

(1957) 02 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 713 of 1952

Bahadur Singh

APPELLANT

Vs

Rajpramukh of Rajasthan and Others

RESPONDENT

Date of Decision : 12-02-1957

Acts Referred:

Alwar State Jagir Rules, 1939 — Rule 29, 4, 5
Constitution of India, 1950 — Article 226
Rajasthan Administration Ordinance, 1949 — Section 3
Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 — Section 3

Citation : AIR 1957 Raj 372

Hon'ble Judges : Ranawat, J;Bapna, J

Bench : Division Bench

Advocate : D.P. Gupta, for the Appellant; R.C. Vyas, for the Respondent

Final Decision : Allowed

Judgement

Bapna, J.—This is a petition under Arc. 226 of the Conatitution of India, and arises in the following circumstances:

2. One Thakur Sheodan Singh was Jagirdar of six-anna share in the Jagir of Dhigwara, and was succeeded by his son Gopal Singh. Thakur Gopal Singh had no male issue, and he made an application to the Government of His Highness the Maharaja of Alwar on the 24th of February, 1945, under Rule 5 of the Alwar State Jagir Rules for permission to adopt Basant Singh. The pedigree was as follows:

SHEODAN SINGH _____|_____ | | | Gopal singh
Bahadur singh Jawahar singh | | Mangal singh Basant singh and two other
sons.

The permission was given by the Executive Council, of Alwar on 2nd May, 1946. Bahadur Singh filed an appeal to His Highness (how the appeal lay under the Alwar State Jagir Rules does not appear to be clear), which was rejected on 11th

October, 1946. In the meanwhile Gopal Singh died on 7th July, 1946. Basant Singh applied to the Hakim, Jagir, for being recognised as the successor of Gopal Singh. Bahadur Singh submitted his objection, and claimed that he was the nearest of kin, and should be recognised as the successor of the late Thakur Gopal Singh. The Hakim, Jagir was of opinion that Basant Singh was entitled to succeed, but on appeal the Home Minister remanded the case for further enquiry and report as to whether any adoption ceremony of Basant Singh had taken place. The Hakim, Jagir, submitted his report on 13th September, 1947, to the effect that no ceremony of adoption had taken place beyond the sanction given by the Rajendra Shashan, and such sanction was deemed sufficient for recognising adoption in Thikana Dhigwara. The Judicial Secretary to whom these papers were forwarded recorded on 11th March, 1948. that the mere sanction to adopt did not amount to an adoption without any ceremony of adoption, and, therefore, the succession should be recommended in the name of the claimant other than Basant Singh, who may be entitled to succeed under the law. Basant Singh filed an appeal, and the Council of Ministers of the Matsya Union, which had since come to be formed rejected the appeal on 7th May, 1949. Basant Singh filed a review petition, which remained undecided till the merger of the Matsya State into Rajasthan. The matter was decided by the Rajpramukh in exercise of the powers conferred upon him by Article VII, para (3), of the Covenant, by which the Rajasthan State was constituted. The order conveyed by the Revenue Secretary on 16-9-1952 to the claimants was as follows:

"I am directed to inform you that after fully, considering over the review petition of Th. Basant Singh and representation of Th. Bahadur Singh H.H. the Rajpramukh has been pleased to recognise succession of Th. Basant Singh to the Jagir of Dhigwara held by late Th. Gopal Singh, in view of his adoption having been sanctioned by Rajendra Shasan Alwar."

3. Thakur Bahadur Singh filed the present petition on 15th December, 1952, and it was urged on his behalf that the Rajpramukh had no jurisdiction to decide the question of succession to the Jagir, and, therefore, his orders should be quashed. It was also urged that mere sanction to adopt did not amount to an adoption and the order of the Rajpramukh was apparently erroneous as being in contravention of the provisions of the Alwar State Jagir Rules.

4. At a preliminary hearing as to whether His Highness the Rajpramukh could be made a respondent under Article 226 of the Constitution, it was urged, by learned counsel for the petitioner that the recognition of a successor to a Jagir was not one of the functions of the Rajpramukh, as laid down by the Constitution, and in recognising Basant Singh as the successor of Th. Gopal Singh he had only exercised the powers of a Tribunal created under Article VII (3) of the Covenant. It was urged that it had been held earlier by this Court in *Umrao Singh v. Bhagwati Singh*, Civil Appeal No. 5 of 1950, D/- 17-10-1950 (A) that the decision of the Rajpramukh could not be challenged by a civil court, and for that reason an application under Article 226 of the Constitution was the only

remedy, and the Rajpramukh was a respondent in his capacity of a tribunal.

