
(1952) 03 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Miscellaneous (Writ) Case No. 48 of 1951

Bishan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-03-1952

Acts Referred:

Constitution of India, 1950 — Article 166
Marwar Court of Wards Act, 1923 — Section 7(1)

Citation : AIR 1953 Raj 46 : (1952) RLW 291

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : Murlimanohar and Prakash Chandra, for the Appellant; Mansha Ram, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Thakur Bishan Singh, Jagirdar of village Nim-bol, under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, prohibition and mandamus or any other appropriate writ may be issued to the State of Rajasthan, and the order made by the State u/s 7 (1) (b) of the Marwar Court of Wards Act be quashed.

2. The applicant's case is that in November, 1948, the Government of the former State of Jodhpur placed the Jagir of Nimbol under the management of the Court of Wards on certain grounds. Representations were made against that order, and eventually in September, 1950, the Government of Rajasthan set aside the order of the Government of the former State of Jodhpur, and released the Thikana from the management of the Court of Wards, and handed back the possession to the applicant. Thereafter, on the 18th of June, 1951, the Government of Rajasthan again took over the management of the estate u/s 7 (1) (b) of the Marwar Court of Wards Act. The contention of the applicant is that the order of the Government of Rajasthan u/s 7 (1) (b) is in excess of their jurisdiction, and should, therefore, be set aside.

3. The application has been opposed on behalf of the State, and it is contended that the order in question is within the jurisdiction of the State of Rajasthan, and there has been no exceeding of their jurisdiction.

4. The Marwar Court of Wards Act provides u/s 7 (1) the conditions under which Jagirdars shall be deemed to be disqualified to manage their own property. We are concerned in this case, with section 7 (1) (b) (ii), as the learned Government Advocate has based his case on that section. It reads as follows:

"Jagirdars shall be deemed to be disqualified to manage their own property when they are persons declared by the Darbar to be incapable of managing, or unfitted to manage, their own property owing to their having been convicted of a non-bailable offence and being unfitted by vicious habits or bad character for the management of their own property."

5. The letter of the Revenue Secretary, which is being assailed and on the basis of which superintendence was assumed by the Court of Wards is in these terms:

"I am directed to say that after the release of Thjkana Nimbol the Thakur has attempted to dissuade the prosecution witnesses from giving evidence against his sons and other persons of the Thikana and in the event of unfavourable evidence he threatens them with disastrous consequences. There is a dispute between the Thakur and his public in the matter of recovery of Kharda cess, and the Thakur encourages his sons and his kam-dar etc. to do such criminal acts, as a sequence to which a criminal case for cutting the nose of one Shri Loon Kavan against them is being tried in the Sessions Court. It is, therefore, quite clear that the Thakur of Nimbol could not prevent his sons and Kamdar from doing violent action and this shows the incapability of the Thakur to manage his Thikana affairs in accordance with the provisions of Section 7 (b), Marwar Court of Wards Act, and consequently the Thakur deserves to be declared incapable to manage his Thikana affairs. Besides, the Thakur exerts undue influence in the proper discharge of justice and administration. It is, therefore, necessary that Thikana Nimbol may be taken under the superintendence of Court of Wards and the Thakur be declared incapable to manage his Thikana affairs."

6. The applicant wanted to show that the recitals in this order were incorrect; but, in our opinion, it is not the function of the Court to go into the correctness or otherwise of the recitals contained in the order. All that the Court has to see is whether the order sought to be challenged is valid on those recitals, accepting them on their face value.

7. Learned counsel, however, argues that in order that section 7 (1) (b) (ii) may apply, it is not enough that a Jagirdar should be unfitted by vicious habits or bad character for the management of his own property, but it is further necessary that he should also have been convicted of a non-bailable offence and it is contended that this condition is not fulfilled in the present case. Reliance is placed on the word "and" appearing in the section, and the argument is that reading the word "and" in its natural dictionary meaning, both conditions have to

be satisfied, namely conviction for a non-bailable offence, and unfitness by vicious habits or bad character, before a Jagirdar can be declared unfit to manage his property. The submission on behalf of the State, however, is that the word "and" has been used in this section in a disjunctive sense, and should be taken to mean "or".

