duplicate the arguments expressed in the judgments with which I am concurring, I add these observations of mine confining to the broad considerations which emerge from the facts and arguments in this case.

66. The important constitutional questions that have been referred by the Division Bench to the Full Bench on 24-8-1950 and thereafter by the Full Bench to this Fuller Bench on 20-3-1951 have lost a good deal of their importance in view of several judgments of the Supreme Court which have been pronounced since the date of references and the recent enforcement of the Hyderabad Atiyat Enquiries Act 10 of 1952 (with which I shall deal subsequently).

The two questions that become material for the determination of the matters in issue are (1) whether the High Court has jurisdiction to interfere by the issue of writs of Certiorari, Mandamus and Prohibition with the order of the Government dated 6-4-1950 based on the findings of the Special Commission appointed by H. E. H. the Nizam by his Firman of 22-11-1948, i. e., prior to coming into force of the Constitution of India on 26-1-1950 and (2) has the Government of Hyderabad power under the Constitution to sanction succession for purposes of enabling the heirs to be entitled to commutation amounts and if so in what form must the order be made.

The answer to these questions is obviously intended to determine the real question in this case, viz., can the High Court in fact interfere by the issue of writs in this case by quashing the aforesaid order having regard to the nature and form of the sanction. It is with respect to the second of these questions the arguments of the learned advocate for the petitioners have to be looked into, in view of the subsequent legislation, viz., the Hyderabad Atiyat Enquiries Act of 1952, enforced as from 1-4-1952, by a notification of the Government published in the Gazette of Hyderabad, dated 28-3-1952.

67. In determining the first question whether the High Court has jurisdiction in the circumstances of this case to issue writs of Certiorari, Mandamus and Prohibition under Art. 226 of the Constitution, the point which would fall for determination is with respect to the nature of the order given by the Chief Minister on the recommendations of the Special Commission appointed by H. E. H. the Nizam, as it is contended that if it is an administrative order the High Court has no power to issue the writs, but if it is a judicial or quasi-judicial order, then it can exercise its power of issuing these writs.

68. In Anglo-American theory as observed by Bernard Schwarz, the availability of the judicial remedy by the issue of the prerogative writs is mostly dependent upon the doctrine of the rule of law. The availability or otherwise of judicial

review depends in a given set of circumstances not only on the relevant statutory provisions but even in a case where such provisions do not exist in the complete utilisation by the Court of the means developed by them for the supervision and control of administrative officers in relation to private rights which are effected by means of prerogative writs. There have, however, been several conflicting pronouncements from the Bench, some transgressing from the judicial into the policy sphere such as in *Roberts v. Hopwood*, (1925) A. C. 578 and some laying down different tests for the exercise of these rights as in *Be decision in Walker*, (1944) K. B. 644.

Even in the United States these writs have been used for purposes of judicial review, though no doubt one of the members of the Supreme Court of the United States, Frankfurter J., has been consistently advocating the view that the judicial review is normally not available in the absence of statutory provisions. The following passage of his in *National Labor Relations Board v. Cheney California Lumber Co.*, (1946) 327 U. S. 385 at p. 388, viz.,

when judicial review is available and under what circumstances are questions..... that depend upon the particular congressional enactments under which judicial review is authorised" is typical of the many views that he has expressed in this behalf, which have not usually had the concurrence of the majority of the Supreme Court of the United States. The majority view is stated thus by Reed J. in *Stark v. Wickard*, (1944) 321 U. S. 288 where he asserts

Here there is no forum other than the ordinary Courts to hear this complaint. When.... personal rights are created by a Federal Statute similar in kind to those customarily treated in Courts of law the silence of Congress as to judicial review is at any rate in the absence of administrative remedy not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the Federal Courts in the exercise of their general jurisdiction.

