

(1988) 02 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 158 of 1980

Dr. Anant Rao

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-02-1988

Acts Referred:

Constitution of India, 1950 — Article 13, 226, 23
Madhya Bharat Abolition of Jagirs Act, 2008 — Section 3, 4

Citation : AIR 1988 MP 237

Hon'ble Judges : T.N. Singh, J; R.M. Rastogi, J

Bench : Division Bench

Advocate : V.K. Sapre, for the Appellant; R.A. Raman, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.—This matter was heard by us lastly on 4-1-1988. On that date Shri V. K. Sapre appearing for the petitioner cited before us Madhaorao Phalke Vs. The State of Madhya Bharat, , in support of his contention. It was then pointed out to learned counsel that the decision would not avail the petitioner because of the constitutional mandate inscribed in Articles 13 and 23 of the Constitution, and he was given time to examine the position. Counsel concedes today that he could not lay his hands on any authority to overcome the hurdle pointed out to him. We proceed, therefore, to dispose of the matter in terms of the constitutional imperative without tarrying further.

2. In this matter, the petitioner has prayed for a writ of mandamus directing the State of Madhya Pradesh to make payment to the petitioner of a sum of Rs. 1556.50 p. annually to which he claimed to be entitled by virtue of the Sanad dated 18-10-1942, granted by the erstwhile Ruler of the State of Gwalior. That is Annexure III to the petition. Under the Sanad the grant claimed was made in the name of Sardar Rao Raja Ganpat Rao Rathunath Rao Rajwade. The grantee, It is admitted, was petitioner's great grandfather but under the Sanad the right to

receive the gram is reserved also for the descendants of the grantee in the main line. Another document Annexure V is also placed for our consideration by Shri Sapre to press another claim of the petitioner in respect of a sum of Rs. 360/- to be paid annually to Sardar Ramchandra Rao Saheb Rajwade who was petitioner's father. Accordingly, the admitted position is that the petitioner has preferred claim for payment by the successor sovereign, namely, the State of Madhya Pradesh, of cash grants which were payable to his ancestors under Annexures III and V by the erstwhile ruler of Gwalior State.

3. The other fact admitted and not denied is that petitioner's ancestors were Jagirdars under the erstwhile Gwalior State and during the life time of petitioner's father. In virtue of the Madhya Bharat Abolition or Jagirs Act, Samvat 2008 (for short, the "Act"), proceedings were taken for resumption of Jagir lands held by him. In those proceedings compensation was paid for resumption of the Jagir lands. The case of the respondent-State is that nothing remains payable to the petitioner, as all claims of his father as Jagirdar were settled to his satisfaction in those proceedings in accordance with the provisions of the Act.

4. We have considered the several submissions advanced by Shri Sapre but we are not satisfied if the petitioner has been able to make out any case for issue of the writ prayed. This we say for several reasons. Firstly, it is conceded by Shri Sapre that the petitioner claims through his father and he has no independent right to claim payments aforesaid because the legal source of the right is Section 6 of the "Kawayad Mafidaran" of Gwalior State, which envisages that the right of "Muafi" is heritable. If that position is accepted, that is the end of the matter. Inasmuch as, the rightful "Muafidar" on the date when the "Muafi" could be claimed, having settled his claim in respect of that right by accepting compensation in regard thereto, his act would bind his successors. It cannot be disputed that during his father's life-time the petitioner was nowhere in the picture when the "Jagir" was resumed and the claim of the petitioner's father, whether as a "Muafidar" or as a Jagirdar, was settled to his satisfaction in the proceedings envisaged for abolition of Jagirs under the Act. The heritable nature of the right did not make the Jagirdar or Muafidar a qualified title holder. As the present holder of the grant in absolute terms the petitioner's father had every right to settle with the successor sovereign his claims in respect to those grants to bind his own successors. Indeed, it is settled law and part of the doctrine of "Act of State" that citizens of the ceded territory cannot enforce against the successor sovereign any right conferred on them by the outgoing ruler until the successor accepted the claim or adopted the act of the erstwhile ruler.

5. We may, however, add that there are other compelling reasons which impel us to take the view that the claim founded on Annexures III and V is meritless. In this connection reference may be made to sections 3 and 4 of the Act which deal with resumption of Jagir-lands by Government and consequences that ensue from such resumption. Section 4(1)(f) of the Act contemplates that "as and from the date of resumption notwithstanding anything contained in any contract, gram

or document or in any other law, rule, regulation or order for the time being in force," the Government shall "cease to be liable to pay to the Jagirdar," among others, "any cash payment in respect of his rights such as Jagirdar." From Annexures III and V it is very clear that whatever right could be claimed by the ancestors of the petitioners, those rights were referable to their status as Jagirdars, and this fact is already established that the last Jagirdar was his father whose Jagir lands were resumed and compensation in respect thereof was paid in accordance with the provisions of the Act. As no objection was raised by petitioner's father to the compensation paid, nothing remained for the petitioner to agitate. His father's act bound him, and the matter ended when the proceedings for payment of compensation were finalised. We have perused the order of the Jagir Commissioner, dated 31-5-1957. Annexure VII to the petition. We are satisfied that the question of payment of the two sums of Rs. 1556.50 and Rs. 360/- as grants was raised before him and in the proceedings that claim was settled. Thereafter, there was no appeal against that order.