5. The learned Advocate General, who was heard on the question, urged that the decision in Umrao Singh's case (A), was correct, and no civil suit was maintainable. He, however, argued that the matter of recognition of a successor was one arising out of the Covenant, and under Article 363 of the Constitution the unsuccessful party could only approach the Central Government for redress.

6. The Division Bench was of opinion that the broad decision in Umrao Singh's case (A), required reconsideration, and the following two questions were referred to a Pull Bench:

"1. Whether a decision by the Rajpramukh in the matter of recognition of a successor to a Jagir is liable to be challenged by a Civil Suit?

2. If the answer to the above question be in the negative, whether the remedy of the unsuccessful litigant on a proper case having been made out lies by a petition to this Court under Article 226 or the matter is one to which the provisions of Article 363 of the Constitution would apply?"

7. It may be stated that Umrao Singh's case (A), in the meanwhile, was taken to the Supreme Court, and their Lordships upheld the decision of this Court on the ground that after the integration of Rajasthan the sovereign right exercised by the Maharao of Kotah in the matter of recognition of successor to Indergarh was dealt with by Article VII (3) of the Covenant, and no suit could be maintainable in a civil court to direct a sovereign to perform his sovereign duties in a particular manner. The relevant observations of their Lordships are:

"The power of recognizing an heir to the Gaddi of Indergarh which was once exercised by the Maharao of Kotah, and which is now being exercised by the Rajpramukh of Rajasthan, is political in character and is an incident of sovereignty and a matter that has to be exclusively settled in exercise of such a power cannot possibly be the subject of adjudication in a civil court."

Again.

"In the absence of any evidence to the contrary it has to be assumed that the Indergarh Jagir was resumable after the death of the last holder and it was in exercise of sovereign rights that the Maharao of Kotah recognized the adoption of Bhagwati Singh and the Rajpramukh of Rajasthan in exercise of the same right recognized him as an heir to the last jagirdar."

It was further observed that--

"Even if the jagir was of a hereditary nature, it seems that the Maharao of Kotah was admittedly the sole arbiter for determining the question of succession to the Gaddi according to law and custom and that exclusive power, by the binding force of the Covenant, has passed to the Rajpramukh of Rajasthan."

8. The Pull Bench distinguished the Supreme Court's decision in Umrao Singh's

case (A), as being prior to the enforcement of the Constitution, it was observed that with the enforcement of the Constitution, the sovereign powers of the Rajpramukh came to an end. Reliance was placed on *Virendra Singh and Others Vs. The State of Uttar Pradesh*,

It was held that the powers of the Rajpramukh granted under Article VII (3) of the Covenant had come to an end by the enforcement of the Constitution, and such a decision by the Rajpramukh did not bar a civil suit to enforce the right to succeed to a jagir which was a civil right. It was held that Article 363 of the Constitution was irrelevant, as the matter of succession to a Jagir was not one arising out of the Covenant.

The Pull Bench answered the first question that a decision by the Rajpramukh in the matter of recognition of a successor to a jagir after the coming into force of the Constitution from 26th January, 1950, did not bar a civil suit, as the first question was answered in the affirmative, the second question did not arise.

Two of the Judges further held that the exercise of the powers under Article VIII(3) of the Covenant by the Rajpramukh was kept independent of the advice of the Ministers as provided by Article V (1) of the Covenant, and it was inconsistent with Article 163 of the Constitution, and was, therefore, invalid.

9. The decision of the Pull Bench purported to affect all decisions by the Rajpramukh after the enforcement of the Constitution, and the Government came out with the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955 (Act No XVIII of 1955).

Learned counsel for the respondent urged that in view of the said Act No. XVIII of 1955, the decision of the Rajpramukh had been validated, and could not be questioned by this Court.

10. The relevant provision of that Act is Section 3 which is as follows:

"Notwithstanding anything contained in the Covenant or in any judgment, decree or order of any Court, all final decisions given by the various grades of Revenue Courts or Officers, or by the Rajpramukh, in cases or proceedings arising out of, or under, the laws of the Covenanting states providing for the resumption of Jagirs in those States and the recognition of succession to the rights and titles of Jagirdars therein shall be valid and shall be deemed always to have been valid and shall not be liable to be called in question in any Civil Court."