Happily, however, there is no such complication in this country, where following the English Law and now under Art. 32 read with Art. 226 of the Constitution the High Courts can issue these writs for purposes of the enforcement of the rights under part III of the Constitution and for any other purpose. Although the scope of the power to issue a writ of Certiorari or other writs under the English common law is limited, under the above referred provisions of the Constitution of India not only can these writs be used for the protection of fundamental rights, but also for any other purposes which vests in the High Courts, the necessary power to keep the executive within bounds as was construed by the Full Bench of the Bombay High Court in *Jehsinghbhai v. Emperor*, 52 Bom. L. R. 544.

69. In the case of the Province of Bombay Vs. Kusaldas S. Advani and Others, to which my learned brother Mohd. Ahmed Ansari has adverted to in his judgment, Kania C. J. after an exhaustive review of the English case law on the point, approving the dictum of Lord Atkin, in *Rex v. Electricity Commissioners*, (1924) 1 K. B. 171 at p. 205 and the observations of Slesser L. J. in *Eex v. London County*

Council, (1931) 1 K. B, 215 at p. 243, viz.,

wherever any body of persons (1) having legal authority, (2) determining the question affecting the rights of the subjects and (3) having the duty to act judicially (4) acts in excess of their legal authority a writ of Certiorari may issue,

laid down the test in the following words :

It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well recognised principles of approach are required to be followed. In my opinion, the conditions laid down by Slesser L. J. in his judgment correctly bring out the distinction between a judicial or quasi-judicial decision on the one hand and a ministerial decision on the other.

70. In *Rex v. Electricity Commissioners*, (1924) 1 K. B. 171 cited in the above decision of the Supreme Court with approval, Atkin L. J., who delivered the leading judgment defined a quasi-judicial function at p. 205 as follows :

Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, acts in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

Atkin L. J. held in that case that the scheme of the Electricity Commissioners, reorganising the electricity undertakings in a district and subject to approval by the Minister and Parliament, was a "quasi-judicial" decision. The definitions laid down by Atkin L. J. and Slesser L. J. and as approved by Kania C. J. in *Province of Bombay Vs. Kusaldas S. Advani and Others*, restrict rather than define the two main questions, viz., what is a right and when has an authority a duty to act judicially. In *Nakkuda Ali v. Jayaratnc*, 54 Cal. w. N. 883 (p. c), their Lordships of the Privy Council in a restatement of the rules of English Common Law relating to the prerogative writs, held that a decision of a Textile Controller canceling a licence without appeal and which was not subject to an appeal, was an administrative and not a quasi-judicial action.

It is not easy, in these circumstances, to reconcile the decision in *Rex v. Electricity Commissioners* with the decision of the Privy Council. If the decision of the Electricity Commissioners affected an individual right, then a fortiori the decision of the Textile Commissioner, affected far more directly the right of a textile dealer to trade. However the criterion which was held to apply in the above decision of the Privy Council is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. Their Lordships held that the requirement for the controller to have reasonable grounds of belief for cancelling a licence are insufficient to oblige him to act

judicially and were of the opinion that the decision in *Liversidge v. Anderson*, (1942) A. C. 206 did not lay down any general rule as to the construction of such phrases "has reasonable grounds to believe" and that no general principle was involved in that case.

Mahajan and Mukherjea JJ. dissented from the conclusions of the majority judgment delivered in the case of *State of Bombay v. Kushaldas S. Advani* referred to above and held that the duties of the Government of Bombay Land Acquisition Ordinance are such as would affect the rights of subjects and hence are judicial as it cannot arrive at its determination on a mental process. Mahajan J. having approved the observations of Das J. in *In re Banwarilal Roy*, 48 Cal. W. N. 766 that the nature of the act under consideration depended mostly on the scope and effect of the particular power conferred in exercise thereof and that the exercise of the jurisdiction to issue a writ of certiorari in application of the abstract proposition to the circumstances of each case varies according to the foot of the Chancellor, laid down that the question whether any act is ministerial or judicial depends on the facts and circumstances relating to each case. Mukherjea J. at p. 241 having reviewed the case law including the case of *Nakkuda Ali v. Jayaratne* observed thus regarding administrative and judicial acts :