8. Reliance is placed on behalf of the applicant on -- Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, where it was held that

"hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules".

That case, however, did not specifically deal with the question whether in certain cases it is possible to read the word "and" as meaning "or". The point has been dealt with in Maxwell on the Interpretation of Statutes, Ninth Edition, at page 244 where the learned author observes as follows:

"To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other."

9. There is ample authority for the view that it is possible for the courts to construe the word "and" as meaning "or" in suitable cases. We may only refer to a recent case of the Allahabad High Court, -- Sukhnandan Vs. Suraj Bali and Others, In that case, a question arose whether the word "and" used in section 13 of the Oudh Laws Act (No. XVIII of 1876) could be read as "or". The case was before a Bench of three Judges, and it was decided that it could not; but the principles under which it could be done in suitable cases were laid down in the following words at page 120:

"The fundamental principle of construction is that the words used in a Statute must be understood in their ordinary grammatical sense. It is clear that, in that sense, the word "and" is used as a conjunction. This will, however, not prevent the Court from departing from the ordinary grammatical meaning of a word if it appears, from the context or a consideration of the other provisions of the Statute that it was the intention of the Legislature to give it another meaning. Similarly, if the ordinary grammatical meaning of a word results in creating an absurdity or an anomaly or of rendering the legislation of no effect, a narrower or a broader meaning may be given to the word or it may be construed in such a way as to obviate the absurdity or anomaly on the principle that it could not have been the intention of the Legislature to create absurdities or anomalies or to render its enactments of no effect. In such a situation the word "and" may well be construed in a disjunctive sense and be read as "or"."

10. What we have to see, therefore, is whether the intention of the Legislature in using the word "and" in this particular context was to use it in a disjunctive sense. Clause (ii) of Section 7 (1) (b) gives the conditions under which a Jagirdar could be disqualified. Was it the intention of the Legislature that this disqualification could only occur if the Jagirdar was convicted of a non-bailable

offence and also was unfitted by vicious habits or bad character for the management of his property? We do not think that the intention of the Legislature could have been to require that both conditions must be present before a Jagirdar could be disqualified from the management of his property. It seems to us that the intention of the Legislature would be frustrated, and the Act made to a great extent ineffective, if it was necessary, before a Jagirdar could be disqualified by reason of vicious habits or bad character, that he should have also been convicted of a non-bailable offence.

Suppose, a Jagirdar had vicious habits and bad character, and also suppose that he made it a rule to give a beating to his tenants for no rhyme or reason; but, suppose that he took care that the beating caused only simple hurt. Suppose also that the Jagirdar had been convicted on numerous occasions u/s 323 of the Indian Penal Code, which is a bailable offence, for beating his tenants. We have no doubt that such a Jagirdar would be utterly unfitted by vicious habits or bad character for the management of his property. But if the word "and" in Clause (ii) has been used by the Legislature in a conjunctive sense, he could not be disqualified under this provision. It could, in our opinion, never have been the intention of the Legislature that such a Jagirdar should not be disqualified. It seems to us, therefore, that in order to carry out the intention of the Legislature, the word "and" in this clause must be interpreted in a disjunctive sense, and must mean "or".

11. We may, in this connection, refer to the Rajasthan Court of Wards Act of 1951, which has repealed and replaced the Marwar Court of Wards Act. In the Rajasthan Act, section 8 corresponds to section 7 of the Marwar Act, and section 8 (1) (c) (ii) corresponds to section 7 (1) (b) (ii) of the Marwar Act. There we find that the word "and" has now been replaced by the word "or" thus making the meaning quite clear. We have, therefore, no difficulty in coming to the conclusion that the word "and" used in the second clause of section 7 (1) (b) has been" used in a disjunctive sense, and means "or". Therefore, in order to disqualify a Jagirdar, all that is necessary is that he should either be convicted of a non-bailable offence, or be unfitted by vicious habits or bad character for the management of his property. It has been urged that this interpretation will give a rather wide latitude to the Govt. inasmuch as there are some non-bailable offences which do not imply moral turpitude or dangerous character. We have, however, no doubt that when the Government propose to take action on the ground that any Jagirdar has been convicted of a non-bailable offence, it will take into consideration the seriousness of the offence.