11. This provision came in for notice in *Purshotam Singh v. Narain Singh*, (S) AIR 1955 Raj 203 (C), and it was held that the bar against the decision being questioned in any civil court did not bar the jurisdiction of this Court under Article 226 of the Constitution. The jurisdiction conferred by Article 226 of the Constitution cannot be barred by any legislation by any State, and can only be taken away by amendment of the Constitution, even if this Court may be exercising civil jurisdiction in matters of this kind.

It was also explained that Section 3 did not validate the decision of the Rajpramukh, if given in his executive authority, but the effect of Section 3 was that it validated the decisions of the Rajpramukh, the Revenue Officers and courts in the matter of succession to jagirs, as provided by the laws of the Covenanting States, and thereby the forum which existed prior to the Covenant had been again brought into existence.

12. The Rajpramukh in that sense could only be treated as a quasi-judicial tribunal, and the decisions of such tribunal had only been validated. Under what law the Rajpramukh could act in the matter requires, examination.

13. According to the Alwar State Jagir Rules, after enquiry by the Hakim Jagir, the final decision was to be taken by the Government of His Highness the Maharaja of Alwar vide Rule 29(d). By Section 3 of the Rajasthan Administration Ordinance all the laws in force in any Covenanting State immediately before the commencement of the Ordinance in that State were continued to remain in force in that State subject to the modification that reference therein to the Ruler or Government of that State was to be construed as a reference to the Rajpramukh, or as the case may be to the Government of Rajasthan.

The previous decision of the Council of Ministers of the Matsya State was a decision of the Government of that State, and the review petition could only be dealt with by the Government of Rajasthan State. The decision would no doubt be announced in the name of the Rajpramukh but would not be one taken by the Rajpramukh in his discretion.

The position taken by the respondent as also the Advocate General is that the decision conveyed by the Revenue Secretary by his letter of 16th September, 1952, was not by the Government, but by the Rajpramukh under Article VII (3) of the Covenant. This has already been held by the Full Bench of this Court to be without jurisdiction, and as explained in Purshotam Singh's case (C), if the decision is said to be taken by the Rajpramukh in his executive capacity, it would still not be validated by the said Act No. XVIII of 1955.

The decision not being by the Government of Rajasthan, which takes the place of the Government of H.H. the Maharaja of Alwar referred to in Rule 5 of the Alwar State Jagir Rules, it must be held to be without jurisdiction, and, the matter will have to be placed "before the Board of Revenue u/s 4 (d) of the Validation Act (XVIII of 1955).

14. It may also be pointed Out that even if the Rajpramukh may have been the authority, according to the Alwar State Jagir Rules read with the Rajasthan Administration Ordinance, who could finally decide the question of succession of a jagir in areas to which those Rules were applicable, the order or decision of the Rajpramukh is to be in accordance with Rule 4 of the Alwar State Jagir Rules.

It provides that on the death of a Jagirdar, his oldest son or in the absence of a son his legally adopted son as provided in Rule 5, shall succeed, and if there is

no son or legally adopted son the nearest of kin shall succeed subject to certain conditions mentioned in that Rule, with which we are not at present concerned. The decision purporting to have been given by the Rajpramukh has been stated in full above. The succession is available to an adopted son, and that adoption must be according to the provisions of Rule 5.

The succession, which has been recognised by the Rajpramukh is stated to have been so done "in view of his adoption having been sanctioned by Rajendra Shasan Alwar", and not on account of his being the adopted son. The decision is clearly against Rule 4 of the Alwar State Jagir Rules. We, do not propose to decide whether Basant Singh was or was not adopted.

We only wish to point out that there must be a finding that a certain person was the legally adopted son before he can be held to be the rightful successor under Rule 4 of the Alwar State Jagir Rules and anything short of that finding does not vest any right in the person claiming to succeed as the adopted son.

15. As a result, the decision, of the Rajpramukh conveyed by the Revenue Secretary to the Government of Rajasthan by letter of 16th September, 1952, is set aside, and the record will be sent to the Board of Revenue for dealing with the matter according to law.

16. The petition is allowed with costs which are assessed at Rs. 50/- per day of hearing.