Leaving aside the cases, where the existence of the duty to act judicially is sought to be inferred from the provisions of a statute relating to holding of enquiry or hearing objections the general rule that all the cases lay down is that if the foundation of the exercise of the powers by an authority is his personal satisfaction or subjective opinion about certain facts, the function is to be regarded as executive and not judicial. The facts may undoubtedly be and often are objective facts about which the authority has got to form his opinion

On the other hand, if the statute imposes an objective condition precedent of fact to the exercise of powers by an authority, and not merely his subjective opinion about it, the function would be *prima facie* judicial.

Fazle Ali J., however, laid down the test at p. 228 in the following words :

An order will be a judicial or quasi-judicial order if it is made by a Court or a Judge or by some person or authority who is legally bound or authorised to act as if he was a Court or a Judge. To act as a Court or a Judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a representation, making some kind of inquiry hearing and weighing evidence, if any, and considering all the facts and circumstances bearing on the merits of a controversy, before any decision affecting the rights of one or more parties is arrived at. The procedure to be followed may not be as elaborate as in a Court of law and it may be very summary, but it must contain the essential elements of judicial procedure as indicated by me.

It would appear from the aforesaid that the entire problem can be approached in various ways which will depend on the uncertainties that surround the notion of

quasi-judicial, which in effect is the controlling factor of the scope of the exercise of the power to issue writs. I may state that in practice it is often difficult to draw a clear line in applying the tests for the determination of the question whether a function is ministerial or judicial which is the touchstone for the applicability or otherwise of the exercise of jurisdiction to issue writs in a given case and in a given set of circumstances.

The net result of the various observations cited above is that if any order affects the rights of any person, has as its basis a judicial enquiry or an enquiry whereby the person making it is required to apply a judicial process by not only taking evidence of both parties, but by hearing them and directing his mind to the records so constituted and coming to a conclusion uninfluenced by any extraneous matter other than the record itself would be quasi-judicial order.

71. Now applying the aforesaid test, it will have to be seen, what is the nature of the enquiry by the Special Commission appointed by H. E. H. the Nizam and whether the order affects the rights of any party.

72. Apart from the fact that the Firman dated 22.11-1948 appointed two Judges of the High Court along with two other members to constitute a special commission, it specifically directed that if necessary the Commission may take evidence and decide the matter. The procedure prescribed for enquiry relating to Atiyat grants has been laid down in Gasti (circular) No. 10 of 18th Amardad, 1338 F. (1949 A. D.) having received the sanction of H. E. H. the Nizam on 6th Zilhaj, 1347 Hizri, In S. 3 of the said rules, it is laid down that in the investigation of the Inam and succession proceedings the same procedure shall, as far as possible, be adhered to as laid down in the Hyderabad CPC for the decision of the original cases.

Thereafter the rules contained provisions for appeals to the Nazim, Atiyat or the Division Bench known as the Committee of Atiyat, as the case may be, and the period within which such appeals should be filed. Section 7 provides for appeals review, revision proceedings and lays down that the procedure regarding appeals in the CPC shall apply as far as possible. There is also provision in the rules for submitting objections to the opinions given by the Nazim, Atiyat to the Atiyat Committee or the Revenue Member to whom the Nazim's opinion has been forwarded and for submitting the opinion of the Committee or the Revenue Member, as the case may be, to H. E. H. the Nizam.

Section 16 envisages the hearing of these cases by a Bench at least one day in the week and the filing of miscellaneous papers with an officer of the Committee who shall submit the same for disposal to the senior member. Section 17 gives the President of the Executive Committee, the right to frame and enforce the bye-laws under these rules, which shall have the force of the rules after the publication in the Gazette.

