

(1965) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 195 of 1958

Bhai Ardaman Singh

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 29-01-1965

Acts Referred:

Citation : AIR 1965 P&H 354

Hon'ble Judges : I.D. Dua, J;A.N. Grover, J

Bench : Division Bench

Judgement

Grover, J.—This is an appeal against the dismissal of a suit instituted on the 24th October, 1956, by Bhai Ardaman Singh for a declaration to the effect that he is entitled to receive a sum of Rs. 5,260/4/per annum as a grant to meet the expenses of the langer (free kitchen) of Shri Gurdwara Sahib Bagrian perpetually and for recovery of Rs. 26,783/6/- as arrears of the grant from 19th September 1951 to the date of institution of the suit.

(2) It was alleged in the plaint that the Maharajas of Jind State had sanctioned some grants of revenue as muafi by way of charity amounting to Rs. 5,300/- at different times for the expenses of the langer (free kitchen) of Shri Gurdwara Sahib Bagrian in favour of the ancestors of the plaintiff details of which were given in par 1 of the plaint.

A fresh Sanad in perpetuity was granted during the reign of Maharaja Ranbir Singh of Jind State regarding fixation of guzara (grant) in amount of Rs. 5,300/- per annum for meeting the expenses of the aforesaid langer in favour of Bhai Arjan Singh father of the plaintiff on 19th May, 1903. In accordance with this Sanad after deduction of Rs. 39/12/- the father of the plaintiff was entitled to receive a sum of Rs. 5,60/4/ annually. After the death of Bhai Arjan Singh mutation of the said grant was sanctioned in August, 1948. In paras 4, 5 and 6 of the plaint it was pleaded that in terms of the Sanads the plaintiffs had been drawing every year on the 1st April a sum of Rs. 5,260/4/- form the Treasury at Sangrur under orders of the Deputy Commissioner, Sangrur. It was asserted that

the amount of the grant was being duly spent on the amount of the grant was being duly spent on the expenses of maintaining the langer in accordance with the terms of the grant. The amount of grant had been paid up to 18th September 1951 but thereafter it has been stopped. In para 7 it was stated that when the plaintiff applied in the beginning of April, 1951, for payment of the amount of the grant the Deputy Commissioner passed an order for its payment up to 18th September, 1951, but did not pass order regarding payment of the amount for the remaining period.

The case of the plaintiff was that he was entitled to receive the amount of grant in perpetuity in accordance with the terms of the Sanad and that the defendants (Government of Pepsu and Deputy Commissioner District Sangrur) had no right to refuse or withhold the payment. In para 13 it was stated that the grants which had been made by the other Covenanting States of the Union for the langer of Shri Gurdwara Sahib Bagrian were being received by the plaintiff as usual and it was only the amount of the grant in dispute which was not being paid.

(3) The position taken up on behalf of the defendants in the amended written statement filed on 23rd October, 1957, was that although the Maharaja of Jind had sanctioned certain amounts from time to time for running the langar at Bagrian but the State Government could refuse that grant at any time. It was denied that the Maharaja of Jind had any right to issue any Sanad on the 20th August, 1948, because the State of Pepsu had come into existence on this date. It was further pleaded that on account of the violation of the terms embodied in the Sanads also the State Government was competent to resume the alleged grants. The discontinuance of the grant after 18th September, 1951, was sought to be justified as account of order No. H. D. 524 Ed. 106 dated the 19th September, 1951. Most of the other allegations made in the plaint were denied and it was also averred that the suit was barred by limitation.

(4) A large number of issues were framed on the pleadings of the parties both before the amended written statement was filed and after it had been filed. The findings on the material issues were that Maharaja Rambir Singh had sanctioned the grant in the amount of Rs. 5,300/- for running the langar in question in favour of the father of the plaintiff on the 19th May, 1903, merging all pervious grants made by the previous Rulers of Jind State and that a fresh grant for the same purpose had been made on 20th August, 1948, by the Maharaja of Jind. The grant was perpetual but was revocable in case of violation of its terms. The State Government had revoked all such charitable grants by means of a circular letter dated 19th September, 1951, reiterated in Home Department notification No. 60 dated 21 March, 1952.

It was further found that the plaintiff has succeeded in proving that Gurdwara Sahib Bagrian had been deprived of the property in dispute without any authority of law and that Article 6(b)(c) of the Covenant entered into by the Rulers of the erstwhile Patiala and East Punjab States Union had been violated but the claim relating to the breach of the terms of the Covenant was not enforceable in the

Municipal Courts. The trial Court non-suited the plaintiff on the view that there could be no cause of action against the successor State so long as the grant had not been recognised either expressly or by implication by that State and in the present case no such agreement had been pleaded and therefore the plaintiff had failed to show that he had a cause of action enforceable the civil Courts.