12. The next point urged is that the conditions requisite u/s 11 of the Marwar Court of Wards Act, 1923 to empower the Court of Wards to assume the superintendence of the property are not fulfilled. That section reads as follows:

"In the absence of any orders passed by the Darbar, the Court of Wards may assume the superintendence of the property of: --(a) any Jagirdar who is a minor or who has been disqualified u/s 7 (b); "(b) any Jagirdar in regard to

whose property a declaration has been made u/s 9; (c) any person who is a minor and whose succession to the estate of a Jagirdar is disputed on behalf of the Darbar according to the law or custom in force for the time being in relation to such succession."

13. It is common ground that the assumption of the property under Court of Wards is being made on account of the alleged disqualification u/s 7 (1) (b) (ii) of the Act. The provisions of that clause have already been stated in an earlier part of the judgment. Those provisions require a declaration by the Durbar that the particular Jagirdar is incapable of managing or unfitted to manage his property for the reasons given in that clause. It was contended that no such declaration has ever been made by the Government in the present case and, therefore, Section 11 does not come into operation and the Court of Wards cannot assume superintendence of the Jagir in this case.

We may mention that in the original application which was made on the 10th of July, 1951, it was said in paragraph 5 that the Government of Rajasthan again on 18th June, 1951, declared the petitioner to be incapable to manage his estate; but a further application was filed on behalf of the applicant on the 26th of November, 1951, in which it was alleged that there had been no declaration by the Darbar within the meaning of Section 7 (1) (b) and therefore, the superintendence of the Jagir could not be assumed by the Court of Wards. There is no doubt that the words of Section 7 (1) (b) clearly provide for a declaration by the Darbar that a particular Jagirdar is incapable of managing or unfitted to manage his property, and it is only when such declaration is made that -a Jagirdar can be deemed to be disqualified to manage his property with the result that the Court of Wards assumes superintendence of his estate without any further orders by the Darbar.

14. Notice of the subsequent application was given to Government Advocate and we have heard further arguments in that connection. The State has filed the copy of an order passed by the Hon. Minister of Revenue on the 11th of June, 1951, and it is urged that that order is a declaration by the Darbar within the meaning of Section 7 (1)(b).

15. Reference in this connection may be made to Section 3 (1) of the Rajasthan Administration Ordinance (No. 1 of 1949) which provides as follows:

"All the laws in force in any covenanting State immediately before the commencement of this Ordinance in that State shall, until altered or repealed or amended by a competent Legislature or other competent authority, continue in force in that State subject to the modification that any reference therein to the Ruler or Government of that State shall be construed as a reference to the Raj. Pramukh, or, as the case may be, to the Government of Rajasthan."

Thus, under this provision, reference to the Darbar in the Marwar Act can be construed as reference either to the Raj Pramukh or to the Government of Rajasthan depending upon the circumstances of each case. We have, therefore,

to see whether the order of the Hon. Minister of Revenue on the 11th of June, 1951, can be said to be a declaration by the Raj Pramukh or the Government of Rajasthan.