73. It would, therefore, appear that according to these rules definite procedure very closely approximating to the judicial procedure has been laid down for

enquiries relating to Atiyat grants. In Gasti NO. 20 of 1330 F. also it has been laid down that cases relating to Atiyat grants will be decided according to the principles of law, and again by Gasti NO. 74 of 1332 F., the Atiyat Tribunals have been given authority in complicated matters to obtain the assistance of the Courts of law. Further, with respect to the enquiries relating to the succession of certain Jagirs such as Paigah, Maharaja Kishen Pershad, Nawab Salar Jung, Nawab Khankhanna and Nawab Fakhrul Mulk, special commissions have to be appointed. Similarly with respect to the succession enquiry of Kamal Yar Jung's estate the Firman of 15th Rubiussani, provided for an enquiry by a commission.

These commissions invariably followed the procedure laid down in Gasti NO. 10 of 1338 Fasli. Such enquiries by commissions even in matters pertaining properly to matters which should be agitated in Courts of law, were also held to be an established fact in 17 Deccan L. R. 157 (F. B.) and 19 Deccan L. R. 444. In these circumstances I do not propose to labour further and hold that the enquiry by the

Special Commission appointed by the Firman of 22-11-1948 was a judicial enquiry wherein parties were given full opportunity to assent and canvass their respective contentions by adducing evidence after making a full representation with respect to the facts and circumstances as well as on the merits of the controversy after which the commission gave its findings and made a recommendation.

74. With respect to the other question whether the orders passed upon the recommendations affect the rights of one party or the other, the question resolves itself into whether an heir of a deceased Jagirdar has a right to succeed to the Jagir or has he any interest therein by way of maintenance or otherwise. I do not propose to add anything to what has already been stated in the pronouncements made just now by my learned brothers, Mohd. Ahmed Ansari and Srinivasachari, but would like to confine myself to the question that, whatever may have been the nature of the exercise of the prerogative by H. E. H. the Nizam, of granting or regranted Jagirs or of recognizing succession to the deceased Jagirdar, before the Police Action or even before the enforcement on 14-8-1949 of the Jagirs Abolition Regulation (69 of 1949) after the enforcement of the said Regulation, however, all the Jagirs by virtue of S. 4 of the said Regulation have vested in the State and have become part of the Diwani Ilaqua.

Those Jagirdars who were recognised as such before the enforcement of the Regulation were entitled first to an allowance and then to commutation under the Jagir Commutation Regulation (25 of 1359 F.). By virtue of sub-s. (2) of s. 21 any claims relating to jagir or to any share in the income thereof, whether arising under the said Regulation or otherwise, shall be subject to the Regulation, but notwithstanding any existing law, be filed and decided by the proper civil Court. With respect to the successions enquiry of deceased Jagirdars pending on the date of the enforcement of the Regulation, the proviso to sub-s. (2) of S. 21 saved such enquiries from being justiciable by civil Courts of law and permitted the enquiries to be conducted and completed as heretofore as if the regulation

had not been enacted.

This proviso was necessary, as otherwise pending enquiries may be deemed to have come to an end and the parties compelled to go to a civil Court of law and litigate the matter all over again at considerable expense and inconvenience. In these circumstances the intention of the Legislature was to determine the rights of the parties not to the Jagir which had become merged in the State (Diwani) but to a right to an allowance and commutation under the Jagirs Abolition Regulation. In this view of the matter it is not necessary to consider the further point argued on the basis of the observations of Narsimham J. in *S.K. Ghosh and Others Vs. Vice-Chancellor, Utkal University and Others*, that an incomplete right may itself suffice for invoking the mandamus jurisdiction of the High Court.

