
(1953) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26/5 of 1952

Dost Mohammad Khan

APPELLANT

Vs

Hyderabad Government and Others

RESPONDENT

Date of Decision : 19-03-1953

Acts Referred:

Hyderabad Atiyat Inquiries Act, 1952 — Section 15

Citation : AIR 1953 AP 222

Hon'ble Judges : Misra, C.J; Manohar Pershad, J

Bench : Division Bench

Advocate : Bishweshwarnath, for the Appellant; Narsimha Iyengar, for the Respondent

Final Decision : Dismissed

Judgement

Manohar Pershad, J.—This is an application on behalf of Dost Mohammed Khan for the issue of Writs of Certiorari, Mandamus and Prohibition under Article 226 of the Constitution of India to quash the opinion of the Atiyat Appeals Committee of 9-5-1951 and the endorsement thereon of the Hon'ble the Chief Minister dated 31-5-1951 refusing to give an opportunity to the Petitioner to represent his case and for an order against Respondents 1 to 3 restraining them from enforcing the said order of the Chief Minister and prohibiting them and Respondent 4 from taking any proceedings in pursuance of the said order.

2. The facts which give rise to this petition are that one Mohammed Anwar Khan, Jagirdar of Tamooru, situate in Bokardan Taluqa, Auran- gabad District, had two types of jagirs; the first consisting of 23 altamga villages and the second consisting of 11 villages which were ear- marked for jamiath (Armed forces). The inam enquiry of the mash was started during the lifetime of Anwar Khan who died in 1313 F. and the virasat (succession) proceedings of the deceased started along with the Inam enquiry. Ibrahim Ali Khan was one of the claimants. But he died in 1321 F. leaving a son Dost Mohd. Khan the present Petitioner and a daughter Shahzadi Begum. The eleven jamiat villages were resumed to Khalsa

through His late High- ness's Firman dated 12 Ramzan 1324 H. before the completion of succession and Inam proceedings. In the succession proceedings the Nazina-Aluiyat recommended that jamiat jagirs having been already resumed by a Firman of the H. E. H. the late Nizam, the altamga jagir alone could be continued in favour of Dost Mohammed Khan, and that Shahzadi Begum Respondent 4 be given a guzara (maintenance) of Rs. 100/-per month. Aggrieved by this, the Petitioner and Respondent 4 preferred two separate appeals-before the Atiyat Appeals Committee, Dost Mohammed Khan praying that the 11 jamiat Jagir villages be also restored and Respondent 4 requesting that she should be given a share according to the Mohammedan Law in the mash instead of a mere guzara. The Atiyat Appeals Committee allowed both the appeals recommending a one-third share to Shahzadi Begum so far as her appeal is concerned and recommending restoration of the 11 jagir villages previously resumed so far as Dost Mohammed Khan's appeal was concerned. On submission of the recommendations of the Atiyat Appeals Committee by the Executive Council to H. E. H. the latter through his Firman dated 17th. Muhar- rum corresponding to 24-5-1932 passed the following orders:

The opinion of the Attiyat Committee and the President is approved. Accordingly, the altamga mash (including the villages specially meant for jamiat) after taking 5 per cent, on account of ."Hakh-e-mallikana, be continued in favour of Dost Mohammed Khan, from the jagirs which the late Ibrahim Ali Khan may in his capacity as the heir of Anwar Khan bo held entitled to Shahzadi Begum, the sister of Dost Mohd. Khan; shall be allowed to one-third share after deducting. Haq-e-intezami and Haq-e-mallikana.

3. On 9th Khurdad 1342 F. Shahzadi Begum submitted an application stating that her brother did not pay her anything towards her share in the jamiat Jagirs. The Joint Secretary heard the parties and gave his opinion that Shahzadi Begum was entitled to get her one- third share not only from the income of al-tamga but also from the jamiat jagir village as per Firman of H. E. H. Dost Mohammed Khan submitted an application aggrieved by this opinion to the Revenue Member. Mr. Crof-ton, the then acting Revenue Member while agreeing with the opinion of the Joint Secretary ordered that an Arzdasht be submitted to H. E. H. requesting him to interpret the portion of the original Firman pertaining to the jagif villages. He elucidated that Shahzadi Begum as a daughter of Ibrahim Ali Khan is entitled to receive one-third share. The Executive Council entirely agreed with the decision of the Hon"ble Revenue Member and ordered that art informatory Arzdasht be submitted to H. E. H. H.E.H. did not pass any final orders but instead- through Firman dated 23rd Jamadi 1336 H. corresponding to 15-5-1947 called for the opinion of the Attiyat Appeals Committee. Accordingly, the Attiyat Appeals Committee con- sisting of Raja Dhonderaj Bahadur and Sri Govind Rao gave their opinion on 9-5-1951 in favour of Shahzadi Begum. This opinion was, later approved by the Chief Minister on 31-5- 1951 which has given rise to the present petition.