6. We are now left only to deal with the decision cited by Shri Sapre. What we could read, in *Madhaorao Phalke Vs. The State of Madhya Bharat*, is that the Maharaja of Gwalior being an absolute monarch had no constitutional limitation upon him to act in any particular capacity. Therefore, his orders, although executive in form, could be deemed "law" as he was supreme head of the legislature and the executive. It was also held that in virtue of the provisions of Article 366(10) of the Constitution, such law would be deemed to be an "existing law." It does not say more than that and it does not say further that such existing law was insulated against the constitutional injunctions adumbrated in Part III of the Constitution. Whether the "existing law" is valid today after the enactment of the Constitution, in our opinion, would be open for any Court to consider and determine. Indeed, that is what we read in Article 13 envisaging that "all laws in force in the territory of India," indeed, "immediately before the commencement of the Constitution," would be valid only to such extent as may be not inconsistent with any provision of Part III of the Constitution,

7. We have looked at Annexure III and have read the several clauses thereof. There can be no doubt about the position that the grant of cash payment envisaged thereunder was made under certain conditions and those were severally enumerated in the Sanad. We do not think if the several conditions mentioned therein can stand the test of constitutional validity under the republican polity whose grundnorm is projected in sovereignty of the people. According to the first condition, the grantee and his descendants were required to pay "any tax" imposed by "Durbar" for the benefit of the public or improvement of the country or for the defence of the territory. As per second condition, the grantee and his descendants were required to serve the Government as ordered from time to time on the assignment given according to their capabilities. Under the third condition, the ruler of the Gwalior State was to be treated as "master" and the grantee and his descendants were required to "obey", without any objection, all orders, laws, rules, circulars and customs in force in the territory

ruled. Indeed, the grant is made conditional enforceable on observance of the aforesaid conditions. This condition is explicitly envisaged in Clause (4) of the Sanad, Annexure 111.

8. We have no hesitation to say at once that the several enumerated conditions are violative of the new norms of the republican polity under which a citizen is granted the several Fundamental Rights envisaged in Part III of the Constitution. The Government under the new polity is not the "master" as sovereignty vests in the "people". Article 23 prohibits in express terms forced labour, and the terms and tenor of the Sanad being violative thereof and other provisions of Part III, the right to cash grant is unenforceable. Indeed, a citizen is not liable to pay "any tax" and he is not bound today to obey such "order" or "law" as is violative of the constitutional injunctions inscribed in Part III because such laws would be deemed void under Article 13. The conditions which could be imposed under pre-existing law, on order passed under the pre-existing law of the Gwalior State, would bind neither the present republican State nor its citizens (including the petitioner) if they are deemed void under Article 13. We are clear in our mind, therefore, that the Sanad (Annexure III) is not enforceable against the successor State of Madhya Pradesh. Because the cash grant under the Sanad is not absolute and unconditional and the conditions being void the grant must be deemed void under Article 13. Indeed, Clause (4) of the Sanad makes it clear that the several conditions thereof are not severable. Accordingly, even if one of the conditions is held unconstitutional, the grant would fall as a whole and it would not be enforceable at all.

9. Insofar as the right claimed under Annexure V is concerned, if we have to add anything, suffice it to say that neither legal source of the right nor the nature or incidence thereof are not to be read in that document. It rather speaks of an order dated 3-6-48 of the ruler of the Gwalior State under which the cash grant of Muafi of Rs. 360/- per year was made. We do not have that order before us to examine whether that order is legal, constitutional, valid and enforceable today under the new republican set-up. Indeed, we have not been able to undertake the same exercise with respect to Annexure V, as undertaken in respect of Annexure III. A mandamus we would not issue unless we have discharged first our constitutional duty to test any law, order or transaction on the touchstone of Article 13. A similar view was taken by this Court in *Nihal Singh*, AIR 1987 Madh Pra 126 wherein it was held that a Court set-up under the Constitution cannot be party to violation of a constitutional injunction. The transaction in relation to which right was enforced in the suit in that case being held violative of Article 23, the decree was set aside by this Court holding that the suit could not have been entertained by any Court of law acting under the Constitution, which prohibits such a transaction from taking place.

10. For all the foregoing reasons, we have no hesitation to hold that the petitioner has failed to make out any case for enforcement of the rights claimed under Annexures III and V. The petition is, accordingly, dismissed. But, we make

no order as to costs in the facts and circumstances of the case.

11. The outstanding amount of security deposit shall be refunded to the petitioner.