Once a Statute circumscribes or provides for matters at one time within the exclusive purview of a prerogative right which was vested in H. E. H. the Nizam as an absolute ruler it becomes merged in the Statute and must be governed by that Statute. "With this view, I am in agreement with my brother Mohd. Ahmed Ansari and there is, in my opinion, no warrant to hold that the proviso to sub-s. (2) of section 21 of Act 69 of 1:558 F. is invalid after the Constitution came into force. No arguments have been addressed before us with reference to any specific provisions of the Constitution under which the impugned proviso is said to be in conflict with any of the provisions of the Constitution. On the other hand there is force in the contention of the respondents" advocates that the Jagirs or rights pertaining to Jagirs are land tenures as laid down in the case of *Lakshminarayana v. Trimbaklal*, 25 Deccan L. R. I, by the State Judicial Committee, and as such are covered by item 18 of list 2 of the seventh schedule to the Constitution and within the exclusive competence of the State Legislature.

In these circumstances any law pertaining to that item, such as the Jagirs Abolition Regulation as an "existing law" continued by virtue of Art. 372 of the Constitution after 26-1-1950 apart from the fact that the said Regulation has been saved from the operation of part III of the Constitution by virtue of Art. 31 B in that it is one of the acts which has been included in sch. 9 to the Constitution of India. In the result, I hold that the order of 3-4-1950 is a quasi-judicial order and not an administrative order and that the High Court has jurisdiction under the Constitution to question it and if need be quash it by the issue of any of the appropriate writs if the circumstances so warrant.

75. With respect to the second question formulated by me and which covered both questions 1 and 2 of the reference, as already observed, after the enforcement of the Atiyat Enquiries Act 10 of 1952, the determination of the question "Whether H. E. H. the Nizam has still a prerogative right of sanctioning recommendations made by the Commission at the time of the enforcement of the Jagirs Abolition Regulation" simplifies itself. Orders issued by the Military Governor, the Chief Minister and others are specifically affirmed and validated by sub-s. (2) of s. 13 of the Act 10 of 1952, as follows :

The orders passed in cases relating to Atiyat Grants including Jagirs on or after 18-9-1948 and before the commencement of this Act by the Military Governor, the Chief Civil Administrator or the Chief Minister of Hyderabad or by the Revenue Minister by virtue of powers given or purporting to be given to him by the Chief Minister shall be deemed to be final orders validly passed by a competent authority under the law in force in the time when the order was passed and shall not be questioned in any Court of law.

76. Before dealing with the arguments of the learned Advocate for the petitioner as also of the learned Advocates on behalf of the interveners, it will be necessary to state shortly that there can be no question of any prerogative right of H. E. H. the Nizam surviving after the Constitution came into force because its existence is totally inconsistent with a Republican Constitution which owes its enactment to the sovereignty vesting in the people of India who have through the Constituent Assembly, adapted, enacted and gave to themselves the said Constitution.

Whatever matters fell within the prerogative rights exercised by H. E. H. the Nizam before the Police Action or even before 26-1-1950, which have not been enumerated specifically in list 2 of sch. 7 to the Constitution as falling within the Legislative field of the State or which cannot rightly be said to belong to either List I or List III of the said Schedule can no longer be deemed to subsist; in other words, the arbitrary power which in theory could be exercised by H. E. H. the Nizam at his will and pleasure unfettered, has, in my view, ceased "in fact" immediately after the Police Action or at any rate "in law" after 26-1-1950.

77. I have already given the reasons for holding that the Atiyat grants were land tenures and were included within item 18 of List (2) of sch. 7 of the Constitution over which the State Legislature has unrestricted powers to legislate, as such the Rajpramukh has by virtue of Art. 385 read with Art. 238 (1) of the Constitution passed Act 10 of 1952. The learned Advocate for the Petitioner, Raja Bahadur Bisweshwarnath contends that the words "including Jagirs" in sub-s. (2) of s. 13 of the said Act govern grants of erstwhile Jagirdars specified in s. 4 and which required the sanction of the President in Council or such other persons who exercise these powers subsequent to the Police Action cannot be deemed to refer to the inclusion of enquiries relating to Jagirs.

