(1956) 06 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9/5 of 1955

Bansigir APPELLANT

Vs

State of Hyderabad RESPONDENT

Date of Decision : 26-06-1956

Acts Referred:

Constitution of India, 1950 — Article 220, 226

Citation : (1956) 06 AP CK 0002

Hon'ble Judges : Palnitkar, C.J;Srinivasachari, J

Bench : Division Bench

Advocate : N. Narasimha Aiyangar, for the Appellant; Gopal Rao Tuljapurkar, for the Respondent

Judgement

Srinivasachari, J.—The Petitioner in this case has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, seeking to quash the order of the Revenue Minister, Hyderabad State, by means of a Writ of Certiorari or any other appropriate writ declaring Act 23 of 1954 amending the Hyderabad (Abolition of Cash Grants) Act 1954 in so far as the Moaveza-e-Karza was concerned, was ultra vires the Constitution.

2. The history of this case dates back to as early as 1260H. The ancestors of the Petitioner, it is stated, were carrying oh money lending business in the city of Hyderabad and in the Districts, It is further stated that about 100 years ago Nawab Nasir-ud-ulla the 4th Nizam granted a "Kowl" in favour of one Bhagwangir Gosai under which an assurance was given to him that on condition that he deposited the amounts into the treasury to enable the Government to draw them for Government purposes, he would be given a munafa or profit at the rate of 1 per cent, per month on amounts so deposited.

According to the Petitioner, in pursuance of the aforesaid arrangement Bhagwangir advanced large sums of money to the Government of Hyderabad by way of loan and in consideration of the fact that the said Bhagwangir accommodated the Government by advancing large sums of money, Nawab

Muktarul-mulk, Sir Salarjung, the First the then Prime Minister issued orders in 1273H., that the family of the said Bhagwangir and his successor be paid a sum of Rs. 600 "Chalni" per month in perpetuity from generation to generation. Bhagwangir died and his heirs and successors continued to receive payment of the amount. The Petitioner it is stated is one of the descendants of Mahant Bhagwangir.

3. The further allegation of the Petitioner is that the above payment continued to be made till 1304 H., when the Government of Hyderabad stopped it and directed Laxmangir, the then descendant of Bhagwangir, to prefer a claim before the Debt Commission (Majlis Daryaft Karza Sarkar) for the recovery of the loan due to him by the Government. In accordance with this direction the claim was laid before the Debt Commission for a sum of Rs. 60,70,892-9-0 inclusive of interest.

The Debt Commission opined that the debt due to this party need not be enquired into, as it had already been enquired into and the amount fixed. It would appear, that subsequent to this, the then Madarul Maham (Prime Minister) issued a directive to the Accountant-General to continue the monthly payment as before with effect from the date it was stopped. Therein the Madarul Maham stated that payment may continue to be made inasmuch as the creditors before the Debt Commission were willing to withdraw their claim if the Mahavar was continued as before.

In carrying out this order of the Madarul Maham, the predecessor-in-interest of the present Petitioner, one Raghunathgir and other heirs of the late Mahant Bhagwangir were, called upon to execute a release deed withdrawing their claims before the Debt Commission and to return the documents relating to the loan and it was agreed that on their complying with those requirements, the Mahavar would be continued; that accordingly Raghunathgir and Ors. executed the release deed in favour of the then Government giving up then-claim for the debt.

A Sanad was granted by the then Madar-ul-maham, Nawab Sikander Jung (Vikarul Umara) on 25-9-1894 under which it was ordered that the Petitioner''s ancestors be paid an aggregate sum of] Hali Sicca 545-7-3 equivalent to 600 Chalni and this amount was to be paid in perpetuity from generation to generation.

The Petitioner claims to be the ''Chela'' of Raghunathgir. His case is that the "Mahavar" was stopped by the Government on the ground that the amount that used to be paid to the Petitioner''s ancestors, was a cash grant in the nature of a Mansab Maviza Kharza and that after the amendment to the Abolition of Cash Grants Act in 1954, the Petitioner would only be entitled to a payment of six times the annual amount payable to the grantee either in full or in annual installments and there could not be a payment in perpetuity.

The result of this was that the Petitioner was told that the monthly payment could not be continued as heretofore perpetually and he was only entitled to a payment of six times the amount (originally granted to his ancestors).

4. The Petitioner being aggrieved by this order of the Revenue Department of 4-2-1954, has filed this application for the issue of a Writ of Certiorari and prays that the order of the R.D. be quashed, on the ground that the amounts that the Petitioner''s ancestors were getting, did not partake of the nature of a ''mansab moaveza karza''. Secondly it is contended that it was not open to the Government to resile from the contract to pay in perpetuity in consideration of the Petitioner''s ancestors relinquishing their claim for a large sum of Rs. 60 lakhs and executing the release.