4. Raja Bahadur Bishweshwarnath, Advocate, appearing on behalf of the Petitioner confined himself to three points only although various other points have been raised in the petition. The first point urged before us is that the judgment of the Attiyat Appeals Committee was passed ex parte and the Petitioner was not given any opportunity to represent his case. This act of Tribunal, he contends, is in Violation of natural justice and cannot be sustained. The second contention is that Clause (6) of Gashti (Circular) 10 of 1338 F. enjoins that the Attiyat Appeals Committee shall consist of two members of the Bab-e-Hukumat (Executive Council) the impugned opinion which has been sanctioned by the Revenue Member and the Chief Minister has been given by Raja Donde-raj Bahadur and Shri Govind Rao who were not members of the Bab-e-Hukumat and for this reason also the impugned judgment has no validity in the eye of law. The third contention is that under Circular 10 of 1338 F. which was, and still, is, the law relating to virasat proceedings and Crown grants, it is essential that the sanction of H.E.H. should be obtained for final adjudication of rights. The proceedings were not submitted to H.E.H. in this case for sanction, and so the judgment is invalid and has no legal force. It is also urged that the Attiyat. Enquiry Act of 1952 is "ultra vires" the powers of the Rajpramukh as well as the legislature of the State under Item 18 of the State List (No. 2) of the Constitution.

5. Shri Narasimha Iyengar, Advocate, appearing: on behalf of Shahzadi Begum in reply contended that H.E.H. only sent for the opinion of the Attiyat Appeals Committee and there was no question of giving any opportunity to any of the parties. With regard to the second point, he contends that prior to the Constitution also H.E.H. used to constitute the Attiyat Committee consisting of persons who were not members of the Bab-e-Hukumat and that it is not necessary that an amendment should be made in Circular No. 10 of 1338 F. Following up the contention he urged that after the Police Action, H.E.H. delegated his power to the Military Governor and the present Bench consisting of Raja Dhonderaj Bahadur and Shri Govind Rao was constituted by H.E.H. on the recommendation of the Chief Minister and so it cannot be said that the Bench was not properly constituted. With regard to the argument relating to the validity of the Attiyat Enquiries Act of 1952, he urges that this "question does not arise in the present case as the Firman calling for the opinion was passed long before the Constitution came into force. A similar argument is advanced on behalf of the other Respondents as well.

6. After giving a careful consideration to the arguments advanced, we are of the opinion that there is no force in this petition and it should be rejected. So far as the first contention is concerned, the learned advocate appearing for the Petitioner has conceded before us that during the days prior to the Constitution H.E.H. used to constitute the Attiyat Committee comprising of persons who were not members of the Bab-e-Hukumat. But he contends that it cannot be held to be legal unless an amendment is made in. Circular No. 10 of 1338 F. We are afraid, we cannot accept this contention either. H.E.H. had only asked for the

opinion of the Attiyat Coinmittee. The fact that the Attiyat Committee consisted of persons who were not members of the, Bab-e-Hukumat does not become so material when it is remembered that H.E.H.: himself has appointed this Committee. The contention that Circular No. 10 of 1338 F. makes a provision that only members of the Bab-e-Hukumat should be appointed does not in any way take away the right of the H.E.H. to appoint other persons. This right of the H.E.H. is not disputed at all. It is urged that the present appointment made by H.E.H. is as a Raj " Pramukh and not as the Nizam. This does not, make any difference.

7. After this we turn to the other argument that the Petitioner was not given an opportunity to represent his case. In this contention too we find no force. H.E.H. had only called for the opinion of the Attiyat Committee. The Firman does not ordain that the parties should be given an opportunity to represent their case. In the absence of any such direction, we are not inclined to accept the argument of the learned Advocate that he should have been given an opportunity to represent his case.

8. The argument questioning the validity of the Attiyat Enquiries Act of 1952 cannot be sustained now in view of the decision of this Court in the case of - Ahmed-un-Nissa Begum v. State of Hyderabad AIR 1952 Hyd 163 (A). The Petitioner has prayed for the writs of certiorari, mandamus and prohibition. The writ of certiorari could be granted if it is shown that a tribunal or body or officer has acted wholly without jurisdiction or in excess of it or has acted in violation of the principles of natural justice or committed an error apparent on the face of the record and such act, or omission, or error has resulted in manifest injustice. As indicated above, no such points have been made out in the present case and so there is no question of issuing any writ of certiorari.

9. As regards the issue of Mandamus and Prohibition we may point out that an order for the issue of Writ of Mandamus is, as a general rule, a matter for the absolute discretion of the Court. Some of the essential conditions relevant for the present purpose for the grant of such a writ are:

(i) that the person applying must show that he is really and specially interested in | the subject matter and has a specific legal right to enforce; (ii) that there resides in him a legal right to I the performance of the legal duty by the! party against whom such a writ is sought and (iii) that there is no other equally efficacious, convenient and beneficial remedy.

The Writ of Prohibition on the other hand, was a writ which used to be issued by the King's Bench Division primarily to prevent a Court or tribunal, judicial or quasi-judicial, from exceeding jurisdiction or acting contrary to rules of natural justice. In the present petition, the Petitioner could not satisfy us as to what was the legal duty of the party against whom mandamus is sought. As discussed above the Petitioner has not made out a case either for the issue of a writ of certiorari or for the issue of mandamus and prohibition. The petition is therefore,

rejected. Having regard to the facts of this case, we do not wish to make any order regarding costs.