His contention is that since cl. (b) of sub-s. (1) of s. 2 defined Atiyat Grants as including various grants omitting Jagir grants as such and since the entire provisions of the Act relate mainly to enquiries pertaining to such Atiyat Grants, the change in the language envisaged in sub-s. (2) of s. 13 to include Jagirs is inconsistent with the entire tenor of the Act as gleaned by the preamble and must be deemed to refer only to the grants made by the erstwhile Jagirdars as provided in s. 4. This line of argument is in my view, unacceptable for the following reasons: (1) the definition in an Act including something does not exclude other things which by the very nature of the term defined would on a reasonable premise include it. A reference to Webster's dictionary would show that the word "include" is synonymous with "comprise", "comprehend" and

"contain" and gives this apt example. The word "duty" includes what we owe to God, to our fellowmen and to ourselves. It also includes a tax payable to the Government. In my view the word "includes" as used in the body of the section is not of a restrictive nature but has been used in giving a wider import to the meaning of the words "Atiyat Grants", as such it must be construed as comprehending not only the "Atiyat grants" made by a Jagirdar and other grants specified in the definition, but also would signify according to the natural import of the word defined such other grants which the definition clause declares that they shall include. In *Municipal Commr. for the City of Bombay v. Mathurabai*, 8 Bom. L. R. 457 Russell J. approving the dictum of Lord Watson in *Dilworth v. Newzealand Commissioner of Stamps* in (1899) A. C. 99 at p. 106 has held that the word "includes" may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which for purposes of the Act must invariably be attached to these words or expression. (2) The orders relating to enquiries regarding Jagirs pertain properly to the subject-matter of the Act which deals inter alia with the enquiries relating to Atiyat grants and matters ancillary thereto. Apart from this, it does not debar the Legislature from providing for matters which are not strictly within the purview of the general scheme of the Act, as to hold otherwise would be to limit the general power of the legislature to enact with respect to matters within its competence. (3) A preamble can only be referred to in cases where the section itself is not unambiguous and clear. In this case even the preamble is self-evident in that it shows that the Act is a consolidating Act purporting to and including not only grants made by the Jagirdar but Jagirs themselves and matters ancillary thereto. (4) The addition of the words "including Jagirs" along with "Atiyat Grants" in sub-s. (2) of s. 13 of the said Act does not indicate for the reasons stated above that the Legislature intended to exclude Jagirs from the purview of the definition of Atiyat grants in s. 2 of the said Act, but would reinforce the argument that it was anxious to include orders pertaining to Jagir enquiries also and not leave it to any possible ambiguity.

78. With regard to the contention of the Advocate for interveners", who submits that Act 10 of 1952 is invalid in that the Rajpramukh under Art. 385 had no power to make the said law after the Legislatures in part "B" States have been duly constituted and summoned to meet in the first sessions under the provisions of the Constitution, in my view has no force for the reasons given by my learned brother Mohd. Ahmed Ansari with which I respectfully agree.

79. In the result for the reasons stated above my answer to question NO. 1 of the reference is that the order of the Chief Minister dated 3-4-1950 is a quasi-judicial order and the High Court has jurisdiction to issue writs pertaining thereto. My answer to questions Nos. 2 & 3 of the said reference is that H. E. H. the Nizam has no prerogative after 26-1-1950 and that in view of the provisions in sub-s. (2) of s. 13 of Act 10 of 1952 the order of the Chief Minister referred to above is valid even if it was not so before the enforcement of the Act, a proposition with which I cannot agree. Further the provisions of Art. 166 of the

Constitution are not mandatory but directory as laid down in A. I. R. 1947 F. c. 38 in interpreting s. 40 of the analogous law in the Government of India Act, 1935 and that the order of the Chief Minister is not invalid merely by reason of the fact that it was not expressed to be made in the name of the Rajpramukh.

Reference answered.