5. We heard the arguments of the learned advocate for the Petitioner and the Advocate-General assisted by the Government Advocate. In so far as the facts alleged in the petition are concerned, the Petitioner has sought to support them by filing conies of various documents commencing from 1273H. We would have gone into the mass of documentary evidence in the case, but for the fact that it appeared to us that prima facie the remedy resorted to by the Petitioner is misconceived There can be no doubt about the fact the where the relationship between the Petitioner on one hand and the Government on the other, is one based on contract, no Writ of Mandamus could be issued to compel the Government to carry out the terms of the contract for it is essential for the issue of a Writ of Mandamus that there ought to be statutory duty imposed upon the authority against whom a Writ of Mandamus is sought and if; such authority fails to carry, out the statutory duty then the Court would issue a Writ of Mandamus. In the case in question there was no statutory duty imposed upon the Government for the payment of the annuity. So no question of the issue of a Writ of Mandamus arises. Another aspect of the case is that it may be taken to be a settled law that where a person has an equally efficacious remedy, the High Court would not interfere in writ proceedings for the jurisdiction exercised in writ proceedings is an extraordinary one and the powers are to be exercised in rare and exceptional cases;

We will now examine as to whether the Petitioner has no other remedy open to him. The Petitioner''s case as set out in his application is that he had a large claim as against the Government and this claim he gave up in consideration of the fact that the Government assured him the perpetual payment of a sum of 600 Chalni. Therefore it was a case of an agreement having been entered into between the Petitioner''s ancestors and the Government; that while the Petitioner''s ancestors would give up their claim the Government would see to it that in consideration of the claim being given up the creditors would be compensated by a perpetual payment of a sum mentioned above.

The Government stopped the payment which they could not do. It comes to this that one of the parties to the contract has failed to fulfil his part of the contract or in other words there has been a breach of the terms of the contract on the part of Government. The remedy open to a party in such cases ordinarily is to sue for the enforcement or breach of the terms of contract.

6. We may also observe that the intention of; the Petitioner is to get a

declaration from this Court that the interpretation put upon the grant made to the Petitioner by the ''Sanad'' of Vikar-ul-Umaraa on 25-9-1894 was wrong and that it did not come within the definition of Mansab Moaveza Karza.

It was argued by the learned advocate for the Petitioner that this could not be regarded as Man sab. He elaborated his argument by saying that none of the attributes appurtenant to a Mansab were to be found in this particular grant. For example, he said there was no Virasat proceedings on the death of the grantee, as there would be in a case of Mansab. The other attribute brought on notice by the learned advocate was that there was no possibility of any deduction of the amount of the Mansab at each succession which is peculiar to a Mansab. On these grounds he contended that this particular grant could not be called as ''Mansab Moaveza Karza''.

7. Before entering into the various point raised by the learned advocate we would first determine as to whether this is a fit case where we ought to exercise our writ powers, because where there is an equally adequate and efficacious remedy open to the Petitioner it would be desirable to direct him to go to a Civil Court rather than interfere in our writ jurisdiction which is admittedly a limited jurisdiction.

There has been no fundamental right of the Petitioners infringed to justify our interference (sic) the order of the Revenue Minister. The sum (sic) substance of the Petitioner''s contention is that the interpretation put upon this grant by the Revenue Department is wrong. The question will be whether writ jurisdiction could be invoked in order to correct a wrong interpretation of a particular enactment by a subordinate authority when mother remedy is open.

We are not sitting here in appellate jurisdiction which would warrant us to go into the question of the interpretation put by the Revenue Authorities. There can be no doubt whatsoever that the Revenue Minister had Jurisdiction to decide this Smatter. There was therefore no excess of jurisdiction or want of jurisdiction. The other contingency under which the High Court would step in to exercise its writ jurisdiction is whether there has been a violation of the principles of natural justice.

If the grievance is that he was by virtue of the agreement entered into with the Government entitled to receive the monthly payment in perpetuity and the Government now refused to pay, this could only amount to a breach of contract on the part of the Government for which he has an adequate remedy at law. The test will be can the Petitioner get no relief except under a direction of this Court exercising its powers under Article 220 of the Constitution.

It has also to be noted that the alternative remedy for the present should be the remedy under which he will get justice by judicial declaration of a competent Court, and in this case such a declaration he could get in a Court of law and this declaration would be binding upon the Government as upon any private party.

In our opinion this remedy is an effectual, and efficacious remedy. It may be taken to be a settled law today that the High Court cannot convert it-self into a Court of appeal and examine the correctness of the decision of the Tribunal against whose order an application for the issue of writ has been filed. This has been well established by the decision of the Supreme Court in the case of Veerappa Pillai Vs. Raman and Raman Ltd. and Others,

We desire to make it clear that Article 226 of the Constitution is not intended to provide an alternative method of redress to the normal process of a decision in an action brought in the usual course established by law. For the above reasons we are of the opinion that this writ application should be dismissed. It is therefore dismissed with costs. Advocate''s fee Rs. 100.