(5) The principal contention canvassed by Shri N. C, Chatterji learned counsel the for plaintiff--appellant is that the trial Court was largely influenced by what it regarded as absence of a specific plea that there was an implied agreement between the plaintiff and the defendant (State) recognising the rights created by the Sanads conferring the grant. According to him the Court below had taken a somewhat narrow and technical view of the pleadings plaintiff had been drawing the amounts of the grant and that these payments had actually been made up to 18th September, 1951, which was well after the coming into existence of the new State of Pepsu.

It has been urged by Mr. Chatterji that these allegations were sufficient for establishing that the successor State had recognised the claim of the appellant under the Sanads and had actually acted in accordance with the terms of the grant by making payment up to 18th September 1951. In *Promod Chandra Deb and Others Vs. The State of Orissa and Others*, after an elaborate examination of the relevant law and the authoritative decisions including those of the Privy Council it has been laid down that Act of State if the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory which was not till then a part of its territory either by conquest treaty or cession or otherwise. As an act of State derives its authority not from a municipal law but from ultra legal or supra-legal means Municipal Courts have no power comes within the ambit of "Act of State".

Whether the act of State has reference to public rights or to private rights the result is the same namely, that it is beyond the jurisdiction of Municipal Courts to investigate the rights and wrongs of the transaction and to pronounce upon them and that therefore such a Court cannot enforce its decisions if any. The Municipal Courts have the power and jurisdiction to investigate and ascertain only such rights as the new sovereign has chosen to recognise or acknowledge by legislation agreement or otherwise. Such an agreement or recognition may be either express or may be implied from circumstances and evidence appearing from the mode of dealing with those rights by the new sovereign. Hence the Municipal Courts have the jurisdiction to find out whether the new sovereign has or has not recognised pressly or by implication. In any controversy as to sovereign the burden of proof lies on the claimant to establish that the new sovereign has recognised or acknowledged the right in question.

(6) In a recent decision of the Supreme Court in *Amar Chand Batail v. Union of India* AIR 1963 S C 1658 P. B. Gajendragadkar C. J., while delivering the judgment of the Court expressed the true position in the following words:

"Recognition of the claim made by the appellant can be proved by the appellant either by express acknowledgment or recognition or may even be established on relevant facts and circumstances which may lead to the inference of such recognition. In other words recognition of such a claim can be wither express or implied and in the latter calls of cases the inference as to recognition may be drawn legitimately form facts and circumstances which reasonably support such an inference."

In that case their Lordships had no difficulty in holding that the claim of the plaintiff had been expressly recognised by the document written by the Chief Conservator of forests to the Accountant General Punjab.

(7) Mr. Chatterji while accepting that the law as laid down by the Supreme Court requires that recognition of the claim made by the present appellant must be proved either by express acknowledgment or by inference from relevant facts and circumstances. His entire case is based on the admitted fact of payment of the amount of grant up to 18th September, 1951, and he says that as soon as that fact has been established the burden would shift to the respondent to prove the circumstances under which that amount was paid and why it was later on withheld.

(8) The learned Advocate General has maintained that the pleas contained in the plaint were vague an no such specific allegation was made that there had been recognition of claim of the appellant by acknowledgment express or implied an that mere statement of the fact that the amount of the grant had been paid up to 18th September, 1951, was not sufficient to import the aforesaid plea which if made properly and specifically would have been fully met by the defendants. He further submits that the mere payment of the amount up to 18th September, 1951 would not by itself establish recognition of the claim. He says that in any case, there is abundant evidence on the record which shows that claim of the appellant was not recognised. He has invited our attention to Exhibit D. W. 1/A1, which is a letter from the Government of Pepsu (Home Department) to the Finance Department. In this letter it is stated inter alia grant to all religious institution other than those which are entirely Government owner and Government managed should be stooped. A notification dated 21st March, 1952 (Exhibit D, 3) was issued which was in the following terms:

"Government have stopped all payments of Parwarishes, Bandhans, Annuities and Rasads to the Religious Institutions and individuals with effect from 19th May, 1951. The question of payment of the arrears was however under the consideration of Government and it has now been decided that the arrears up to 18th September, 1951 may be paid. It is therefore notified for the information of all concerned that they can draw their arrears dues, if any form the Government Treasuries where they used to draw their Parwarishes, Bandhans, Annuities or Rasads, etc.

No payment should be made in cases where payments were stopped by the

covenanting States before the formation of the Union."