16. We may, in the first place, refer to the language of the so called order of the 11th of June, 1951. It begins with the various circumstances which have led to that "note or order" being recorded. The Hon. Minister of Revenue gives his view on the facts before him that the applicant's unfitness is clear from those facts and ends by saying "

^vr% os viufBdkus dk izca/k djus v;ksX; ?kksf"kr fd;s tkus ds vf/kdkjh gS A

(consequently, he is liable to be declared unfitted to manage his Thikana). The "note or order" proceeds further and gives certain other circumstances and ends up with these words:

Bkdqj fuEcksy dks fBdkus dk izca/k djus esa v;ksX; ?kksf"kr fd;k tkos A jkt"o ls? sVjh bl IEcU/k esa vko";d dkjokbZ djus ds vkns"k f"k?kz tkjh djs A

(Thikana Nimbol should be declared unfitted to manage his Thikana. Revenue Secretary should take immediate steps to issue necessary orders). After this we find that the Revenue Secretary issued a letter to the Commissioner of Jodhpur Division the relevant terms of which we have already set out.

It is admitted that there is no order of the Raj Pramukh in the form in which such orders are issued declaring the applicant unfitted to manage his property; nor is there any order of the Government of Rajasthan in clear terms making any such declaration. The words used in the "note or order" of the Hon. Minister of Revenue are also not in the categorical form of an order or declaration. We have already set out the exact words and in both the places, there is no categorical order of the Hon. Minister. In one place, the Hon. Minister merely records that the applicant is liable to be declared unfitted to manage his estate. In the other place, the Hon. Minister says that the Thakur of Nimbol should be declared unfitted to manage his property. The Hon. Minister has nowhere said that "the Thakur is declared unfitted to manage his property". In the end, the Revenue Secretary is directed to take immediate steps in the matter on what we can only consider as the advice of the Hon. Minister. That is why we think that the so-called order of the 11th of June, 1951, is merely a note of the Hon. Minister tendering his advice to the Raj Pramukh and ordering the Revenue Secretary to take necessary steps in the matter.

17. We may in this connection refer to Article 166 of the Constitution of India. That Article provides that all executive action of the Government of a State shall be expressed to be taken, in the name of the Governor. It further provides that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an 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. There is further provision that the Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. Art. 163 provides for Council of Ministers and lays down what are the functions of the Council in Clause (1) in these terms:

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

The Ministers, therefore, only aid and advise the Governor and the orders of the Governor have to be expressed as taken in the name of the Governor. There is a well known form for this in Rajasthan viz., By order of His Highness the Raj Pramukh, and where that form is used and authenticated in the manner provided by the rules, there is a conclusive presumption that the order was made by the Raj Pramukh in view of Article 166(2). In the present case, however, we do not find any order in that form. It was, in our opinion, the duty of the Revenue Secretary after the note of the Hon. Minister dated 11th June, 1951, reached him to take action in the manner provided in Article 166.

That has, however, not been done and we cannot, therefore, treat the note of the Hon. Minister dated 11th June, 1951, as complying with the conditions mentioned in Section 7 (1) (b) which requires a declaration by the Darbar. It was urged on behalf of the State that according to the rules of business, the Hon. Minister of Revenue was competent to pass final orders in this matter and, therefore, we should accept this note of the 11th June, 1951, as the order of the Government of Rajasthan. In the first place, we have already pointed out that this is merely a note and not an order because there is no categorical declaration in it. In the second place, the rules of business on which reliance is being placed have not been shown to us, and it is not possible for us, therefore, to say anything with regard to this argument based on the rules of business.

Opportunity was allowed to the learned Government Advocate to produce the aforesaid Rules of Business on which reliance was placed in this case, and more than one adjournment was granted but the learned Government Advocate ended by saying that under the instructions sent to him, he was not in a position to produce them. We, have, therefore perforce to construe the note of the 11th of June 1952, as it stands, with the help of the various provisions in the Constitution and the only conclusion we can come to, under these circumstances, is that the condition prescribed in Section 7(1)(b) of Wards Act, viz., making of the declaration by the Darbar, has not been complied with.

18. Under these circumstances, the superintendence of the Jagir of the applicant could not be assumed by the Court of Wards as the provisions of the law have

not been complied with. We, therefore, allow the application and order that the estate of the applicant will be released from the Court of Wards. The applicant will get his costs from the State, which we assess at Rs. 80/- per day of hearing.