Mr. Chatterji contends that according to the evidence of Lachhman Sarup, Nazir Deputy Commissioner's Officer Sangrur (P. W. 5) it was on 30th July 1951 that the amount of the grant for two years was paid to the appellant's Mukhtiar-i-am and since respondents have not produced any orders prior to the notification dated 21st March, 1952, it cannot be said that the claim of the plaintiff was not recognised on the date of the payment. If on that date payment was being made pursuant to the grant it must be held that the claim had been recognised and if that was so it was not open to Government later on to disclaim recognition.

In this connection it will be useful to refer to certain documents which are on the records but unfortunately were not included in the printed record. But since counsel for both the parties rely upon them there can be no objection s to examining them. Exhibit P. 22 is a letter dated 13th September, 1949 of the Under Secretary to Government of Pepsu (Home Department) addressed to Bhai Lal Singh Mukhtiar of the appellant by which he was informed that the matter of payment of grant of Rs. 5,260/4/- was receiving the attention of the Government. Ext. P. 23 is another letter of the Under Secretary to Government, Home Department dated 21st November 1950 which was sent in reply to a letter addressed by the appellant on 8th October, 1950 to the Chief Minister. In that letter the appellant was told that the matter was under consideration and a decision would be taken at an early date.

Exhibit P. 24 is a letter by Shri G. S. Rarewala, who was the Chief Minister of Pepsu saying that he was sorry that there had been some delay in the settlement of the appellant's claim and he was asking the Chief Secretary to expedite it. Exhibit P. 26 shows that the sum of Rs. 1,0520/8/- was disbursed to the Mukhtiar of the appellant on 30th June, 1951. By Exhibit P. 28 the appellant was required to furnish the sanction regarding the grant of langar money as the same was required by the Revenue Department. Exhibit P. 31 is a communication dated 15th December, 1952 which shows that the appellant was directed to see the Revenue Secretary on 2nd January 1953. Exhibit P. 33 is a letter from the Deputy Secretary on 2nd January, 1953. Exhibit P. 33 is a letter from the Deputy Secretary to Government (Home Department) Pepsu in reply to the appellant's letter dated 15th January 1953. He sent a copy of circular letter dated 27th February, 1953 in which the position with regard to para 4 of the Home Department circular letter dated 19th September, 1951 was fully clarified.

(9) Mr. Chatterji says that as the payment was made by the Deputy Commissioner's office on the 30th July, 1951 after the correspondence between the appellant and the Chief Minister as also other officers of the Government it must be inferred that a decision was taken that his claim should be recognised and the payment should be made to him. No such decision has however been produced and no attempt was made in the trial Court to summon any such document from the payment made on 30th July, 1951 up to 18th September, 1951 was made in pursuance of any decisions of the Government that the claim

of the appellant should be accepted or recognised.

The learned Advocate-General appears to be right in saying that the matter with regard to the payment of such amounts as also other allied matters which are mentioned in letter Ext. D. W. 1/A1 was under consideration of the Government and on 19th September, 1951 the letter mentioned above was duly sent to the Finance Department conveying the decisions taken. According to him it is significant that the payment which was made to the appellant was up to 18th September, 1951 although it was made in July, 1951 but this tallies with the date given in the notification dated 21st March, 1952, which embodied the final decision of the Government that arrears were to be paid only up to 18th September 1951. To my mind it is apparent that the Government was considering over the matter when the correspondence took place to which reference has been made whether such payments were to be stopped for the future. The decisions taken came to be expressed in the letter dated 19th September, 1951. It was on account of that decision that in the notification dated 21st March, 1952 it was stated in unequivocal terms that Government had decided to stop all payments of such nature but that arrears would be paid up to 18th September, 1951, It cannot be therefore be said to have established that any decision had been taken by the Government in favour of continuance of the payment was made to him of the amount due up to 18th September, 1951 a few months earlier in July, 1951.

I am also not unmindful on the fact as was pointed out by the trial Court that the pleas in the plaint were not specific and that the appellant was required to produce a more cogent proof that the mere factum of payment up to 18th September, 1951 in order to establish recognition by the new State of his claim. This he entirely failed to do and his claim was rightly rejected.

(10) Mr. Chatterji in the course of his arguments mentioned certain other points, namely, the violation of Art. 6(b)(c) of the Covenant entered into by the Rulers of the erstwhile Patiala and East Punjab State Union and the grants made by other Covenanting States for langer of Shri Gurdwara Sahib Bagrian having been duly recognised but he did not pursue these matters further as they could hardly be of much assistance in deciding the main point in controversy on which alone Mr. Chatterji addressed us at length.

(11) In the result the appeal is dismissed but in view of the nature of the circumstances the parties are left to bear their own costs.

Dua, J.

(12) I agree.

(13) Appeal dismissed.